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**DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF SAN BENITO
AND NORTHEAST FAIRVIEW LANDOWNERS GROUP (SANTANA RANCH)**

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into on November 2, 2010 by and between the County of San Benito, a political subdivision of the State of California ("**County**") and the Santana Ranch Landowners, which include Guerra Nut Shelling Company, a California corporation, Larry W. Anderson and Georgeann M. Anderson, Restated Larry W. Anderson and Georgeann M. Anderson Revocable Family Trust, and King & Domingues Properties, a California general partnership (collectively, "**Owner**"). County and Owner are sometimes herein referred to individually as a "**party**" and collectively as "**parties**."

RECITALS

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

A. Capitalized Terms.

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

B. Nature and Purpose of Development Agreements.

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

C. County's Development Agreement Procedures.

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

D. Owner's Interest in the Property.

The land governed by this Agreement consists of the following: (1) approximately two hundred and ninety two (292) acres in unincorporated San Benito County adjacent to

the City of Hollister, as more particularly described in attached Exhibit 1 and depicted on Exhibit 2 ("**Specific Plan Area**"); and (2) approximately twenty-six (26) acres located immediately adjacent to the Specific Plan Area, as more particularly described in attached Exhibit 3 and depicted on attached Exhibit 4 ("**Potential Wastewater Treatment Plant Site**"). Together, the Specific Plan Area and the Potential Wastewater Treatment Plant Site are collectively referred to herein as the "**Property**." Owner has a legal interest in the Property. The Property has been designated by the San Benito County Board of Supervisors ("**Board**") and in the County's General Plan as an "Area of Special Study," which is an area where significant growth is expected to occur upon completion and adoption of a comprehensive specific plan pursuant to Government Code Section 65450.

E. Development of the Property.

Owner has prepared the Santana Ranch Specific Plan ("**Specific Plan**"), which relates to the development of the Property as described more fully in the Specific Plan, including, without limitation, the development of a maximum of one thousand ninety-two (1,092) residential units (consisting of approximately 774 Santana Ranch single-family units [R1-SR] and approximately 318 Santana Ranch residential multiple units [SR-RM], with a variety of housing types); a maximum of one hundred six thousand (106,000) square feet of neighborhood commercial and mixed uses, including approximately sixty-five thousand (65,000) square feet of neighborhood commercial uses and forty-one thousand (41,000) square feet of potential mixed uses; reservation of a site, anticipated to consist of eight to twelve (8 to 12) acres, for purposes of an elementary school to serve approximately seven hundred (700) students; approximately eighteen (18) acres of Formal Parks (as the term is defined below in Section 2.3(a) below); and additional park and recreational facilities, including a pedestrian and bicycle network throughout the Property. Collectively, such development shall be known as the "**Project**."

F. Initial Project Approvals.

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

1. Environmental Impact Report (Resolution No. 2010-114). On October 5, 2010, pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*), the CEQA Guidelines (14 Cal. Regs. § 15000 *et seq.*), and County's local Implementing Procedures for CEQA (collectively, "**CEQA**"), and in accordance with the recommendation of the San Benito County Planning Commission ("**Planning Commission**"), the Board took the following actions: (a) certified an Environmental Impact Report (State Clearinghouse No. 2008031019) for the Project ("**Project EIR**"); (b) adopted written findings relating to significant environmental impacts; (c) adopted a Statement of Overriding Considerations; and (d) adopted a mitigation monitoring and reporting plan ("**MMRP**").

2. General Plan Amendment (Resolution No. 2010-128). On October 26, 2010, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board took the following actions: (a) approved General Plan Amendment No. 10-45 as an amendment to the County's General Plan ("**General Plan Amendment**") in

connection with the Project; and (b) made determinations regarding the Project's consistency with the County's General Plan (as amended) and the non-applicability of the County's Potential Residential Growth Increase (PRGI) Ordinance.

3. Specific Plan Adoption (Resolution No. 2010-129). On October 26, 2010, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board adopted the Specific Plan, which governs development of the Project ("**Specific Plan Adoption**").

