BEFORE THE SAN BENITO COUNTY PLANNING COMMISSION

A RESOLUTION OF THE SAN BENITO COUNTY PLANNING COMMISSION RECOMMENDING THAT THE BOARD OF SUPERVISORS: A) ADOPT CEQA ADDENDUM TO THE EIR FOR THE SUNNYSIDE ESTATES PROJECT; B) ADOPT FINDINGS UNDER CEQA AND STATE PLANNING LAW; AND C) ADOPT AN ORDINANCE TO APPROVE A DEVELOPMENT AGREEMENT	**Resolution No. 2017-010**

WHEREAS, John Brigantino of San Benito Realty Inc. ("***Owner***" or "***Applicant***") filed an application to allow for development of the Project (as further defined below), which concerns an approximately 44.4-acre site located approximately one-half mile south of the City of Hollister (outside the City's sphere of influence), approximately one-half mile west of State Route 25, and approximately 2.25 miles south of State Route 156, on parcels identified as APN's 020-280-022, 020-280-041, 020-280-043, and 020-320-007 in unincorporated San Benito County, California, which shall be referred to as the "Project Site" as shown on the vicinity map attached hereto and incorporated herein by reference as **Exhibit A**; and

WHEREAS, the Project consists of the development of 200 single-family residential units, approximately 5.3 acres of parks and open space (of which approximately 0.4 acre would be a retention/detention basin; approximately 2.0 acres of open space would be within the 100-year flood plain; and the remaining 2.9 acres would be dedicated and developed pursuant to the County Code requirements for parklands as a park open to the public), and other on- and off-site improvements necessary to serve the Project, as shown on the site plan attached hereto and incorporated herein by reference as **Exhibit B**; and

WHEREAS, in order to develop the Project, the Applicant filed applications with the County for approval of: (1) a Zoning Map Amendment (ZC 14-181) to change the existing zoning of the Project Site from Agricultural Productive (AP) to Single-Family Residential ("***Zone Change***"); and (2) a Vesting Tentative Tract Map (TSM 19-41) to subdivide the Project Site to allow for development of the Project ("***VTM***"); and

WHEREAS an Environmental Impact Report for the Project, comprised of a Draft Environmental Impact Report ("***DEIR***") and a Responses to Comments/Final Environmental Impact Report ("***FEIR***"), including, without limitation, all appendices attached thereto (collectively referred to as the "***EIR***") was prepared in accordance with the California Environmental Quality Act (Pub. Res. Code §21000 *et seq.*), the CEQA Guidelines (14 Cal. Code of Regs §§15000-15387) and the San Benito County Implementing Procedures for CEQA (collectively, "***CEQA***") to study the potential environmental impacts of approving the Project, and to propose feasible mitigation measures to avoid or reduce any significant, adverse environmental impacts; and

WHEREAS, the Planning Commission of the County of San Benito considered the Project, including certification of the EIR, adoption of the Mitigation Monitoring and Reporting Program ("MMRP"), adoption of the CEQA findings including, without limitation, a

Statement of Overriding Considerations, adoption of General Plan Consistency findings, and adoption of a Resolution recommending that the Board of Supervisors adopt an Ordinance amending the County Zoning Map (Zone Change 14-181), as well as all other information in the administrative record, at a duly noticed public hearing at its regularly scheduled meeting on January 20, 2016, at which time it heard and received all oral and written testimony and evidence that was made, presented or filed, and all persons present at the hearing were given an opportunity to hear and be heard with respect to any and all matters related thereto; and

WHEREAS, at the conclusion of the public testimony, and in accordance with all applicable laws and regulations, the Planning Commission closed the public hearing and deliberated and considered the merits of recommending approval of the Project, including certification of the EIR, adoption of the Mitigation Monitoring and Reporting Program ("MMRP"), adoption of the CEQA findings including, without limitation, a Statement of Overriding Considerations, and adoption of General Plan Consistency findings, and adoption of an ordinance amending the Zoning Map (Zone Change 14-181); and

WHEREAS, after considering the matter and in light of all evidence in the administrative record for the Project, the Planning Commission adopted Resolution No. 2016-01, recommending the Board of Supervisors' approval of the Project, including certification of the EIR, adoption of the Mitigation Monitoring and Reporting Program ("MMRP"), adoption of the CEQA findings including, without limitation, a Statement of Overriding Considerations, adoption of General Plan Consistency findings, and adoption of an ordinance amending the Zoning Map (Zone Change 14-181); and

WHEREAS, the Board of Supervisors of the County of San Benito considered the Project, including certification of the EIR, adoption of the Mitigation Monitoring and Reporting Program ("MMRP"), adoption of the CEQA findings including, without limitation, a Statement of Overriding Considerations, adoption of General Plan Consistency findings, and adoption of an Ordinance amending the County Zoning Map (Zone Change 14-181), as well as the Planning Commission's recommendations set forth in Planning Commission Resolution No. 2016-01 and all other information in the administrative record, at a duly noticed public hearing at its regularly scheduled meeting on March 8, 2016, at which time it heard and received all oral and written testimony and evidence that was made, presented or filed, and all persons present at the hearing were given the opportunity to hear and be heard with respect to any and all matters related thereto; and

WHEREAS, at the conclusion of the public testimony, and in accordance with all applicable laws and regulations, the Board of Supervisors closed the public hearing and deliberated and considered the merits of the Project, including certification of the EIR, adoption of the Mitigation Monitoring and Reporting Program ("MMRP"), adoption of the CEQA findings including, without limitation, a Statement of Overriding Considerations, and adoption of General Plan Consistency findings, and adoption of an ordinance amending the Zoning Map (Zone Change 14-181), in light of all evidence in the administrative record for the project, including public testimony received and the Planning Commission's recommendations, as reflected in Planning Commission Resolution No. 2016-01; and

WHEREAS, in light of all evidence in the administrative record for the project, including public testimony received and upon positive recommendation from the Planning

Commission, the Board certified the EIR for the Project, adopted the Mitigation Monitoring and Reporting Program ("***MMRP***"), adopted the requisite CEQA findings including, without limitation, a Statement of Overriding Considerations, and adopted Ordinance No. 944, approving the above-referenced Zone Change; and

WHEREAS, the Planning Commission subsequently considered the above-referenced VTM, at a duly noticed public hearing at its regularly scheduled meeting on May 18, 2016, at which time it heard and received all oral and written testimony and evidence that was made, presented or filed, and all persons present at the hearing were given an opportunity to hear and be heard with respect to any and all matters related thereto; and

WHEREAS, at the conclusion of the public testimony, and in accordance with all applicable laws and regulations, the Planning Commission closed the public hearing and deliberated and considered the merits of approving the VTM; and

WHEREAS, after considering the matter and in light of all evidence in the administrative record for the Project, the Planning Commission approved the VTM, based upon the findings and conditions of approval recommended by County staff; and

WHEREAS, the Applicant has requested to enter into a Development Agreement for the Project, attached hereto and incorporated herein by reference as **Exhibit C**, which would (as described more fully therein) vest Owners (as that term is defined therein) with the right to develop the Project as envisioned by the Zone Change and VTM, while at the same time obligating Owners to perform numerous obligations including, without limitation, those relating to certain identified public benefits; and

WHEREAS, Owners each have a legal interest in the Project Site; and

WHEREAS, the requested Development Agreement was processed pursuant to section 65864 *et seq.* (Development Agreement Statute) of the California Government Code, and chapter 19.11 (Development Agreements) of the San Benito County Code as well as other applicable laws and regulations; and

WHEREAS, the County prepared a CEQA Addendum pursuant to CEQA Guidelines Sections 15162 and 15164, attached hereto and incorporated herein by reference as **Exhibit D**, which documents the conclusion that no further environmental review shall be required in connection with the County's consideration of the proposed Development Agreement; and

WHEREAS, the Planning Commission considered the Project, including adoption of a CEQA Addendum to the EIR and adoption of a Resolution recommending that the Board of Supervisors adopt an Ordinance to approve a development agreement, as well as all other information in the administrative record, at a duly noticed public hearing at its regularly scheduled meeting on March 15, 2017, at which time it heard and received all oral and written testimony and evidence that was made, presented or filed, and all persons present at the hearing were given an opportunity to hear and be heard with respect to any and all matters related thereto; and

WHEREAS, at the conclusion of the public testimony, and in accordance with all applicable laws and regulations, the Planning Commission closed the public hearing and deliberated and considered the merits of recommending adoption of the CEQA Addendum to the EIR and approval of the Development Agreement; and

WHEREAS, after considering the matter and in light of all evidence in the administrative record for the Project, the Planning Commission recommends that the Board adopt the CEQA Addendum to the EIR, including findings under CEQA and State Planning Law, and adopt an Ordinance approving the Development Agreement.

NOW THEREFORE BE IT RESOLVED that based on all evidence in the administrative record for the Project, the San Benito County Planning Commission hereby finds and recommends that the San Benito County Board of Supervisors make the following findings and determinations:

I. RECOMMENDATION TO ADOPT THE CEQA ADDENDUM TO THE PREVIOUSLY CERTIFIED EIR

San Benito County is the lead agency for the Project for purposes of CEQA. The Project concerns the approximately 44.4-acre Project Site, which is located approximately one-half mile south of the City of Hollister (outside the City's sphere of influence), approximately one-half mile west of State Route 25, and approximately 2.25 miles south of State Route 156, in unincorporated San Benito County, California.

The Project consists of the development of 200 single-family residential units, approximately 5.3 acres of parks and open space (of which approximately 0.4 acre would be a retention/detention basin; approximately 2.0 acres of open space would be within the 100-year flood plain; and the remaining 2.9 acres would be dedicated and developed pursuant to the County Code requirements for parklands as a park open to the public); and other on- and off-site improvements necessary to serve the Project.

The County prepared and certified the Project's EIR, which comprises a project-level analysis. The EIR has State Clearinghouse No. 2014091018. Following is a summary of that process.

The County prepared the DEIR, which was released for public and agency review on October 28, 2015, including being posted on the County's website and making it available in hard copy at the County of San Benito Resource Management Agency, Building and Planning Division (2301 Technology Parkway, Hollister, CA) and with the Clerk of the Board of Supervisors (481 Fourth Street, Hollister, CA). The public comment period closed on December 14, 2015 after a 45-day review period. The DEIR fully evaluated the potential environmental effects of Project implementation, identified the means to eliminate or reduce potential adverse impacts to the extent feasible, and evaluated a reasonable range of potentially feasible alternatives.

The County prepared the FEIR, which consisted of comments on the DEIR; written responses to the environmental issues raised in those comments; and revisions to the text of the DEIR reflecting changes made in response to comments and other information. The FEIR incorporated the DEIR by reference and comprised the EIR for the Project. The

FEIR was published on January 10, 2016 and provided to commenting agencies on or before January 10, 2016. In addition to posting the FEIR on the County's website and making it available in hard copy at the Resource Management Agency and Clerk of the Board, the County sent an electronic and/or hard copy to each agency, entity, or individual that submitted written comments on the DEIR.

The EIR was certified by the Board on March 8, 2016, and is hereby incorporated into this Resolution by reference.

Based on the foregoing and the additional findings and determinations set forth herein, the Planning Commission hereby recommends that the Board adopt the CEQA Addendum to the previously certified EIR.

BE IT FURTHER RESOLVED that based on all evidence in the administrative record for the Project, the San Benito County Planning Commission hereby finds and recommends that the San Benito County Board of Supervisors make the following findings and determinations under the California Environmental Quality Act and CEQA Guidelines:

II. CEQA FINDINGS

Having received, reviewed, and considered the EIR, the CEQA Addendum (as that term is defined below) and other relevant information in the administrative record of proceedings, the Planning Commission hereby finds and recommends that the Board adopt the following findings in compliance with CEQA:

Part II.A: Findings regarding the environmental review process and the contents of the EIR.

Part II.B: Identification of the custodian and location of the administrative record of proceedings, as required by CEQA.

The Planning Commission finds and recommends that the Board determine that the findings in Section II are based on full appraisal of all viewpoints, including, without limitation, all information set forth in the administrative record. The Planning Commission further finds and recommends that the Board adopt the findings and the statement in Parts II.A through II.B for the approvals that are set forth in Section III, below.

A. Environmental Review Process

1. Development of the Project

The Project Site encompasses approximately 44.4 acres, which is currently comprised of agricultural uses (hay production and walnut orchards) and one single-family residence and garage, located in the northeast corner of the site. The Project Applicant applied to San Benito County for approval of the proposed Project. As described above, the Project consists of the development of 200 single-family residential units, approximately 5.3 acres of parks and open space (of which approximately 0.4 acre would be a retention/detention basin; approximately 2.0 acres of open space would be within the 100-year flood plain; and the remaining 2.9 acres would be dedicated and developed

pursuant to the County Code requirements for parklands as a park open to the public); and other on- and off-site improvements necessary to serve the Project.

2. Preparation of the EIR

A public scoping meeting was held in the City of Hollister in San Benito County on September 18, 2014, to receive comments on the scope of the EIR for the proposed Project. The intent of the scoping meeting was to provide interested individuals, groups, public agencies and others a forum to provide input to the County verbally in an effort to assist in further refining the intended scope and focus of the EIR. San Benito County also accepted comments by letter and email during the 30-day scoping period, which began on September 9, 2014 and ended on October 8, 2014. Written comments received during the scoping period are summarized and responded to in Section 1.0 of the DEIR, and are included in full in Appendix A to the DEIR.

San Benito County completed the DEIR and circulated it for review and comment on October 28, 2015. A Notice of Completion was submitted to the State Clearinghouse on October 28, 2015, and a Notice of Availability was published in the Free Lance on September 4, 2015. The 45-day period for receipt of comments on the DEIR remained open until December 14, 2015. One (1) written comment letter was received, from the California Department of Transportation.

The FEIR was completed and made available to public agencies and members of the public on January 10, 2016.

The EIR consists of the DEIR (including all attached appendices) and the Final EIR, which consists of the comments received during the public comment period, together with written responses to those comments that raised environmental issues as set forth in the FEIR and refinements to the EIR text that merely clarify and/or amplify certain issues raised during the public comment period, all of which were prepared in accordance with CEQA.

The Board certified the EIR, adopted the Mitigation Monitoring and Reporting Program ("***MMRP***"), and adopted the requisite CEQA findings including, without limitation, a Statement of Overriding Considerations.

3. CEQA Addendum

As noted above, an EIR was prepared, circulated and ultimately certified as adequate by the Board in March 2016 for the Project, which expressly contemplated the development contemplated by the Zone Change and the VTM, and which would be vested under the proposed Development Agreement. Feasible mitigation measures were identified in the EIR, which have been incorporated into the adopted MMRP and the Conditions of Approval that were imposed via the VTM. The Development Agreement reiterates these obligations by expressly obligating compliance with all applicable Conditions of Approval (including, without limitation, the mitigation measures identified in the Project's adopted MMRP).

The Project has been evaluated in light of the criteria set forth in Public Resources Code Section 21166 and CEQA Guidelines Section 15162, and it has been determined that the proposed

Development Agreement is consistent with the other Project entitlements, the impacts of which were fully and adequately evaluated in the EIR, and that: 1) there are no substantial changes proposed in the Development Agreement that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; 2) there are no substantial changes in the circumstances under which the Project is proposed to be undertaken that would require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and 3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified, showing: a) the Development Agreement would have one or more significant effects not discussed in the EIR; b) significant effects previously examined in the EIR would be substantially more severe than shown in the EIR; c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the project proponent declined to adopt the mitigation measure or alternative; or d) mitigation measures or alternatives which are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but the project proponent declined to adopt the mitigation measure or alternative. Specifically, the Planning Commission finds and recommends that the Board make the following findings regarding the decision to prepare a CEQA Addendum to the previously certified EIR, rather than preparing a subsequent or supplemental EIR regarding its consideration of the Development Agreement:

Finding 1: That an Environmental Impact Report ("EIR") regarding the proposed project was prepared, circulated and certified as adequate by the Board of Supervisors.

Evidence: As noted above, an EIR was prepared, circulated and ultimately certified as adequate by the Board in March 2016 for the Project, which expressly contemplated the development contemplated by TSM 14-91 and which would be vested under the proposed Development Agreement. Feasible mitigation measures were identified in the EIR, and were incorporated into the Conditions of Approval imposed in connection with the approved TSM 19-41, with this obligation being further expressly incorporated into the proposed Development Agreement. The Planning Commission has evaluated the Project in light of the criteria set forth in Public Resources Code Section 21166 and CEQA Guidelines (14 California Code of Regulations) Sections 15162 and 15163, and has determined that the proposed Development Agreement is consistent with the related Project entitlements, the impacts of which were fully and adequately evaluated in the EIR.

Finding 2: That there are no substantial changes proposed in the Development Agreement that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Evidence: An EIR was prepared, circulated and ultimately certified as adequate by the Board in March 2016 for the Project, which expressly contemplated the development contemplated by TSM 14-91 and which would be vested under the proposed Development Agreement. Feasible mitigation measures were identified in the EIR, and were incorporated into the Conditions of Approval imposed in connection with the approved TSM 19-41, with this obligation being further expressly incorporated into the proposed Development Agreement. The Planning Commission has evaluated the Project in light of the criteria set forth in Public Resources Code Section 21166 and CEQA Guidelines (14 California Code of

Regulations) Section 15162, and has determined that the proposed Development Agreement is consistent with the related Project entitlements, the impacts of which were fully and adequately evaluated in the EIR; that in the intervening approximately twelve months since the EIR was certified, there has not been a substantial increase in any significant environmental effects or a substantial increase in the severity of the significant effects identified in the EIR, and that therefore, there are no substantial changes proposed in the Development Agreement due to the involvement of significant environmental effects or a substantial increase in the severity of the significant effects identified in the EIR.

Finding 3: That there are no substantial changes in the circumstances under which the Project is proposed to be undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Evidence: An EIR was prepared, circulated and ultimately certified as adequate by the Board in March 2016 for the Project, which expressly contemplated the development contemplated by TSM 14-91 and which would be vested under the proposed Development Agreement. Feasible mitigation measures were identified in the EIR, and were incorporated into the Conditions of Approval imposed in connection with the approved TSM 19-41, with this obligation being further expressly incorporated into the proposed Development Agreement. The Planning Commission has evaluated the Project in light of the criteria set forth in Public Resources Code Section 21166 and CEQA Guidelines (14 California Code of Regulations) Section 15162, and has determined that the proposed Development Agreement is consistent with the related Project entitlements, the impacts of which were fully and adequately evaluated in the EIR; that in the intervening approximately twelve months since the EIR was certified, there has not been an involvement of significant environmental effects or a substantial increase in the severity of the significant effects identified in the EIR, and that therefore, there are no substantial changes in circumstances under which the proposed Development Agreement is proposed to be undertaken that would require major revisions to the EIR.

Finding 4: That there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified, showing the Development Agreement would have one or more significant effects not discussed in the EIR.

Evidence: An EIR was prepared, circulated and ultimately certified as adequate by the Board in March 2016 for the Project, which expressly contemplated the development contemplated by TSM 14-91 and which would be vested under the proposed Development Agreement. Feasible mitigation measures were identified in the EIR, and were incorporated into the Conditions of Approval imposed in connection with the approved TSM 19-41, with this obligation being further expressly incorporated into the proposed Development Agreement. The Planning Commission has evaluated the Project in light of the criteria set forth in Public Resources Code Section 21166 and CEQA Guidelines (14 California Code of Regulations) Section 15162, and has determined that the proposed Development Agreement is consistent with the related Project entitlements, the impacts of which were fully and adequately evaluated in the EIR; that in the intervening approximately twelve months since the EIR was certified, there has not been any discovery of any new information of substantial importance, which was not known and/or could not have been known with the exercise of reasonable diligence at the time the EIR was certified, showing that the Development Agreement would have one or more significant effects not discussed in the EIR.

Finding 5: That there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified, showing significant effects previously examined in the EIR would be substantially more severe than shown in the EIR.

Evidence: An EIR was prepared, circulated and ultimately certified as adequate by the Board in March 2016 for the Project, which expressly contemplated the development contemplated by TSM 14-91 and which would be vested under the proposed Development Agreement. Feasible mitigation measures were identified in the EIR, and were incorporated into the Conditions of Approval imposed in connection with the approved TSM 19-41, with this obligation being further expressly incorporated into the proposed Development Agreement. The Planning Commission has evaluated the Project in light of the criteria set forth in Public Resources Code Section 21166 and CEQA Guidelines (14 California Code of Regulations) Section 15162, and has determined that the proposed Development Agreement is consistent with the related Project entitlements, the impacts of which were fully and adequately evaluated in the EIR; that in the intervening approximately twelve months since the EIR was certified, there has not been any discovery of any new information of substantial importance, which was not known and/or could not have been known with the exercise of reasonable diligence at the time the EIR was certified, showing that significant effects previously examined in the EIR would be substantially more severe than shown in the EIR.

Finding 6: That there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified, showing mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the Project proponents declined to adopt the mitigation measure or alternative.

Evidence: An EIR was prepared, circulated and ultimately certified as adequate by the Board in March 2016 for the Project, which expressly contemplated the development contemplated by TSM 14-91 and which would be vested under the proposed Development Agreement. Feasible mitigation measures were identified in the EIR, and were incorporated into the Conditions of Approval imposed in connection with the approved TSM 19-41, with this obligation being further expressly incorporated into the proposed Development Agreement. The Planning Commission has evaluated the Project in light of the criteria set forth in Public Resources Code Section 21166 and CEQA Guidelines (14 California Code of Regulations) Section 15162, and has determined that the proposed Development Agreement is consistent with the related Project entitlements, the impacts of which were fully and adequately evaluated in the EIR; that in the intervening approximately twelve months since the EIR was certified, there has not been any discovery of any new information of substantial importance, which was not known and/or could not have been known with the exercise of reasonable diligence at the time the EIR was certified, showing that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the Project proponent declined to adopt the mitigation measure or alternative.

Finding 7: That there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified, showing mitigation measures or alternatives which are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but the Project proponents declined to adopt the mitigation measure or alternative.

Evidence: An EIR was prepared, circulated and ultimately certified as adequate by the Board in March 2016 for the Project, which expressly contemplated the development contemplated by TSM 14-91 and which would be vested under the proposed Development Agreement. Feasible mitigation measures were identified in the EIR, and were incorporated into the Conditions of Approval imposed in connection with the approved TSM 19-41, with this obligation being further expressly incorporated into the proposed Development Agreement. The Planning Commission has evaluated the Project in light of the criteria set forth in Public Resources Code Section 21166 and CEQA Guidelines (14 California Code of Regulations) Section 15162, and has determined that the proposed Development Agreement is consistent with the related Project entitlements, the impacts of which were fully and adequately evaluated in the EIR; that in the intervening approximately twelve months since the EIR was certified, there has not been any discovery of any new information of substantial importance, which was not known and/or could not have been known with the exercise of reasonable diligence at the time the EIR was certified, showing that mitigation measures or alternatives which are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but the Project proponents declined to adopt the mitigation measure or alternative.

Finding 8: None of the conditions described in CEQA Guidelines Section 15162 require the preparation of a supplemental EIR.

No supplemental EIR is required because there are no impacts, significant or otherwise, of the Project beyond those already identified in the EIR. As explained above, there are not substantial changes to the Project involving new or more severe significant impacts. To the contrary, the Project now includes a Development Agreement for the purpose of confirming the Owners' vested rights to develop the Project as well as confirming the Owners' obligations to the County in connection therewith including, without limitation, those relating to specified public benefits. The Project, as vested under the proposed Development Agreement, contemplates the same land uses originally analyzed in the EIR, and also includes the same number of residential units in the same configuration and at the same density, with the same related improvements (e.g., utilities, street layout, lighting, landscaping, etc.) and amenities (e.g., parks, open space). In addition, all conditions of approval, including, without limitation, those imposed in connection with the Vesting Tentative Tract Map as well as the EIR mitigation measures, as set forth in the adopted MMRP, remain obligations of the Project, and are expressly provided for in the Development Agreement. In addition, there are no substantial changes in the conditions under which the Project is undertaken involving new or more severe significant impacts. The Project's EIR was certified by the Board only approximately twelve months ago. The approval of such a Development Agreement for the Project does not involve substantial changes to the Project involving new or more severe significant impacts. No new or revised mitigation measures would be required to reduce the environmental impacts of the Project. Accordingly, no further environmental review may be required under this trigger (d).

Accordingly, as documented more fully in the CEQA Addendum attached hereto as Exhibit D, the EIR is adequate to serve as CEQA compliance for the proposed Development Agreement and no further environmental review is warranted.

The Planning Commission finds and recommends that the Board determine that the EIR provides adequate, good faith, and reasoned analysis as required under CEQA; it is adequate to serve as CEQA compliance for the proposed Development Agreement; and no further environmental review is warranted under applicable laws and regulations.

B. Record of Proceedings

Various documents, information, testimony, reports, studies, analyses and other materials (both oral and written) constitute the administrative record upon which the Planning Commission bases the findings and recommended approvals contained herein. The location and custodian of these documents and materials is the County of San Benito Resource Management Agency, Building and Planning Division, 2301 Technology Parkway, Hollister, CA 95023.

BE IT FURTHER RESOLVED that based on all evidence in the administrative record for the Project, the Planning Commission hereby finds and recommends that the Board make the following findings and determinations and take the following actions regarding approval of the Sunnyside Estates Project:

III. RECOMMENDATION TO APPROVE THE SUNNYSIDE ESTATES PROJECT DEVELOPMENT AGREEMENT

The Planning Commission hereby recommends that the Board take the following actions regarding approval of the Sunnyside Estates Project Development Agreement:

A. Adopt the CEQA Addendum as discussed in Sections I and II, above.

B. Adopt these findings in their entirety as its findings for these actions and approvals.

C. Approve the proposed Development Agreement, attached hereto as Exhibit C.

D. Make the following additional findings regarding the approval of the proposed Development Agreement:

1. The adoption of an Ordinance approving the Development Agreement complies with all applicable state and local laws and regulations;

2. The Development Agreement was processed in accordance with Government Code section 65864 *et seq.* and the subject development project and Development Agreement are consistent with San Benito County Code, Title 19, Chapter 19.11. The Owner has a legal interest in the Property, which is the subject of the Development Agreement,

which makes it an eligible party to said agreement under Government Code section 65865 and County Code sections 19.11.002 and 19.11.004. The Development Agreement is limited to a term of years not to exceed 15 years unless extended in accordance with the County Development Agreement Procedures. As set forth more fully in the Development Agreement, attached hereto as **Exhibit C**, the Development Agreement addresses, among other things, the duration of the Development Agreement; the permitted uses of the Property; the density and intensity of uses; provisions for reservation or dedication of land for public purposes; conditions, terms, restrictions and requirements for subsequent discretionary actions; provisions for the timing of construction; terms and conditions relating to applicant financing of the necessary public facilities and subsequent reimbursement and/or credits over time; standard contract clauses including those for organizational, introductory, and implementation purposes; an indemnification clause; specification of the elements of the development project that are intended to vest; an assignability clause; and any limitations on the applicability of the Development Agreement with regard to future discretionary review. The Development Agreement application was filed with the Resource Management Agency Director, in accordance with County Code section 19.11.007. The application included all the required content under County Code section 19.11.007(B), including, without limitation, the proposed agreement; sufficient documentation to facilitate CEQA review and consistency with the San Benito County General Plan and Chapter 19.11; and a fee deposit to facilitate review by San Benito County. The application is on file at the San Benito County Resource Management Agency, Building and Planning Division, 2031 Technology Parkway, Hollister, CA 95023.