4. County Code, Zoning Text and Zoning Map Amendments (Ordinance No. 860). On October 26, 2010, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board took the following actions: (a) amended the text in the County's Zoning Code to reflect the new zoning designation of "Santana Ranch-Specific Plan (SR-SP)" to be applied to the Property; (b) amended the County's Zoning Map to show the Property as rezoned to "Santana Ranch-Specific Plan (SR-SP);" and (c) made other conforming amendments to ensure consistency between the County Code and the Project (collectively, "**Code Amendments**").

5. Development Agreement (Ordinance No. 861). On November 2, 2010, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board made the following findings with respect to the Agreement:

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

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

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

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

(e) It is fair, just and reasonable.

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

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

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

(i) The Board has approved the underlying legislative entitlements at a meeting precedent to the hearing in which the Board seeks to approve the Development Agreement.

On this basis, the Board approved this Agreement. On November 2, 2010, the Board adopted Ordinance No. 861, enacting this Agreement. This Agreement will become effective on December 2, 2010 ("**Effective Date**").

H. Intent of Parties.

County and Owner have, in good faith, negotiated the terms and conditions of this Agreement, and have determined that use of a development agreement is appropriate for development of the Project in accordance with the Project Approvals. County desires to enter into this Agreement because it will eliminate uncertainty in planning and provide for the orderly development of the Property; it will ensure the maximum efficient utilization of resources within the County and the surrounding community; it will provide for public benefits beyond those that otherwise could be imposed as conditions of approval; and it will otherwise achieve the goals and purposes of the Development Agreement Statute and the County's Development Agreement Procedures. In exchange for these benefits to County, together with the other public benefits derived from development of the Project, Owner desires to enter into this Agreement to receive the assurance that it may proceed with development of the Project in accordance with the Project Approvals, as set forth more fully below.

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

AGREEMENT

Section 1 Definition of Terms.

The following defined terms are used in this Agreement:

- 1.1 "Additional Park and Recreational Space" has the meaning set forth in Section 2.4.
- 1.2 "Additional Outreach and Marketing Period" has the meaning set forth in Section 2.7(e).
- 1.3 "Affordable Housing Implementation Plan" has the meaning set forth in Section 2.7(f).
- 1.4 "Affordable Housing Procedures" has the meaning set forth in Sections 2.7(c) and 2.7(f).
- 1.5 "Affordability Term" has the meaning set forth in Section 2.7(c).
- 1.6 "Affordable Units" means any one or more of the Project's units reserved for occupancy by Low and Moderate Income Households.

- 1.7 **"Age-Restricted"** means those Moderate Income Units that are reserved for Moderate Income Households where all household members are fifty-five (55) years of age or older.
- 1.8 **"Agreement"** means this Development Agreement between County and Owner. This Agreement also is sometimes referred to herein as "DA."
- 1.9 **"Area Median Income" or "AMI Median Income"** means the annual median income for San Benito County, adjusted for family size, as published from time to time by the California Department of Housing and Community Development (HCD) pursuant to Health & Safety Code Sections 50079.5 and 50105.
- 1.10 **"Basic Community Park Improvements"** has the meaning set forth in Section 2.3(c).
- 1.11 **"Board"** means the San Benito County Board of Supervisors.
- 1.12 **"Building Permit"** refers to a document authorizing the holder to construct a building, as provided for in the San Benito County Code.
- 1.13 **"CEQA"** has the meaning set forth in Recital F(1).
- 1.14 **"Certificate of Occupancy"** means a final certificate of occupancy issued by County's Building Official or, if County's Building Code does not provide for the issuance of a certificate of occupancy for a particular structure, the functional equivalent thereto.
- 1.15 **"Code Amendments"** has the meaning set forth in Recital F(4).
- 1.16 **"COG"** refers to the Council of San Benito County Governments.
- 1.17 **"Community Financing District" or "CFD"** shall mean a financing district formed under the Mello-Roos Community Facilities Act of 1982, pursuant to Government Code section 53311 *et seq.*
- 1.18 **"Community Park"** has the meaning set forth in Section 2.3(a).
- 1.19 **"County"** means the County of San Benito, a political subdivision of the State of California.
- 1.20 **"County Development Agreement Procedures"** has the meaning set forth in Recital C.
- 1.21 **"Days"** means calendar days. If the last day to perform an act under this Agreement is a Saturday, Sunday or legal holiday in the State of California, said act may be performed on the next succeeding calendar day that is not a Saturday, Sunday or legal holiday in the State of California and in which the County offices are open to the public for business.