3. The Development Agreement is consistent with the 2035 San Benito County General Plan, and any applicable specific and/or area plans, the San Benito County Code, and other applicable Rules, Regulations and Official Policies, for the reasons set forth in section III.E.2 and **Exhibit F** to Planning Commission Resolution No. 2016-01, regarding approval of the Zone Change and VTM, with which the Development Agreement is consistent. There are no specific or area plans applicable to the subject property.

4. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the applicable zoning of the Property. The Development Agreement is consistent with the project, including the Zone Change previously approved by the Board.

5. The Development Agreement 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. With regard to good land use practice, the Project, which is subject to the proposed Development Agreement, directs anticipated growth to certain areas in San Benito County near the City of Hollister, determined appropriate and able to provide adequate facilities and infrastructure to serve that increased growth, which, in turn, serves to protect and preserve more environmentally sensitive areas and more productive agricultural lands. In addition, the Project includes: a commitment to the development of Community Park Improvements and dedication of common area open space near the San Benito River in excess of current requirements; a commitment to the provision of affordable housing through payment of an affordable housing fee; and the formation of a Community Facilities District (CFD) or other financing district(s)/mechanisms to provide funding to County to be used to fund various public safety infrastructure, facilities, improvements and services at an urban level of service, as well as maintenance and operation of the Community Park, in order to ensure revenue neutrality of the project.

6. The Development Agreement will not adversely affect the orderly development of the surrounding community. In approving the Project, which is the subject of the Development Agreement, it is anticipated that the Board of Supervisors will determine that development of the Property with the Project would direct anticipated growth to certain areas in San Benito County near the City of Hollister, determined appropriate and able to provide adequate facilities and infrastructure to serve that increased growth, as described more fully in the EIR.

7. The Development Agreement is fair, just and reasonable based on, among other things: the Project provides a comprehensively planned vision for the Property that has been designated for increased urban growth near the incorporated City of Hollister; the Development Agreement provides assurances that all public benefits for which the Owner is obligated to provide are fulfilled as required thereunder; the development of a project will be designed cohesively, with a focus on sustainability; full environmental review of the Project was carried out under CEQA, and this process identified mitigation to reduce environmental impacts on the community to a less-than-significant level, where feasible, that the County and/or owner must implement; the Project was studied after a lengthy public process that involved a public comment period and multiple public hearings that were duly noticed; the Project and conditions of approval express a wide variety of interests and are intended to accomplish a diversity of goals; and the County will receive numerous benefits associated with the Project, while the Owners will receive certainty in terms of their investment and development of the Project.

8. The development project associated with the Development Agreement should be encouraged in order to meet important economic, social, environmental or planning goals of San Benito County. With regard to

planning goals, the Project, which is subject to the Development Agreement, directs anticipated growth to certain areas in San Benito County near the City of Hollister that are determined appropriate and able to provide adequate facilities and infrastructure to serve that increased growth, which, in turn, protects and preserve other areas in the County that are more environmentally sensitive or productive agricultural land. With regard to economic and social goals, the Development Agreement also would facilitate the development of Community Park Improvements and dedication of common area open space near the San Benito River in excess of current requirements; a commitment to the provision of affordable housing through payment of an affordable housing fee; and the formation of a Community Facilities District (CFD) or other financing district(s)/mechanisms to provide funding to County to be used to fund various public safety infrastructure, facilities, improvements and services at an urban level of service, as well as maintenance and operation of the Community Park, in order to ensure revenue neutrality of the project.

E. Direct the Resource Management Agency Director or his/her designee to file a Notice of Determination with the County Clerk.

F. Adopt an Ordinance to approve the Development Agreement for the Sunnyside Estates project, on the following conditions of approval:

1. Hold Harmless: Upon written notice by the County, Owner shall defend, indemnify and hold harmless San Benito County and its agents, officers and employees in accordance with Section 12.17 of the Sunnyside Estates Development Agreement.

2. Compliance Documentation: The Owner shall submit to the County Resource Management Agency, Building and Planning Division, a summary response in writing to these Conditions of Approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. County shall review Owner's good faith compliance with the terms of the Development Agreement on an annual basis. This periodic compliance review shall be conducted in accordance with the Development Agreement Statute and the County's Development Agreement Procedures ("Periodic Review"), as well as the terms of the Development Agreement itself. To facilitate the Periodic Review, the Owner shall provide to County an annual status report regarding its compliance with the terms of the Development Agreement. County shall have the right, but not the obligation, to review and/or audit books and records for purposes of monitoring overall compliance subject to Owner's management, monitoring and enforcement obligations under the Development Agreement, and Owner shall keep accurate and complete books and records, and shall make them reasonably available to County for this purpose. Owner shall reimburse County for the actual costs of preparing for and conducting

the Periodic Review within thirty (30) days of written demand from County.

The foregoing Resolution was adopted at a duly noticed public hearing at a regularly-scheduled meeting of the San Benito County Planning Commission, held on the 15th day of March, 2017, by the following vote:

AYES: Commissioners Loe, Tognazzini, Pierce, Rodriguez, Zlotkin
NOES: none
ABSTAIN: none
ABSENT: none

Pat Loe

Pat Loe, Chair
San Benito County Planning Commission

ATTEST:

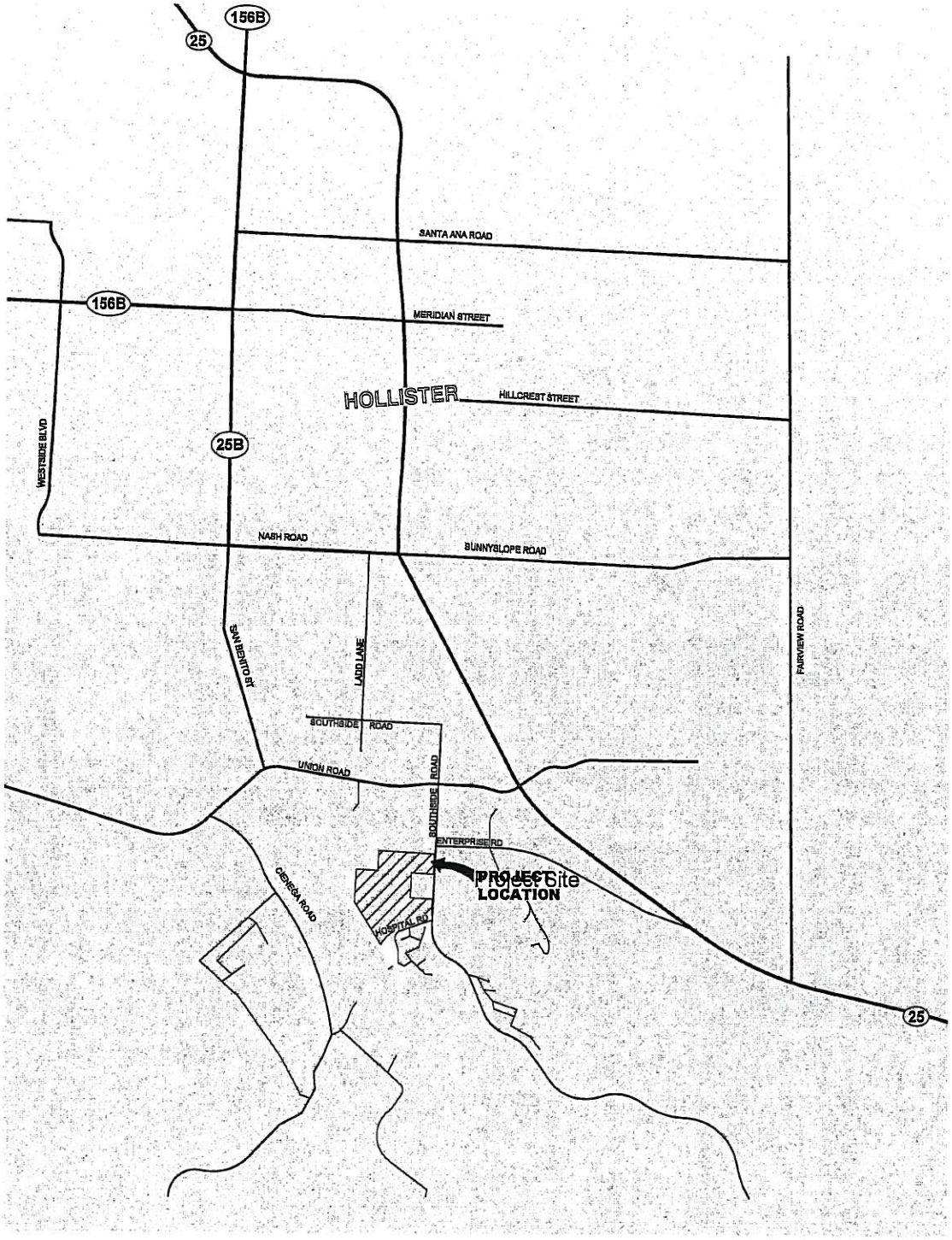
Michael Kelly

Brent Barnes, Director Michael Kelly, Associate Planner, for Brent Barnes
San Benito County Resource Management Agency

Exhibits:

A. Vicinity Map
B. Site Plan
C. Development Agreement
D. Addendum to Environmental Impact Report (SCH # 2014091018)

EXHIBIT A



Source: Kelley Engineering and Surveying, 2014

Vicinity Map

EXHIBIT B


STREET 1
STREET 2
STREET 3
STREET 4
STREET 5
STREET 6
STREET 7
STREET 8
HOSPITAL ROAD
FUTURE HOSPITAL ROAD
SOUTHRIDGE ROAD
ENTERPRISE ROAD
PRELIMINARY
KELLEY
ENGINEERING & SURVEYING
400 PARK CENTER DRIVE, SUITE #4
HOLLISTER, CA 95023
OFFICE (831) 636-1104 FAX (831) 636-1837
VESTING TENTATIVE MAP
SUNNYSIDE ESTATES
SITE PLAN
SHEET 2 OF 5
DATE: DECEMBER 2014
SCALE: 1" = 80'
DESIGNED: MJK, TJK
DRAWN: TJK
JOB NO.: 14003
BY DATE REVISIONS

PLANNING COMMISSION RESOLUTION 2017-__, EXHIBIT C

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
San Benito County
Attn: San Benito County Clerk
440 Fifth St., Room 206
County Courthouse
Hollister, CA 95023

RECORDING FEE EXEMPT
PURSUANT TO GOVERNMENT CODE
SECTION 27383

DEVELOPMENT AGREEMENT BY AND AMONG THE COUNTY OF SAN BENITO AND THE BRIGANTINO FAMILY

DEVELOPMENT AGREEMENT BY AND AMONG THE COUNTY OF SAN BENITO AND THE BRIGANTINO FAMILY

THIS DEVELOPMENT AGREEMENT ("***Agreement***") is made and entered into on _____, 2017 by and among the County of San Benito, a political subdivision of the State of California ("***County***"), J & V BRIGANTINO FAMILY LIMITED PARTNERSHIP, a California limited partnership, the D & D BRIGANTINO FAMILY LIMITED PARTNERSHIP, a California limited partnership, BRIGANTINO FAMILY FARMS, LLC, a California limited liability company, RALPH BRIGANTINO, TRUSTEE OF THE TESTAMENTARY TRUST CREATED IN THE FINAL DISTRIBUTION FILED SEPTEMBER 26, 1986, RECORDERS FILE NO. 8606369, SAN BENITO COUNTY RECORDS, ARNOLD TOGLIATTI, TRUSTEE OF THE TOGLIATTI LIVING TRUST DATED MARCH 21, 1994, the JOHN BRIGANTINO RETIREMENT PLAN AND TRUST U/A/D 01/17/03, JOHN BRIGANTINO AND VICKI BRIGANTINO TRUSTEES, and the BRIGANTINO FAMILY FARMS, LLC RETIREMENT TRUST, VINCENT BRIGANTINO AND DENISE BRIGANTINO, TRUSTEES (collectively, "***Owners***"). County and Owners 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. Any terms not defined in Section 1 below shall have the meaning assigned to them in this Agreement unless otherwise expressly indicated. County and Owners 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 and providing for the development of such property and establishing certain development rights and obligations related thereto. Among other things, the legislative findings in the Development Agreement Statute state that the lack of public facilities, including, without limitation, streets, wastewater, transportation, potable water, schools, and other utilities is a serious impediment to the development of new housing, and that

applicants and local governments may include provisions in development agreements relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

C. County's Development Agreement Procedures.

Pursuant to the Development Agreement Statute, County adopted San Benito County Code Chapter 19.11 (as may be amended from time to time), which sets forth procedures and requirements for the consideration of development agreements ("***County Development Agreement Procedures***"). This chapter enables County and a property owner seeking County approval of a project to enter into a development agreement that vests certain rights and that requires the property owner to provide certain public benefits beyond those that could otherwise be imposed by County as conditions of development. Consistent with the Development Agreement Statute, the purpose of the County Development Agreement Procedures are to strengthen the public planning process, to encourage private participation in comprehensive, long range planning, and to reduce the economic costs of development through the use of development agreements. Also stated therein is the conclusion that the appropriate use of development agreements will reduce uncertainty in the development review process, will promote long-term stability in the land use planning process, and will result in significant public gain.

D. Property Description.

The land governed by this Agreement consists of a total of approximately forty four (44) acres in unincorporated San Benito County, as more particularly described in attached Exhibit 1(a) and depicted on attached Exhibit 1(b) ("***Property***"). Owners have a legal interest in the Property.

E. Proposed Development of the Property.

The Property is intended to be developed in accordance with the approved Vesting Tentative Tract Map (TSM 14-91) ("***VTM***") that County approved on May 18, 2016 as well as a related Zoning Map Amendment (which changed the zoning designation for the Property) previously approved on March 8, 2016. Specifically, Owners seek to develop the Property as described more fully in the VTM, with a maximum of 200 single-family residential units and related on- and off-site improvements and amenities, including, without limitation, approximately 5.3 acres of parks and open space. For purposes of this Agreement, the development described in this Recital E and as further detailed in the VTM (including, without limitation, the conditions of approval attached thereto) shall be known as the "***Project***".

F. Project Approvals.

County has taken various planning, land use entitlement and environmental review actions relating to the Project, including approval of the Zoning Map Amendment and the VTM (collectively, "***Initial Approvals***"). The parties desire to enter into this Agreement for the purpose of confirming Owners' vested rights to develop the Project as well as confirming Owners' obligations to County in connection therewith including, without limitation, those relating to specified public benefits. On _____, 2017 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:

(1) It has been processed in accordance with the Development Agreement Statute and the County Development Agreement Procedures.

(2) It is consistent with the 2035 San Benito County General Plan Update, any area plans and other applicable Rules, Regulations and Official Policies.

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

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

(5) It is fair, just and reasonable.

(6) 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 approval as set forth more fully herein.

(7) It should be encouraged in order to meet important economic, social, environmental and planning goals of the County. On this basis, the Board approved this Agreement. On _____, 2017, the Board adopted Ordinance No. _____, enacting this Agreement ("***DA Ordinance***"). This Agreement shall become effective on_____, 2017 (the date thirty (30) days after the adoption of Ordinance No._____ ("***Effective Date***")).

G. Intent of Parties.

County and Owners 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. Among other things, the parties desire to: delineate how Owners' obligations as set forth herein including, without limitation, those relating to the provision and/or funding of Project Infrastructure will be met; eliminate uncertainty in planning and provide for the orderly development of the Property with the Project and to obtain assurance that Owners may proceed with development of the Project in accordance with the Project Approvals; ensure the maximum efficient utilization of resources within the County and the surrounding community; provide for public benefits beyond those that otherwise could be imposed as conditions of approval; and to otherwise achieve the goals and purposes of the Development Agreement Statute and the County's Development Agreement Procedures as these relate to the Property.

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

AGREEMENT

Section 1 Definition of Terms.

The following defined terms are used in this Agreement:

1.1 "VTM" means TSM 14-91 as approved by the Planning Commission of the County of San Benito on May 18, 2016.

1.2 "Agreement" means this Development Agreement between County and Owners.

1.3 **"Assignment"** has the meaning set forth in Section 10.1.

1.4 **"Assignment and Assumption Agreement"** has the meaning set forth in Section 10.2.

1.5 **"Building Permit"** refers to a document authorizing the holder to construct a building or other structure, as provided for in the San Benito County Code.

1.6 "**Certificate of Occupancy**" means a final certificate of occupancy issued by the County's Building Official or, if the County's Building Code does not provide for the issuance of a certificate of occupancy for a particular building or other structure, the functional equivalent thereto.

1.7 **"COG"** shall mean the Council of San Benito County Governments.

1.8 **"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.*

1.9 **"Consent to Assignment"** has the meaning set forth in Section 10.1.

1.10 **"County"** has the meaning set forth in the Preamble.

1.11 **"County Development Agreement Procedures"** has the meaning set forth in Recital C.

1.12 **"DA Ordinance"** has the meaning set forth in Recital F(7).

1.13 **"Days"** shall mean 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.

1.14 **"Defense Counsel"** has the meaning set forth in Section 12.17.

1.15 **"Development Agreement Statute"** has the meaning set forth in Recital B.

1.16 **"Development Impact Fee"** or **"Development Impact Fees"** means any requirement of County or other governmental or quasi-governmental agency 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 of the Project on the environment; facilities, services, improvements and/or infrastructure; or other public interests.

1.17 **"Dispute"** has the meaning set forth in Section 9.1.

1.18 **"Effective Date"** has the meaning set forth in Recital F(7).

1.19 **"Enforced Delay"** has the meaning set forth in Section 7.

1.20 **"Existing Rules"** shall mean the Rules, Regulations and Official Policies in effect on the Vesting Date.

1.21 **"Full Build Out"** shall mean upon the issuance of the last Certificate of Occupancy for all components of the Project.

1.22 **"JAMS"** has the meaning set forth in Section 9.1.

1.23 **"Legal Challenge"** has the meaning set forth in Section 12.17.

1.24 **"Mortgage"** shall mean any mortgage, deed of trust, security agreement, assignment or other like security instrument encumbering all or any portion of the Property or any Owner's rights under this Agreement.

1.25 **"Mortgagee"** shall mean the holder of any Mortgage encumbering all or any portion of the Property or any Owner's rights and obligations under this Agreement, and any successor, transferee, or Subsequent Owner of any such Mortgagee.

1.26 **"Mortgagee Successor"** has the meaning set forth in Section 11.1.

1.27 **"New Rules"** has the meaning set forth in Section 3.3.

1.28 **"Notice of Default"** has the meaning set forth in Section 6.1.

1.29 **"Notice of Intent to Terminate"** has the meaning set forth in Section 8.2.

1.30 **"Owner"** or "**Owners**" has the meaning set forth in the Preamble, and also includes their respective successors and assignees.

1.31 **"Periodic Review"** has the meaning set forth in Section 5.

1.32 **"Planning Commission"** shall mean the San Benito County Planning Commission.

1.33 **"Planning Director"** shall mean the head of the Planning and Building Departments and the Chief Planning Officer of San Benito County.

1.34 **"Project Approvals"** shall mean the Initial Approvals and Subsequent Approvals, collectively.

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

1.36 **"Recorder"** shall mean the San Benito County Recorder.

1.37 **"Regulatory Processing Fees"** shall mean any and all fees, costs, and/or 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, or other 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.

1.38 **"Revenue Neutral" or "Revenue Neutrality"** shall mean that the Project is fiscally neutral (i.e., not fiscally negative) based on a showing that Project revenues fully cover the costs of the provision of Public Infrastructure upon Full Build Out of the Project.

1.39 **"Rules, Regulations and Official Policies"** shall mean 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.

1.40 "Subsequent Approvals" shall mean, collectively, any and all land use, environmental, building and development approvals, entitlements and permits required subsequent to County's approval of the Initial Approvals in connection with development of the Project on the Property, including, without limitation, formation of a CFD or similar financing district/mechanism; final subdivision maps, parcel maps and lot line adjustments; conditional use permits; design review approvals; Building Permits; grading permits; Certificates of Occupancy; and any amendments thereto.

1.41 "Subsequent Owner" or "Assignee" shall mean an individual or entity that has acquired all or a portion of the Property from an Owner in accordance with the assignment and assumption obligations set forth in Sections 10.1 and Section 10.2 below other than: (1) a Mortgagee; or (2) the ultimate user of any residential lot that has been released from liability under this Agreement pursuant to Section 8.3 below.

1.42 "Substantial Completion" shall mean when the improvement at issue has been constructed such that it may be used for its intended purpose.

1.43 "Term" has the meaning set forth in Section 4.1 below.

1.44 "Vesting Date" shall mean, for purposes of this Agreement, the date upon which County acted upon the VTM, which was May 18, 2016.

Section 2 Owners' Obligations.

2.1 Development of the Project. Subject to compliance with the provisions of this Agreement, during the Term, Owners shall have the vested right to develop all or a portion of the Project in accordance with the following: (a) this Agreement; (b) the VTM including, without limitation, all conditions of approval attached thereto; and (c) all other applicable Existing Rules. Notwithstanding anything to the contrary in the foregoing, in the event of a conflict between any provision of this Agreement and the other Project Approvals, this Agreement shall prevail.

2.2 Financing of Infrastructure, Improvements, Facilities and Services; Formation of CFD.

(a) County Reliance on Owners' Provision of, or Contribution Towards, Project Infrastructure. The parties acknowledge and agree that County's approval of the Project and this Agreement is, in part, in reliance upon and in consideration of Owners' provision of, or pro rata share contribution(s) towards, the infrastructure, facilities, improvements, services and amenities (including, without limitation, construction, operation (including personnel) and maintenance thereof) necessary to serve the Project, as described more fully in the VTM and the conditions attached thereto and other Project Approvals (collectively, "***Project Infrastructure***") in accordance with Owners' obligations set forth herein.

(b) Formation and Purpose of CFDs or Other Financing Districts. It is the intent of the parties to form a CFD or other mutually acceptable financing district(s)/mechanism(s) to ensure that the Project is Revenue Neutral; once formed, said CFD shall provide funding to County to be used, in County's sole discretion, for the operation and maintenance of the approximately 3.156-acre community park to be offered to County for dedication, as described more fully in the VTM and related

conditions of approval attached thereto ("***Community Park***"), as well as all other Public Infrastructure (at an urban level of service) provided to the Project by County and paid for from its General Fund, including, without limitation, the following: Information Technology, GIS, Finance, County Counsel, Personnel, Elections, Judicial, Police Protection, Detention and Correction, Communications, Public Works Administration & Engineering, County Clerk, Recorder, Coroner, Public Administrator, Office of Emergency Services, Planning & Building, Animal Control Contract, Housing and Economic Development, CMSP Participation Fee, Public Assistance Aid Programs, Veteran's Services, Public Assistance Other Assistance, Library Services and Recreation.

(i) To facilitate the purpose of ensuring Revenue Neutrality, Owners shall fund the cost of a fiscal impact study (to be prepared by an economic consultant retained by County), which shall determine: whether the Project would be fiscally positive or negative, and if the latter, then said study shall identify the amount of additional funding needed to be provided by the Project to County to ensure Revenue Neutrality. Said study shall also provide any other information necessary (determined in County's reasonable discretion) to facilitate the formation of the above-referenced CFD in accordance with applicable laws. Owners shall be solely responsible for all actual costs that County incurs in connection with the formation and implementation of the CFD.

(ii) The approved CFD shall fund the ongoing operation and maintenance of the Community Park and any and all other identified Public Infrastructure at levels acceptable to County (in County's sole discretion) and in accordance with the approved fiscal impact study referenced in subsection (i) above, including, without limitation, sufficient reserves for replacements and repairs as necessary or desirable to keep the Community Park (including all improvements thereon) and all other identified Public Infrastructure in good working order.

2.3 Street Improvements and Other Project Infrastructure.

(a) General Construction Obligations. Owners shall construct, or cause to be constructed or contribute their pro rata share(s) towards the construction of the Project Infrastructure in accordance with the provisions of this Agreement, the VTM (including, without limitation, the conditions of approval attached thereto), and the other Project Approvals. Development of the Property, including, without limitation, the Project Infrastructure, shall be subject to final design review, plan check and inspection by County (and/or other applicable government agency) in accordance with the Project Approvals, the County Code, and any other relevant Codes and/or standards, as applicable. The Project Approvals, and all required improvement plans prepared in accordance with and in connection thereto and as approved by County, shall govern the design and scope of all Project Infrastructure to be constructed on or benefitting the Property and the Project.

(b) On-Site Improvements. Owners shall construct all street improvements and all other Project Infrastructure to be located within the Property in accordance with their obligations under this Agreement and as required by the Project Approvals (including, without limitation, the VTM and conditions of approval attached thereto), and the Project EIR (including, without limitation, the MMRP).

(c) Off-Site Improvements. Owners shall contribute their pro rata fair share towards all of those street improvements and other Project Infrastructure that are to be located off-site but that are necessary or desirable to serve the Project, in accordance with their obligations under this Agreement and as required by the other Project Approvals (including, without limitation, the VTM and the

conditions of approval attached thereto), and the Project EIR (as set forth in the MMRP). Said obligations shall include the following:

(i) Subject to the provisions set forth in this subsection (c)(i), Owners shall be obligated to fund: (A) the cost to modify the existing traffic signal at Highway 25(Airline)/Union Road (as planned pursuant to County's TIF program) and subject to partial fee credit as indicated herein); and (B) the cost to plan, design, permit, and construct the right turn lane at the intersection of Highway 25 (Airline)/Union Road (including those costs associated with County obtaining any necessary Caltrans encroachment permit(s)). To satisfy the foregoing funding obligations, prior to recordation of the first (1st) final map for the Project, Owners shall pay to County the amount of Two Hundred Sixty Five Thousand, One Hundred and Sixty Four Dollars ($265,164), which reflects the estimated cost to install the right turn lane and modified traffic signal at Highway 25 (Airline)/Union Road, subject to Owners' receipt of a partial TIF fee credit in the amount of Sixty Seven Thousand, Two Hundred and Eighty Dollars ($67,280). Said funding may be used by County, in its discretion, to cover the costs to modify the above-referenced traffic signal and to plan, design, permit and construct the above-referenced right turn lane. As further consideration, prior to the issuance of each Building Permit for each residential unit in the Project, Owners shall pay One Thousand Dollars ($1,000) to County, in addition to the then-applicable Regional Traffic Impact Mitigation Fee (TIMF), for each unit. The terms set forth in this Section 2.3(c) shall constitute Owners' full compliance with their obligations under VTM Condition of Approval 30.a.