- 1.22 **"Defense Counsel"** has the meaning set forth in Section 10.16.
- 1.23 **"Development Agreement Statute"** has the meaning set forth in Recital B.
- 1.24 **"Development Impact Fee"** means any requirement of County in connection with a Project Approval for the dedication of land, the construction of public improvements, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment; facilities, services and infrastructure; or other public interests.
- 1.25 **"Dispute"** has the meaning set forth in Section 8.1.
- 1.26 **"Effective Date"** has the meaning set forth in Recital F(5).
- 1.27 **"Enforced Delay"** has the meaning set forth in Section 6.2(d).
- 1.28 **"Engineer's Report"** has the meaning set forth in Section 4.3.
- 1.29 **"Existing Rules"** means the Rules, Regulations and Official Policies in effect on the Effective Date.
- 1.30 **"Fairview Road Improvements"** describes infrastructure improvements identified in attached Exhibit 7.
- 1.31 **"First Phase of Affordable Units"** has the meaning set forth in Section 2.7(d).
- 1.32 **"Formal Parks"** has the meaning set forth in Section 2.3(a).
- 1.33 **"General Plan Amendment"** has the meaning set forth in Recital F(2).
- 1.34 **"Initial Approvals"** has the meaning set forth in Recital F.
- 1.35 **"Initial Outreach and Marketing Period"** has the meaning set forth in Section 2.7(e).
- 1.36 **"JAMS"** has the meaning set forth in Section 8.1.
- 1.37 **"Legal Challenge"** has the meaning set forth in Section 10.16.
- 1.38 **"Linear Park"** has the meaning set forth in Section 2.3(a).
- 1.39 **"Local Builder"** means those homebuilders that have their primary place of business in San Benito County and that have constructed ten (10) or fewer residential units in any year within the previous three (3) years.
- 1.40 **"Local Builder Lot"** has the meaning set forth in Section 2.8.
- 1.41 **"Low Income Household"** means a household with an annual income not greater than (and including) eighty percent (80%) of the Median Income.

- 1.42 **"Low Income Unit"** means an Affordable Unit that shall be rented or sold to a Low Income Household at a monthly rent or at a sales price that equates to a monthly cost that is no greater than thirty percent (30%) of eighty percent (80%) of the monthly Median Income, less the Utility Allowance then in effect.
- 1.43 **"Milestones"** refers to a schedule for the construction of improvements, as described in attached Exhibit 8.
- 1.44 **"MMRP"** has the meaning set forth in Recital F(1).
- 1.45 **"Moderate Income Household"** means a household with an annual income not greater than (and including) one hundred and twenty percent (120%) of the Median Income.
- 1.46 **"Moderate Income Unit"** means an Affordable Unit that shall be rented or sold to a Moderate Income Household at a monthly rent or at a sales price that equates to a monthly cost that is no greater than thirty-five percent (35%) of one hundred and twenty percent (120%) of the monthly Median Income, with no deduction or offset for any Utility Allowance.
- 1.47 **"Mortgage"** means any mortgage, deed of trust, security agreement, assignment or other like security instrument encumbering all or any portion of the Property or Owner's rights under this Agreement.
- 1.48 **"Mortgagee"** means the holder of any Mortgage encumbering all or any portion of the Property or Owner's rights under this Agreement, and any successor, assignee or transferee of any such Mortgagee.
- 1.49 **"Neighborhood Parks"** has the meaning set forth in Section 2.3(a).
- 1.50 **"New Rules"** has the meaning set forth in Section 3.3.
- 1.51 **"Notice of Default"** has the meaning set forth in Section 6.2(a).
- 1.52 **"Notice of Intent to Terminate"** has the meaning set forth in Section 7.2.
- 1.53 **"Offsite Land"** means lands other than the Property that prove necessary to support Project Infrastructure, as is further detailed in Section 3.9.
- 1.54 **"Owner"** means the Santana Ranch Landowners and all of their successors and assigns.
- 1.55 **"Periodic Review"** has the meaning set forth in Section 6.1.
- 1.56 **"Planning Commission"** means the San Benito County Planning Commission.
- 1.57 **"Planning Director"** means the head of the Planning and Building Departments and the Chief Planning Officer of San Benito County.