2.4 Additional Public Benefits of the Project.

In addition to making the payments required in connection with Development Impact Fees, satisfying all Project EIR mitigation measures, constructing and/or contributing towards specified Project Infrastructure, and paying all other identified fees and contributions as required herein, Owners shall provide the following additional public benefits:

(a) Affordable Housing Fee. Pay to County the amount of Four Thousand Five Hundred Dollars ($4,500) per residential unit within the Project for a total of Nine Hundred Thousand Dollars ($900,000) (***"Affordable Housing Fee"***), paid on a per-unit basis prior to County's issuance of each Building Permit for the construction of same; provided, however, to ensure that County receives the total amount of the Affordable Housing Fee due hereunder regardless of if or when Owners achieve Full Build Out, no later than five (5) years after issuance of the Building Permit for the first (1st) residential unit within the Project, Owners shall pay the amount of the Affordable Housing Fee minus any amounts previously paid to County pursuant to this Section 2.4(a). By way of example and not by way of any limitation, if Owners sought issuance of one hundred (100) Building Permits for residential units and paid the $4,500-per-unit fee in connection therewith (for a total of $450,000), then Owners would be required to pay the remaining $450,000 due to County no later than five (5) years from the date upon which that first Building Permit was issued regardless of when or if Full Buildout occurs.

(b) Community Park Improvements. Prior to issuance of the first (1st) Building Permit, Owners shall offer to dedicate land to County for the Community Park totaling a contiguous approximately 3.156 acres within the Property; provided, however, that the parties acknowledge and agree that said dedication may involve more than one (1) parcel as shown on the VTM. Prior to said offer of dedication, Owners shall: (A) construct or bond for the construction of the necessary infrastructure to provide utility services (i.e., water, sewer, and electricity) to the Community Park site;

(B) Owners shall pay to County the total amount of One Hundred Thousand Dollars ($100,000) to be used (in County's sole discretion) to plan, design and fund the construction of initial park improvements on the Community Park site; (C) complete grading of the Community Park site to a finished grade status; and (D) provide for sufficient funding for operation and maintenance of the Community Park pursuant to Section 2.2(b) above.

(c) Common Area Open Space. Prior to issuance of the first (1st) Building Permit, Owners shall offer to dedicate to County approximately 2.15 acres of contiguous common area open space within the Property ("***Common Area Open Space***"); provided, however, that the parties acknowledge and agree that said dedication may involve more than one (1) parcel as shown on the VTM. Prior to said offer of dedication, Owners shall provide for sufficient funding for operation and maintenance of the Common Area Open Space pursuant to Section 2.2(c) above.

2.5 Reimbursements; Credit.

Owners shall not be entitled to any fee credits or reimbursement in connection with any Project Infrastructure required under this Agreement or by any other Project Approvals except under the following limited circumstances:

(a) Fee Credits/Reimbursement.

(i) Owners shall be entitled to the partial fee credit in the amount set forth in section 2.3(c)(i) towards any Traffic Impact Fees imposed.

(ii) The parties agree that Owners' satisfaction of their obligations relating to the Community Park and Common Area Open Space set forth in Section 2.4(b), (c) above shall constitute full compliance with the Project's park and open space obligations under applicable County Code provisions and the Project shall not be required to pay any further park "in lieu" fees.

(b) Reimbursement from Other Property Owners Generally. In the event and to the extent other private property owners outside of the Property directly benefit from Owners' construction of any Project Infrastructure on-site or off-site which is not covered under Section 2.5(a) above, Owners shall be entitled to reimbursement from any such other property owner(s) based on an apportionment of the relevant pro rata share of costs of the improvement at issue. To the extent Owners seek reimbursement under this Section 2.5(b), County shall use diligent and good faith efforts to facilitate said reimbursement consistent with the County's Subdivision Ordinance and all applicable federal, state, and local laws and regulations (including, without limitation Proposition 218), through the formation of a local benefit district or Area of Benefit. Said reimbursement shall occur as promptly as feasible after assessment(s) or fees (as applicable) are available for purposes of reimbursing Owners for the improvement at issue. Notwithstanding anything to the contrary in the foregoing, if Owners requesting third party reimbursement under this Section 2.5(b), then Owners shall pay all of County's costs (including, without limitation, staff and attorney time) associated with the requested reimbursement hereunder and shall indemnify and hold County harmless from and against any and all claims in connection therewith. Further, Owners agree that County's obligations under this Section 2.5(b) are limited to facilitating reimbursement from other private property owners, and County shall have no obligation to directly or indirectly reimburse Owners. County's obligation to facilitate reimbursement as

set forth in this Section 2.5(b) shall survive for a period of ten (10) years after the expiration of the Term, including any extensions thereto, if the required reimbursement does not occur prior to Full Buildout of the Project.

Section 3 Owners' Vested Rights.

3.1 Vested Right to Develop the Project.

Subject to Owners' compliance with the provisions of this Agreement, Owners shall have the vested right to develop the Property with the Project in accordance with this Agreement and other Project Approvals in accordance with the Existing Rules as of the Vesting Date. The parties acknowledge and agree that Subsequent Approvals will be required to fully implement the Project. County shall process and consider any application for a Subsequent Approval in accordance with the Existing Rules. The permitted uses of the Property; the density and intensity of such 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 Project Infrastructure; and the development standards and design guidelines shall be as set forth in the VTM (including, without limitation, the conditions of approval attached thereto) and the other Project Approvals. The parties acknowledge that a VTM has been approved in connection with the Property and that this is a vesting map under the Subdivision Map Act (Government Code Section 66410 *et seq.*). If this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to develop to Owners, then and to that extent the rights and protection afforded Owners under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement. Except as set forth immediately preceding in this Section 3.1, development of the Property with the Project shall occur only as provided in this Agreement and the other Initial Approvals (and any Subsequent Approval(s) if and to the extent approved by County), and the provisions in this Agreement shall be controlling over any conflicting provision of law concerning vesting maps.

3.2 Development Impact Fees and Regulatory Processing Fees.

(a) No Vesting of Development Impact Fees. Owners seeking to develop all or a portion of the Project shall pay all Development Impact Fees due in connection with the proposed development at issue and in accordance with this Section 3.2(a) and Section 3.3 below, unless otherwise specified under this Section 3.2(a). Owners shall pay the then-applicable Development Impact Fees (in both amount and type) at the time said Owners seek to develop all or a portion of the Project, except as follows: (i) any such fees related to affordable (or inclusionary) housing in which case Owners shall pay the Affordable Housing Fee pursuant to Section 2.4(a) above which shall constitute full compliance, and (ii) with respect to park fees, Owners' satisfaction of their obligations under Section 2.4(b), (c) above shall constitute full compliance of with the Project's requirements under applicable County Code provisions and therefore no additional park-in lieu fees shall be due. Parties acknowledge and agree that this Development Agreement does not vest Owners as it relates to payment of any Development Impact Fees, except for those related to affordable (or inclusionary) housing fees (which shall be governed by Section 2.4(a) above) and park fees. Owners shall pay the then-applicable Development Impact Fees prior to the issuance of each Building Permit for the proposed development at issue unless otherwise provided for under applicable law.

(b) Regulatory Processing Fees Generally. The parties agree that Owners shall not vest into any Regulatory Processing Fees, and that instead Owners shall pay all Regulatory Processing Fees in connection with its proposed development in accordance with Section 3.3 below.

3.3 Application of Subsequently Enacted Rules, Regulations and Official Policies.

This Agreement is a legally binding contract that shall supersede any initiative, measure, moratorium, statute, ordinance, or other limitation enacted after the Vesting Date except as provided herein and as otherwise provided for in accordance with applicable law. Notwithstanding anything to the contrary in the foregoing, the parties acknowledge and agree that County may adopt new or modified Rules, Regulations and Official Policies after the Vesting Date (collectively, "***New Rules***"); provided, however, such New Rules shall be applicable to the Project and the Property only to the extent that such application will not conflict with any of the vested rights granted to Owners under this Agreement. Any New Rules shall be deemed to conflict with Owners' vested rights hereunder if they seek to limit or reduce the density or intensity of development of the Project; or to limit the timing of the development of the Project, either with specific reference to the Property or as part of a general enactment that applies to the Property. Notwithstanding anything to the contrary in the foregoing, County shall not be precluded from applying any New Rules to the Project or Property under the following circumstances, where the New Rules are: (i) specifically mandated by changes in state or federal laws or regulations adopted after the Vesting Date as provided in Government Code section 65869.5; (ii) specifically mandated by a court of competent jurisdiction; (iii) changes to the Uniform Building Code or similar uniform construction codes, or to County's local construction standards for public improvements so long as such code or standard has been adopted by County and is in effect on a County-wide basis; (iv) required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate and material adverse risk on the health or safety of the surrounding community; or (v) new or increased Regulatory Processing Fees or Development Impact Fees (except for affordable housing/inclusionary housing fees and park fees) so long as such fees are applied to all similar development projects on a County-wide basis.

3.4 Modification or Suspension by State or Federal Law.

In the event that state or federal laws or regulations enacted after the Vesting Date apply to the Project and prevent or preclude compliance with one or more provisions of this Agreement, such provision(s) of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Notwithstanding anything to the contrary in the foregoing, 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.

3.5 CEQA.

The parties acknowledge that the Project EIR was certified by the Board of Supervisors on March 8, 2016, Resolution # 2016-11. Owners acknowledge that implementation of the Project will require County's consideration and approval of applications for Subsequent Approvals and that, if and to the extent required by applicable laws and regulations, County may be required to complete environmental

review in connection therewith. County's environmental review (if and to the extent triggered by applicable laws and regulations) of Subsequent Approval(s) pursuant to CEQA shall utilize the Project EIR to the fullest extent permitted by applicable laws and regulations; provided, however, nothing in this Agreement shall be deemed to limit the legal authority of County to conduct any environmental review required under CEQA or other applicable laws and regulations.

3.6 Timing of Development.

The parties acknowledge that Owners cannot at this time predict when, or at what rate the Project will be developed. Such decisions depend upon numerous factors that may not be within Owners' control, such as market orientation and demand, interest rates, absorption, completion and other similar factors. It is the intent of the parties to avoid the result of the decision in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, by acknowledging and providing that Owners shall have the right but not the obligation to develop the Project, and in such order, at such rate, and at such times as Owners deem appropriate within their exercise of subjective business judgment, subject to any and all timing requirements set forth in the VTM and other Project Approvals, and other than those timing requirements set forth in Government Code section 66452 *et seq*. Provided, however, that nothing in this Section 3.6 is intended to excuse Owners from any obligation in this Agreement which is required to be performed on or before a specified calendar date or event without regard to whether or not Owners proceed with the development of all or any portion of the Project.

3.7 Regulation by Other Public Agencies.

It is acknowledged by the parties that other public agencies not within County's control may possess authority to regulate aspects of the construction and operation of the Project, and this Agreement in no way constrains or limits any such authority of other public agencies.

3.8 Eminent Domain.

The parties acknowledge and agree that development of the Project Infrastructure is a critical component of the Project and also will result in benefits to the community generally. While not anticipated, the parties 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, Owners shall use their best efforts to acquire any and all such land (***"Offsite Land"***), which shall include: paying for and obtaining an appraisal prepared by a qualified Member of the Appraisal Institute (***"MAI"***), in connection with the acquisition of the Offsite Land; and offering to acquire the Offsite Land based on such appraisal. In the event Owners are not successful in acquiring the Offsite Land, County and Owners shall meet and confer to determine: (a) whether the need for the Offsite Land is such that County 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 County to consider using its statutory powers of eminent domain to acquire the Offsite Land. In the event that County, in its discretion, determines to use its statutory powers of eminent domain to pursue acquisition of the Offsite Land, Owners shall be responsible for all costs associated therewith. Notwithstanding anything to the contrary in the foregoing, neither this Section 3.8 nor any other provision of this Agreement is intended to abrogate County's responsibility in the exercise of eminent domain, to satisfy the substantive and procedural requirements of the Eminent Domain Law (Cal. Code

of Civ. Proc. Part 3, Tit. 7, §§ 1230.010-1273.050), as amended from time to time. In the event the Offsite Land is not ultimately acquired because Owners were unable to acquire said land privately and because County determined not to pursue eminent domain of the Offsite Land after a request to do so by Owners has been made, then Owners' 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.

3.9 Life of Project Approvals.

The life of all Initial Approvals and any and all Subsequent Approvals for the Project to be built on the Property, including, without limitation, tentative subdivision maps or parcel maps (vesting or otherwise), shall be at least equal to the Term of this Agreement and any extensions thereto in accordance with applicable laws, unless this Agreement is earlier terminated pursuant to the provisions hereof, in which event the life of said approvals shall be governed by the applicable provisions of this Agreement with respect to entitlements after termination. Provided, however, the life of all Initial Approvals and Subsequent Approvals may extend beyond the Term of this Agreement in the event and to the extent allowed by applicable law.

3.10 Owners' Applications for Subsequent Approvals.

Consistent with their vested rights hereunder, Owners shall be obligated to obtain any and all Subsequent Approvals required to develop the Project. Owners shall apply for such Approvals in a timely manner. Owners' obligations under this Section 3.10 apply to those Approvals that are under County's jurisdiction and also to those Project 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 extra-territorial utility service agreements, district formation and/or annexation, flood control, wastewater service, water service or fire protection; and agencies having jurisdiction over air quality, biological resources, solid wastes and hazardous wastes and materials). At such time as Owners seek such Project Approval(s) from non-County agencies, County agrees to reasonably cooperate and coordinate with Owners in such efforts for the purpose of implementing the Project, upon Owners' request and subject to Owner(s) paying any and all costs incurred by County in connection therewith (including, without limitation, costs associated with staff and attorney time). Notwithstanding anything to the contrary in the foregoing, this Section 3.10 shall not require County to take any specific action with respect to the City of Hollister as it relates to any tax sharing arrangement.

3.11 County's Processing of Subsequent Approvals.

(a) Expedited Processing. County shall cooperate and diligently work to promptly process and consider all applications for Subsequent Approvals, provided that: each such application is in a proper form with all relevant information provided; it includes payment of any and all applicable fees; and Owners are in compliance with their obligations under this Agreement. In the event that County and Owners mutually determine that additional personnel or outside consultants need to be retained to assist County to expeditiously process any Subsequent Approval, the cost of any such personnel or consultants shall be paid by Owners but shall be under the direction of County. County shall retain its discretion in its consideration of any and all Subsequent Approvals but shall exercise that discretion in a

manner consistent with Owners' vested rights under this Agreement, including any action(s) to impose additional conditions, fees, and/or exactions.

(b) Financing and Conveyance Maps. Owners may seek County approval of a "Master Tract Map" or "Large Lot Map" pursuant to the Existing Rules for the sole purposes of conveying portion(s) of the Property to others and/or for creating legal lots which may be used as security for loans to develop the Property or portions thereof, as otherwise permitted under the Subdivision Map Act. Any such map shall not authorize any development of any Project component (including, without limitation, any Project Infrastructure) and shall not be subject to any conditions other than those relating to monumentation and those that do not require the payment of Development Impact Fees or the installation or construction of improvements; provided, however, that Owners shall pay all applicable Regulatory Processing Fees for said map application.

(c) Multiple Final Maps. Owners may seek to file multiple final maps on all or a portion of the Property in accordance with applicable law, including, without limitation, Government Code section 66456.1 and County's Subdivision Ordinance.

3.12 Revenue Neutrality of Project; Cooperation in Forming Financing Districts.

(a) Revenue Neutrality Generally. The parties acknowledge and agree that Owners are required to ensure Revenue Neutrality of the Project through the formation and implementation of the CFD.

(b) Formation and Implementation of CFD. In accordance with Section 2.2(b) above, Owners shall cooperate in the establishment of the CFD and the imposition of the related levy over the Property, including, without limitation, not exercising any right of protest; funding County's consultant to prepare any and all studies and other documentation necessary to form the CFD; and paying all of County's costs and expenses associated with the CFD formation and implementation process. After Owners have initiated said formation process, County shall use diligent and good faith efforts to complete said formation process within one hundred eighty (180) days after County issues the required Notice of Intention for Form the Sunnyside CFD.

Section 4. Duration of Agreement.

4.1 Term. The term of this Agreement shall commence on the Effective Date, and shall continue for a period of fifteen (15) years, unless sooner terminated as provided herein ("***Term***"). Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for the rights and obligations described in Sections 2.5(b), 12.13. and 12.17 of this Agreement, which shall survive termination as provided for herein. Provided, however, that termination of this Agreement that occurs as a result of the Term expiring shall not modify any right or obligation arising from the other Project Approvals or any expiration date related thereto.

4.2 Tolling In Event of Litigation. In the event third party litigation is filed challenging this Agreement and such litigation would delay the Project or prevent the DA Ordinance from becoming effective on the Effective Date (i.e., court issues injunctive relief in connection with the DA Ordinance such that the same is stayed and not presumed to be valid), the Term shall be automatically tolled for the duration of the litigation which is defined to mean the litigation is fully and finally resolved in such a manner that the Agreement becomes effective. Provided, however, that in the event such litigation is

filed but does not result in the delay or prevention of the DA Ordinance from becoming effective on the Effective Date (i.e., court does not issue injunctive relief in connection with the DA Ordinance and therefore the same is presumed valid), then the parties may, but are not required, to extend this Agreement by mutual consent pursuant to Section 4.3 below.

4.3 Extension by Agreement. The Term may be extended at any time before its termination date by the parties' mutual agreement and in accordance with County's Development Agreement Procedures.

Section 5. Periodic Compliance Review.

County shall review Owners' good faith compliance with the terms of this Agreement on an annual basis. This periodic compliance review shall be conducted in accordance with the Development Agreement Statute and the County's Development Agreement Procedures, and shall address all items set forth therein ("***Periodic Review***"). Owners shall reimburse County for the actual costs of preparing for and conducting the Periodic Review within thirty (30) days of written demand from County. Upon completion of a Periodic Review, County shall provide an Estoppel Certificate as described in Section 12.21 below in substantially the same form attached as Exhibit 2 upon Owners' request.

If County finds and determines during the Periodic Review that Owners are not in compliance with the terms and conditions of this Agreement for the period under review, County may provide a Notice of Default to Owners pursuant to the provisions of Section 6.1 below. Prior to any further action taken under this Agreement, County and Owners shall meet and confer regarding the alleged default as required by Section 9.1 below. If after adherence with the provisions of Section 9.1 below, a Dispute remains regarding compliance with this Agreement, County or Owners, in accordance with Sections 6 and 9.2 below, may either elect to cure the default; challenge such default determination by instituting arbitration proceedings pursuant to Section 9.2 below, in which event the arbitrator shall exercise its review, based on substantial evidence, as to the existence of default; and/or elect to pursue other remedies as set forth in this Agreement. Any arbitration determination shall be binding on County and Owners.

Section 6. Default; Cure; Remedies.

6.1 Notice of Default. Failure or unreasonable delay by County or Owners to perform any material provision herein shall constitute a default under this Agreement. In the event of a default, the party alleging such default shall give the defaulting party not less than thirty (30) days' written notice of default ("***Notice of Default***") in the manner set forth in Section 12.12 below, unless the parties extend such time by mutual written consent or except in cases where Owners' default presents a threat of imminent harm to the public; provided, however, failure or delay in giving a Notice of Default shall not waive a party's right to give future notice of the same or any other default. The Notice of Default shall specify the nature of the alleged default, the manner and period of time in which said default may be satisfactorily cured, and shall otherwise adhere to the noticing requirements set forth in this Agreement. The time of the Notice of Default shall be measured from the date actually delivered in accordance with Section 12.12 below.

6.2 Cure Period; Right to Terminate or Initiate Arbitration Proceedings. The defaulting party shall provide evidence establishing it was never, in fact, in default or shall cure the default within thirty

(30) days; provided, however, that if the nature of the alleged default is such that it cannot be reasonably cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. During any period of curing, the party charged shall not be considered in default for purposes of terminating this Agreement or instituting arbitration proceedings. If the default is cured, then no default shall exist or be deemed to have existed and the noticing party shall take no further action. After proper notice and the expiration of such 30-day cure period without cure and subject to the Dispute Resolution process set forth in Sections 9.1 and 9.2 below, the noticing party, at its option, may terminate this Agreement without legal action pursuant to Section 8.2 below.

6.3 Remedies Generally. The parties agree that remedies to enforce the terms of this Agreement shall be limited to actions for mandamus, specific performance, declaratory relief, injunctive relief or other equitable relief, and that no party shall be liable for monetary damages. Notwithstanding anything to the contrary in this Section 6.3, County reserves the right to seek payment from Owners through binding arbitration proceedings for any fees, charges, costs or other monies owed under this Agreement, and to obtain recovery thereof. Likewise, Owners reserve the right to seek repayment from County of the actual amount of any Development Impact Fees (or land or improvements provided by Owners in lieu thereof) that County imposed on the Project that violated Owners' rights under this Agreement.

Section 7. 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, or by any other severe and unforeseeable occurrence that is beyond the control of that party (collectively, "***Enforced Delay***"); provided, however, the parties agree a delay that results from unforeseen economic circumstances shall not constitute an Enforced Delay for purposes of this Section 7. Performance by a party of its obligations under this Section 7 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.

Section 8. Termination.

8.1 Termination Upon Completion of Project or Expiration of Term. This Agreement shall terminate upon the earlier of: (a) the expiration of the Term (plus any extension(s) mutually agreed upon in accordance with Section 4 above or as otherwise provided for in this Agreement); or (b) when Full Build Out of the Project has occurred as provided for in this Agreement and other Project Approvals, and all of Owners' obligations hereunder have been satisfied. Upon termination of this Agreement, the County Recorder may cause a notice of such termination in a form satisfactory to County Counsel to be duly recorded in the official records of San Benito County. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any and all obligations provided herein that expressly provide that they shall survive termination.

8.2 Termination Due to Default. After notice and expiration of the thirty (30) day cure period and after satisfaction of the Dispute Resolution obligations set forth in Section 9.1 below, if the default has not been cured or it is not being diligently cured in the manner set forth above, the noticing party may, at its option, give notice of its intent to terminate this Agreement ("***Notice of Intent to Terminate***") with such termination becoming effective sixty (60) days after such notice is provided unless the party receiving the notice elects to commence arbitration pursuant to Section 9.2 below or seek judicial relief. Notwithstanding anything to the contrary in this Section 8.2, a written Notice of Intent to Terminate given under this Section 8.2 is effective to terminate the obligations of the noticing party only if a default has occurred, and such default, as a matter of law, authorizes the noticing party to terminate its obligations under this Agreement. In the event the noticing party is not so authorized to terminate, the party alleged to be in default shall have all rights and remedies provided herein or under applicable law, including, without limitation, the right to specific performance of this Agreement. Once the noticing party has given a Notice of Intent to Terminate, and the defaulting party elects to take no further action contesting the decision, arbitration proceedings may be instituted to obtain a declaratory judgment determining the respective termination rights and obligations under this Agreement.

8.3 Termination of Agreement with Respect to Individual Lots/Units Upon Sale to Ultimate User and Completion of Construction. The assignment and assumption provisions of Sections 10.1 and 10.2 below shall not apply, and the obligations hereunder shall terminate with respect to any lot/unit and the owner of such lot/unit shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot upon which the unit is located has been finally subdivided and individually (i.e., not in "bulk") sold to a member of the public or other ultimate user; and

(b) A Certificate of Occupancy has been issued for a residential building on said lot.

8.4 Termination by Mutual Consent. This Agreement may be terminated by the mutual consent of the parties in the manner provided in the Development Agreement Statute and herein.

Section 9. Dispute Resolution.

9.1 Informal Discussions; Mediation. If a dispute arises related to the interpretation or enforcement of, or compliance with, the provisions of this Agreement ("***Dispute***"), County and Owners 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, County and Owners shall endeavor to settle the Dispute by mediation. The Dispute shall be submitted to the San Jose, California office of Judicial Arbitration and Mediation Services, Inc. ("***JAMS***") for mediation, and shall take place at JAMS' San Jose Office; if the matter is not resolved through mediation, then it shall be submitted to JAMS for final binding arbitration pursuant to Section 9.2 below. Either County or Owners may commence mediation by providing to JAMS and the other parties a written request for mediation setting forth the subject of the Dispute and the relief requested. County and Owners shall cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, who shall be a retired judge, 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: (a) provide the parties with a list of ten (10) mediators and give County and Owners the opportunity to strike three (3) names on said list and rank the remainder, and (b) select the mediator

who, collectively, is the highest ranked by the parties. The selected mediator shall then promptly set a mediation date, for which the parties shall agree. County and Owners agree to participate in any such mediation in good faith. The costs and fees of mediation (including, without limitation, those costs and fees set forth in JAMS' fee schedule in effect at the time of commencement of the mediation) shall be borne equally by County and Owners; provided, however, County and Owners shall be responsible for their own attorneys' fees and any expert witness fees in connection with said proceedings. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their respective agents, employees, experts and attorneys, and by the mediator and any JAMS employees, shall be treated by the parties as confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration or 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. Any party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process.

9.2 Arbitration. Either County or Owners may initiate arbitration with respect to a Dispute by filing a written demand for arbitration at any time following completion of the informal dispute resolution and mediation processes described in Section 9.1 above; provided, however, that mediation may continue after the commencement of arbitration, if County and Owners so mutually desire. Unless otherwise agreed to by County and Owners, the mediator shall be disqualified from serving as the arbitrator in the case. The provisions of this Section 9.2 may be enforced by any court of competent jurisdiction, and the prevailing party shall be entitled to an award of all costs, fees, and expenses, including attorneys' fees, to be paid by the non-prevailing party. Any Dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, which is not resolved by the mediation process set forth above, shall be determined by arbitration to be held in San Jose, California before one (1) arbitrator who shall be a retired judge. The arbitrator shall apply the law in the same manner as in a judicial proceeding. No party may request an arbitration hearing until after the completion of informal dispute resolution and mediation processes under Section 9.1 above are complete. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, which rules shall govern the commencement of arbitration. If the parties cannot agree on the appointment of an arbitrator, then the parties: (a) shall request that JAMS provide the parties with a list of ten (10) arbitrators and give County and Owners the opportunity to strike three (3) names from the list and rank the remainder, and (b) select the arbitrator who is, collectively, the highest ranked by County and Owners. Judgment on the arbitration award may be entered in the San Benito County Superior Court or any court having jurisdiction. This Section 9.2 shall not preclude County or Owners from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction. The costs and fees of arbitration (including, without limitation, those costs and fees set forth in JAMS' fee schedule in effect at the time of commencement of the arbitration) shall be borne equally by County and Owners; provided, however, the prevailing party in said proceeding shall be entitled to recover for its own attorneys' fees and any expert witness fees.

9.3 Good Faith Participation in Dispute Resolution. The dispute resolution process described under Sections 9.1 and 9.2 above shall be undertaken in good faith. The parties may select a mediator or arbitrator utilizing another methodology than that which is set forth in Sections 9.1 and 9.2 above upon the parties' mutual written agreement. By agreeing to the above-referenced dispute resolution

process, neither County nor Owners hereby loses or waives their respective right to assert the operation of any applicable statute of limitations as an affirmative defense. Any arbitration award or determination shall be final and binding upon County and Owners and each shall accept such decision and award and/or determination as binding and conclusive and shall abide thereby and no party to said proceeding may commence civil litigation as a means of resolving the Dispute that was at issue in said proceeding except for an action to obtain equitable relief.