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- 1.58 **"Potential Wastewater Treatment Plant Site"** has the meaning set forth in Recital D.
- 1.59 **"Project"** has the meaning set forth in Recital E.
- 1.60 **"Project Approvals"** means the Initial Approvals and Subsequent Approvals, collectively.
- 1.61 **"Project EIR"** has the meaning set forth in Recital F(1).
- 1.62 **"Project Infrastructure"** has the meaning set forth in Section 2.2.
- 1.63 **"Project Land Use Plan"** denotes the location of Project components, as set forth in attached Exhibit 5.
- 1.64 **"Project Revenues"** mean any and all revenues generated in connection with the Project, whether by property taxes, sales taxes, special taxes, special assessments or otherwise.
- 1.65 **"Property"** has the meaning set forth in Recital D.
- 1.66 **"Recorder"** means the San Benito County Recorder, which is responsible, in part, for recording legal documents that determine ownership of real property and other agreements related to real property.
- 1.67 **"Regulatory Processing Fees"** means fees and charges adopted by County for the purpose of defraying County's actual costs incurred or to be incurred in the processing and administration of any form of regulatory permit, license, land use entitlement, financing district or mechanism, permit or approval, or imposed by County to defray the costs of periodically updating its plans, policies, and procedures, including, without limitation, the fees and charges referred to in Government Code section 66014.
- 1.68 **"Rules, Regulations and Official Policies"** means the County rules, regulations, ordinances, laws, general or specific plans, zoning and official policies governing development, including, without limitation, density and intensity of use; permitted uses; the maximum height and size of proposed buildings; the provisions for the reservation or dedication of land for public purposes or payment of fees in lieu thereof; the construction, installation and extension of public improvements; growth management; environmental review; and other criteria relating to development or use of real property and applicable to the Property.
- 1.69 **"School District"** means the Hollister School District.
- 1.70 **"School Site"** means the proposed elementary school site on the Property.
- 1.71 **"Second Phase of Affordable Units"** has the meaning set forth in Section 2.7(d).

- 1.72 **"Specific Plan"** means the Santana Ranch Specific Plan adopted by the Board on October 26, 2010 by Resolution No. 2010-129, as set forth in Recital E.
- 1.73 **"Specific Plan Adoption"** has the meaning set forth in Recital F(3).
- 1.74 **"Specific Plan Area"** has the meaning set forth in Recital D.
- 1.75 **"Subsequent Approvals"** means any and all land use, environmental, building and development approvals, entitlements and permits required subsequent to the Effective Date in connection with development of the Project on the Property, including, without limitation, tentative and final subdivision maps, parcel maps and lot line adjustments; conditional use permits; design review approvals; building permits; grading permits; certificates of occupancy; approvals of financing districts or other financing mechanisms; and any amendments thereto.
- 1.76 **"Subsequent Landowner"** is a party who has acquired all or a portion of the Property from Owner other than: (1) a Mortgagee; or (2) the ultimate user of any residential lot who has been released from liability under this Agreement pursuant to Sections 7.3 and 9.1 below.
- 1.77 **"Term"** has the meaning set forth in Section 5.1.
- 1.78 **"Traffic Impact Fee Program" or "TIF Program"** refer to the City of Hollister/San Benito County Regional Traffic Impact Fee Program.
- 1.79 **"Traffic Impact Fees"** refers to fees required under the City of Hollister/San Benito County Regional Traffic Impact Fee Program.
- 1.80 **"Utility Allowance"** means the allowance for tenant-purchased utilities adopted by the San Benito Housing Authority and approved by the U.S. Department of Housing and Urban Development (HUD) for the Section 8 Existing Rent Subsidy/Section 8 Voucher Programs.

Section 2 Owner's Obligations.

2.1 Development of the Project.

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