9.4 Attorneys' Fees and Dispute Resolution Costs. Except as otherwise provided in Sections 9.1 and 9.2 above, in any action or proceeding brought by any party to enforce or interpret a provision of this Agreement, or to seek specific performance or injunctive relief or declaratory relief against any other party to this Agreement, the prevailing party is entitled to recover attorneys' fees and any other costs incurred in the action or proceeding in addition to any other relief to which it is entitled.

Section 10. Assignment and Assumption; Joint and Several Liability.

10.1 Assignment of Rights, Interests and Obligations. Subject to compliance with this Section 10.1 and Section 10.2 below, Owner(s) may sell, assign or transfer (collectively, "***Assign***" or "***Assignment***") in whole or in part the Property to any individual or entity at any time during the Term of this Agreement. The applicable Owner(s) shall seek County's prior written consent to any Assignment (which shall be documented in a form substantially the same as attached Exhibit 3 ("***Consent to Assignment***")), which consent shall not be unreasonably withheld or delayed; provided, however, that such consent shall not be required if the proposed Assignment would involve an entity directly related to any of the entities that make up the applicable Owner(s) such that they hold a majority interest (fifty-one percent (51%) or more) therein, or if the proposed Assignment would involve an entity such that the applicable Owner(s) would retain a minimum of fifty one percent (51%) of the ownership or beneficial interest and would retain management and control of that portion of the Property so Assigned. County may refuse to give its consent to a requested Assignment only if, in light of the following factors: (a) the financial strength and capability of the proposed Subsequent Owner to perform the obligations of this Agreement; and (b) the proposed Subsequent Owner's experience and expertise in planning, financing, development, ownership, and operation of similar projects, such Subsequent Owner would not be able to perform the obligations hereunder proposed to be assumed by such Subsequent Owner. Such determination shall be made by the Planning Director, and the Planning Director's decision is appealable by the applicable Owner(s) to the Board, which shall also evaluate the decision based on the criteria specified above. Failure by County to respond in writing within sixty (60) days to any request made by the applicable Owner(s) for the required consent shall be deemed to be County's approval of the Assignment. Notwithstanding anything to the contrary in this Section 10.1 and in accordance with Section 8.3 above, this Section 10.1 shall not apply to: the owner of any residential unit located on a lot that has been finally subdivided and individually sold to the ultimate user and a Certificate of Occupancy has been issued for a residential building on said lot; any mortgage, deed of trust, sale/leaseback or other form of conveyance for financing (subject to Section 11.2 below); the granting of any easement interests or offers of dedication to any governmental or quasi-governmental agency or utility; or the transfer of common areas to a homeowner's association(s) formed in connection with the Project. Further, the parties agree that upon receipt of a payment from a foreclosing Mortgagee, County shall permit said Assignment in accordance with Section 11.2 below.

10.2 Assumption of Rights, Interests and Obligations. Express written assumption by a proposed individual or entity of the obligations and other terms and conditions of this Agreement with respect to that portion (or all) of the Property thereof Assigned, shall relieve the applicable Owner of such obligations so expressly assumed. The Assignment and Assumption Agreement shall be substantially in the form attached as Exhibit 4 to this Agreement ("***Assignment and Assumption Agreement***"), shall be recordable and shall be approved as to form by County Counsel. Said agreement shall provide for the proposed Subsequent Owner to contractually assume and be bound by all of the applicable Owner's obligations under this Agreement with respect to the Property, or portion(s) thereof, which are Assigned to the proposed Subsequent Owner. The applicable Owner shall ensure that such Assignment and Assumption Agreement is recorded by the County Recorder in the official records of San Benito County within ten (10) days of receipt after County executes the required Consent to Assignment, or as promptly thereafter as feasible. Subject to County's consent of such Assignment pursuant to Section 10.1 above, upon recordation of said Assignment and Assumption Agreement, the applicable Owner shall automatically be released from those obligations expressly assumed by the Subsequent Owner at issue.

10.3 Joint and Several Liability. Under all circumstances, Owners shall be joint and severally liable for any and all obligations set forth herein.

Section 11. Rights and Duties of Mortgagee in Possession of Property.

11.1 Mortgagee Successor Generally. This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the Effective Date, including, without limitation, the lien of any Mortgage. Notwithstanding anything to the contrary in this Section 11.1, no breach of this Agreement shall defeat, render invalid, diminish or impair any Mortgage made in good faith and for value; provided, however, this Agreement shall be binding upon and effective against all persons and entities, including all Mortgagees who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, and including any subsequent transferee of the Property acquired by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise after the Effective Date (in either case, a "***Mortgagee Successor***"), subject, however, to the terms of Section 11.2 below.

11.2 Rights and Obligations Hereunder. The provisions of Section 11.1 above notwithstanding, a Mortgagee Successor shall have the right but not any obligation under this Agreement to commence or complete the construction of any Project Infrastructure, or to guarantee such construction or completion. County, upon receipt of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Owners under this Agreement. The foreclosing Mortgagee shall be obligated to comply with this Agreement, including, without limitation, complying with the requirements set forth in Section 10.2 above. Notwithstanding anything to the contrary in this Section 11.2, a Mortgagee Successor shall not be entitled to construct the Project and/or develop the Property pursuant to the Project Approvals unless and until said Mortgagee Successor enters into an Assignment and Assumption Agreement with County in a form acceptable to the County whereby said Mortgagee Successor expressly assumes any and all rights and obligations of Owners hereunder. In the event that any Mortgagee Successor shall acquire title to the Property or any portion thereof, the Mortgagee Successor further shall not be (a) liable for any breach or default under this Agreement on the part of Owners or their successor(s), or (b) obligated to cure any breach or default under this

Agreement on the part of Owners or their successor(s). Provided, however, in the event such Mortgagee Successor desires to succeed to Owners' rights, benefits, privileges and obligations under this Agreement, County may, in its sole discretion, condition such succession upon the assumption of this Agreement by the Mortgagee Successor of the obligation to cure any breach or default on Owners' part.

11.3 Notice. If County receives notice from a Mortgagee requesting a copy of any Notice of Default regarding compliance with this Agreement as it relates to all or a portion of the Property, then County shall deliver said notice to such Mortgagee, concurrently with service thereof to Owners, any notice given to Owners with respect to any claim by County that Owners are in default. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after receipt of such notice to cure, or to commence to cure, the alleged default set forth in said notice in accordance with Section 6.2 above. If the default or such noncompliance is of a nature that can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall have the right (but not the obligation) to seek to obtain possession with diligence and continuity through a receiver or otherwise, and thereafter to remedy or cure the default within ninety (90) days after obtaining possession, except if any such default cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default if such Mortgagee commences cure during such ninety (90) day period, and thereafter diligently pursues completion of such cure to the extent possible. Notwithstanding anything to the contrary in this Section 11.3, nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee or Mortgagee Successor to undertake or continue construction or completion of any improvements comprising the Project (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the defaulting Owners' continuing obligations hereunder in the manner specified in Section 11.2 above.

Section 12. General Provisions.

12.1 Independent Contractors. Each party is an independent contractor and shall be solely responsible for the employment, acts, omissions, control and directing of its employees and its other agents. All persons employed or utilized by Owners in connection with this Agreement and the Project shall not be considered employees of County in any respect. Except as expressly set forth herein, nothing contained in this Agreement shall authorize or empower any party to assume or create any obligation whatsoever, express or implied, on behalf of any other party or to bind any other party or to make any representation, warranty or commitment on behalf of any other party.

12.2 Invalidity of Agreement and Severability of Provisions. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment, including any appeals. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, that provision shall not affect, impair, or invalidate any other provision, and the remaining provisions shall continue in full force and effect unless the court determination affects a material part of the Agreement in which case the parties shall comply with the provisions of Section 3.3 above.

12.3 No Third Party Beneficiary. There are no third party beneficiaries to this Agreement, and this Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person or entity other than the parties to this Agreement.

12.4 Execution of Other Instruments. Each party shall execute and deliver to the other parties 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 parties the rights and privileges granted by this Agreement.

12.5 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, including, without limitation, the resolution of any Dispute which may arise concerning the obligations of Owners and County as set forth in this Agreement.

12.6 Amendments. This Agreement may be amended from time to time by mutual consent of the parties, in accordance with the Development Agreement Statute and the County Development Procedures. In the event the parties amend this Agreement, the party requesting said amendment shall record the amended Agreement with the County Recorder to in the official records of San Benito County within ten (10) days of the amended Agreement being fully executed by all parties.

12.7 Subsequent Approvals Do Not Require Amendment; Effect of Amendment.

(a) No Amendment to Agreement for Subsequent Approvals. County's approval of any Subsequent Approval shall not require an amendment to this Agreement except in the event and to the extent Owners expressly seek and County approves such amendment in connection with Subsequent Approval(s). Upon County's approval of any Subsequent Approval, it shall become part of the Project Approvals governing development of the Project covered by this Agreement.

(b) Effect of Amendment to Development Agreement. Except as expressly set forth therein, an approved amendment to this Agreement shall not be construed to materially modify, impair, or waive any other rights or obligations of any party under this Agreement that were not modified as a result of said amendment.

12.8 Project is a Private Undertaking. The parties agree that: (a) any development by Owners of the Property shall be a private development; (b) County has no interest in or responsibilities for or duty to third parties concerning any Project Infrastructure constructed in connection with the Property until such time that County accepts the same pursuant to the provisions of this Agreement or in connection with any subdivision map approvals; (c) the contractual relationship between County and Owners is such that Owners are independent contractors and are not agents of County; and (d) nothing in this Agreement is intended or shall be construed to create or reflect any form of partnership or joint venture among the parties. The only relationship between County and Owners is that of a government entity regulating the development of private property and the owners of such private property.

12.9 No Discrimination Permitted. Owners shall not discriminate in any way against any person on the basis of race, color, national origin, sex, marital status, sexual orientation, age, creed, religion, or condition of physical disability in connection with or related to the performance of this Agreement.

12.10 Covenants Running with the Land. Subject to Section 10 above and pursuant to the Development Agreement Statute, all of the provisions contained in this Agreement are binding upon and benefit the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring an interest in all or any portion of the Property, whether by operation of law

or in any manner whatsoever, during their ownership of the Property, or any portion thereof. All of the provisions of this Agreement constitute covenants running with land pursuant to California law.

12.11 Recordation of Agreement. Owners shall cause this Agreement to be duly recorded in the official records of San Benito County at the time provided for in this Agreement.

12.12 Notices. Any notice required under this Agreement shall be in writing and personally delivered, or sent by certified mail (return receipt requested and postage prepaid), overnight delivery, with a courtesy copy by email to the following:

County: San Benito County Planning and Building Department
Attn: Planning Director
Hollister, CA 95023
(tel) 831.637.5313
(email) BBarnes@cosb.us

Copy to: County Counsel's Office
Attn: County Counsel
481 4th Street, 2nd Floor Hollister, CA 95023
(tel) 831.636.4040
(email) MGranger@cosb.us

Copy to: Miller Starr Regalia
Attn: Nadia Costa, Esq.
1331 N. California Blvd., Fifth Floor
Walnut Creek, CA 94596
(tel) 925.935.9400
(email) nadia.costa@msrlegal.com

Copy to: John Brigantino
150 San Felipe Road
Hollister, CA 95023
(tel) 831.801.0154
(email) John@sanbenitorealty.com

Copy to: Breen Law Firm
Attn: Christine O Breen, Esq.
330 Tres Pinos Road, Suite F8-4
Hollister, CA 95023
(tel) 831.636.2529 phone
(email) cob@breenlaw.net

Any Notice to a Mortgagee by County shall be given as provided above using the contact information provided by such Mortgagee. Any Notice to a Subsequent Owner shall be given by County as required above only for those Subsequent Owners who have given County written notice of their contact information for the purpose of receiving such notices. Any party may change its mailing

address/email at any time by giving written notice of such change to the other parties in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date shown on the return receipt, air bill or email.

12.13 Prevailing Wage. Owners shall be solely responsible for determining whether construction of any or all of the Project Infrastructure required in connection with the Project trigger the obligation to pay prevailing wages under California or federal law. In the event and to the extent that payment of prevailing wages is required, Owners shall comply with those requirements. Owners shall defend, indemnify and hold harmless County, its agents, employees, officers and officials from any claims, injury, liability, loss, costs or damages sought by a third party for a failure to pay prevailing wages in connection with the Project. The indemnification obligation set forth in this Section 12.13 shall survive the termination of this Agreement if the statute of limitations on any prevailing wage claim has not yet run.

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

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

12.16 Reimbursement Agreement. The parties acknowledge and agree that Owners shall be responsible for any and all costs incurred by County in connection with the processing of the Project Approvals in accordance with the Reimbursement Agreement (as it may be amended from time to time). In the event that Owners fail to satisfy said obligations, County may, in its discretion, halt the processing of any applications for Project Approval(s) until said obligations have been fully satisfied.

12.17 Cooperation in the Event of Legal Challenge; Indemnification. In the event of any legal action or proceeding brought by a third party challenging the validity of this Agreement or any provision hereof or any Project Approval ("***Legal Challenge***"), the parties shall cooperate in defending said action or proceeding as provided for in this Section 12.17. County shall provide Owners with notice of the pendency of such action or proceeding and may, in its discretion, request that Owners defend such action or proceeding. It being understood that the Project is a private undertaking, the parties may agree that it is Owners' primary responsibility to defend any Legal Challenge, as defined herein. In this event, Owners shall engage the services of competent counsel at their sole cost and expense ("***Defense Counsel***"), subject to County's reasonable approval, to defend the parties' interests in any Legal Challenge challenging any aspect of the Project Approval(s); provided, however, that nothing in this Section 12.17 shall preclude County Counsel's involvement in the Legal Challenge to defend County's interest therein. Furthermore, in accordance with the Reimbursement Agreement between County and Owners, in the event that County determines, in its sole and absolute discretion, that separate counsel is necessary to serve the interests of the County and the public welfare, County may retain special counsel, for which Owners shall pay all actual legal fees and costs related thereto. If County retains special counsel in accordance with this Section 12.17, County shall direct special counsel to cooperate with Defense Counsel to the extent feasible and to use diligent and good faith efforts to avoid duplication with the efforts of Defense Counsel; such efforts may include, for example, the filing of joint briefs and other papers. Defense Counsel, County Counsel, and County's special counsel, if any, shall consult with each other and act in good faith in considering any settlement or compromise of any Legal Challenge;

provided, however, Owners/Defense Counsel shall not agree to settle the Legal Challenge without County's prior written consent, which shall not be unreasonably withheld. During the pendency of any Legal Challenge, this Agreement and all Project Approvals shall remain in place subject to any changes that may be required by judicial determination.

Owners further agree to and shall defend and hold harmless County, its agents, employees, officers, and officials from any claims, injury, liability, loss, costs or damages sought by a third party, relating to personal injury, death or property damage, arising from or relating to the construction of the Project by an Owner(s) or those of its employees, officers, agents, contractors or subcontractors. It is understood that Owners' duty to indemnify and hold harmless under this Section 12.17 includes the duty to defend as set forth in California Civil Code Section 2778; the parties further agree that County shall have the option to choose its own legal representation for which Owners shall pay all actual legal fees and costs related thereto. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Owners from liability hereunder. The provisions of this Section 12.17 shall survive the termination of this Agreement.

12.18 No Waiver. No waiver by any party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including, without limitation, the time for performance of any such provision. The exercise by a party of any right or remedy provided in this Agreement or provided by law shall not prevent the exercise by that party of any other remedy provided in this Agreement or under the law.

12.19 Construction. This Agreement has been reviewed and revised by legal counsel for both County and Owners, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. The provisions of this Agreement and the attached exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party, and in a manner that shall achieve the purposes of this Agreement. Wherever required by the context, the masculine gender shall include the feminine or neuter genders, or vice versa.

12.20 Entire Agreement. This Agreement and all exhibits hereto constitute the entire agreement between the parties and supersede all prior discussions, negotiations, and agreements whether oral or written. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by both parties.

12.21 Estoppel Certificate. Any party from time to time (or a Mortgagee under Section 11 above) may deliver written notice to the other parties requesting an Estoppel Certificate stating: (a) this Agreement is in full force and effect and constitutes a binding obligation of the parties; (b) this Agreement has not been amended either orally or in writing, or if it has been amended, specifying the nature of the amendment(s); and (c) there are no existing defaults in the performance of its obligations under this Agreement to the actual knowledge of the party signing the Estoppel Certificate. A party receiving a request shall execute and return the certificate within thirty (30) days after receipt thereof. The Planning Director shall, on County's behalf, have the right to execute any certificate requested by Owners. The Estoppel Certificate shall be substantially in the same form as attached Exhibit 2. An Estoppel Certificate prepared in accordance with this Section 12.21 may be relied on by Assignees and Mortgagees.

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

12.23 Authority to Execute. Each party hereto expressly warrants and represents that it has the authority to execute this Agreement on behalf of its entity and warrants and represents that it has the authority to bind its entity to the performance of its obligations hereunder.

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

12.25 Recitals. The recitals in this Agreement constitute part of this Agreement and each party shall be entitled to rely on the truth and accuracy of each recital.

12.26 Compliance, Monitoring, and Management Duties; Default. If Owners fail to perform any duties related to compliance review processes, monitoring, or the management of any programs as required herein, County has the right, but not the obligation, to undertake such duties and perform them at Owners' sole expense.

12.27 Listing and Incorporation of Exhibits.

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

Exhibits 1(a) and (b):	Legal Description of the Property; Map of Property
Exhibit 2:	Form of Estoppel Certificate
Exhibit 3:	Form of Consent to Assign
Exhibit 4:	Form of Assignment and Assumption Agreement

IN WITNESS WHEREOF, the parties hereto have caused the DEVELOPMENT AGREEMENT BY AND AMONG THE COUNTY OF SAN BENITO AND THE BRIGANTINO FAMILY to be duly executed as of the date(s) written below.

COUNTY OF SAN BENITO

_____

Brent Barnes
Director, San Benito County Resource
Management Agency

Date:_____

APPROVED AS TO FORM:

San Benito County Counsel's Office

_____

Matthew Granger
County Counsel

Date:_____

J & V BRIGANTINO FAMILY LIMITED PARTNERSHIP:
John M. Brigantino and Vicki L. Brigantino,
Trustees of the J&V Brigantino Trust

By: John M. Brigantino, General Partner and Trustee

_____Date_____

By: Vicki L. Brigantino, Trustee

_____Date_____

D & D BRIGANTINO FAMILY LIMITED PARTNERSHIP
David V. Brigantino and Dixie A. Brigantino
Trustees of the D&D Brigantino Family Trust

By: David V. Brigantino, General Partner and Trustee

_____Date_____

By: Dixie A. Brigantino, Trustee

_____Date_____

BRIGANTINO FAMILY FARMS, LLC,

By: Vincent Brigantino

_____Date_____

By: Denise Brigantino

_____Date_____

RALPH BRIGANTINO
TRUSTEE OF THE TESTAMENTARY TRUST CREATED
IN THE FINAL DISTRIBUTION FILED SEPTEMBER 26, 1986,
RECORDERS FILE NO. 8606369, SAN BENITO COUNTY RECORDS

By: Ralph Brigantino, Trustee

_____Date_____

ARNOLD TOGLIATTI TRUSTEE OF THE TOGLIATTI LIVING TRUST DATED MARCH 21, 1994

By: Arnold Togliatti, Trustee

_____Date_____

JOHN BRIGANTINO RETIREMENT PLAN AND TRUST U/A/D 04/17/03
JOHN BRIGANTINO AND VICKI BRIGANTINO TRUSTEES

By: John M. Brigantino, Trustee

_____Date_____

By: Vicki L. Brigantino, Trustee

_____Date_____

BRIGANTINO FAMILY FARMS, LLC Retirement Trust
VINCENT AND DENISE BRIGANTINO, TRUSTEES

By: Vincent Brigantino, Trustee

_____Date_____

By: Denise Brigantino, Trustee

_____Date_____

EXHIBIT 1(a)

LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of San Benito, State of California, described as follows:

PARCEL 1:

THAT PART OF HOMESTEAD LOT 42 OF THE SAN JUSTO RANCHO, ACCORDING TO THE MAP THEREOF FILED JULY 21, 1876, IN VOL. 1 OF MAPS, AT PAGE 64, SAN BENITO COUNTY RECORDS, BOUNDED AND PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 4" X 6" UNDERGROUND MONUMENT WITH IRON CENTER SET IN THE MIDDLE OF A COUNTY ROAD IN THE DIVISION LINE BETWEEN HOMESTEAD LOTS 42 AND 43 THAT IS NORTH 3° EAST 394.68 FEET FROM THE COMMON CORNER OF SAID HOMESTEAD LOTS 42 AND 43 IN THE NORTHERN LINE OF HOMESTEAD LOT 45, AND FROM SAID POINT OF BEGINNING RUNNING ALONG THE NORTHERLY LINE OF A COUNTY ROAD SOUTH 70° 33' WEST 508.56 FEET, THENCE NORTH 3° EAST 587.80 FEET, THENCE SOUTH 86° 3' EAST 470.04 FEET TO A POINT ON THE DIVISION LINE OF HOMESTEAD LOTS 42 AND 43, SAID POINT ALSO BEING IN THE CENTERLINE OF THE COUNTY ROAD, THENCE ALONG THE SAID DIVISION LINE SOUTH 3° WEST 389.49 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

THAT PART OF HOMESTEAD LOT 42 OF THE SAN JUSTO RANCHO, ACCORDING TO THE MAP THEREOF FILED JULY 21, 1876, IN VOL. 1 OF MAPS, AT PAGE 64, SAN BENITO COUNTY RECORDS, BOUNDED AND PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS SOUTH 70° 33' WEST 508.56 FEET OF A 4" X 4" UNDERGROUND MONUMENT WITH IRON CENTER IN THE MIDDLE OF A COUNTY ROAD IN THE DIVISION LINE BETWEEN HOMESTEAD LOTS 42 AND 43 THAT IS NORTH 3° EAST 394.68 FEET FROM THE COMMON CORNER OF SAID HOMESTEAD LOTS 42 AND 43 IN THE NORTHERN LINE OF HOMESTEAD LOT 45; AND FROM SAID POINT OF BEGINNING RUNNING ALONG THE NORTHERN LINE OF A COUNTY ROAD SOUTH 70° 33' WEST 287.75 FEET, THENCE SOUTH 70° 33' WEST 287.75 FEET, THENCE SOUTH 37° 15' WEST 87.78 FEET; THENCE SOUTH 13° 45' EAST, 264.00 FEET; THENCE SOUTH 30° 30' EAST, 193.38 FEET; THENCE SOUTH 45° WEST 194.70 FEET TO A POINT IN THE NORTHEASTERN LINE OF HOMESTEAD LOT 49; THENCE RUNNING ALONG THE NORTHEASTERN LINE OF SAID HOMESTEAD LOT 40 NORTH 43° 30' WEST 81.18 FEET; THENCE NORTH 32° 40' WEST, 788.70 FEET TO THE COMMON CORNER OF HOMESTEAD LOTS 42 AND 45 IN THE NORTHEASTERN LINE OF HOMESTEAD LOT 49; THENCE NORTH 32° 07' WEST, 594.66 FEET; THENCE NORTH 3° 10' EAST, 172.46' TO AN IRON PIPE; THENCE NORTH 3° 10' EAST, 478.70 FEET TO AN IRON PIPE; THENCE SOUTH 86° 30' EAST, 1122.47 FEET; THENCE SOUTH 3° WEST 1082.78 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO THE COUNTY OF SAN BENITO, BY DEED FROM ANGELO LOMPA, ET AL, RECORDED JUNE 16, 1961, RECORDER'S FILE NO. 77532, SAN BENITO COUNTY RECORDS.

PARCEL 3:

A 30' ACCESS EASEMENT, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE DIVISION LINE BETWEEN HOMESTEAD LOTS 42 AND 43, THAT IS NORTH 3° EAST, 1279.15 FEET FROM THE COMMON CORNER OF SAID LOTS 42 AND 43 IN THE NORTHERN LINE OF LOT 45. THENCE FROM SAID POINT OF BEGINNING N 86° 30' WEST, 470.04 FEET TO THE NORTHWEST CORNER OF PARCEL 1; THENCE ALONG THE WESTERN LINE OF PARCEL 1, SOUTH 3° WEST, 30.00 FEET; THENCE SOUTH 86° 30' EAST, 470.04 FEET TO THE CENTERLINE OF A COUNTY ROAD WHICH IS ALSO THE DIVISION LINE BETWEEN HOMESTEAD LOTS 42 AND 43; THENCE ALONG SAID LINE NORTH 3° EAST, 30.00 FEET TO THE POINT OF BEGINNING, AS RESERVED IN THE DEED FROM JOHN BRIGANTINO, ET AL, TO AUGUSTIN OSCADAL, ET AL, RECORDED DECEMBER 14, 1995, RECORDER'S FILE NO. 9510676, SAN BENITO COUNTY RECORDS.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT FOR THE PURPOSE OF CONSTRUCTION, MAINTENANCE AND USE OF A STORM DRAIN PIPELINE, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO AND ALONG SUCH EASEMENT:

BEING A PORTION OF HOMESTEAD LOT 42 OF THE SAN JUSTO RANCHO, ACCORDING TO THE MAP THEREOF RECORDED JULY 21, 1876 IN VOLUME 1 OF MAPS, PAGE 64, SAN BENITO COUNTY RECORDS, BOUNDED AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND 20 FEET WIDE THE NORTHERLY AND WESTERLY LINES OF WHICH ARE THE NORTHERLY AND WESTERLY LINES OF THAT CERTAIN PARCEL OF LAND CONVEYED BY DEED FROM JOHN BRIGANTINO RETIREMENT PLAN AND TRUST U/A/D 04/17/03 JOHN BRIGANTINO AND VICKI BRIGANTINO TRUSTEES AND BRIGANTINO FAMILY FARMS, LLC RETIREMENT TRUST, VINCENT BRIGANTINO AND DENISE BRIGANTINO, TRUSTEES TO JAMES HAROLD BRAY AND DEBBIE RAYE BRAY, CO-TRUSTEES OF THE BRAY FAMILY TRUST UA 12/1/92 AND F. RONALD CULLER AND VERONICA I. CULLER, CO-TRUSTEES OF THE CULLER LIVING TRUST DATED DECEMBER 16, 1982, SAID DEED RECORDED 4/19/12, RECORDERS FILE NO. 2012-0003567, SAN BENITO COUNTY RECORDS, AND ALL AS SET FORTH IN PARAGRAPH 3 OF THAT CERTAIN AGREEMENT TO ADJUST LOT LINES, RECORDED 4/17/12 RECORDERS FILE NO. 2012-0003516, SAN BENITO COUNTY RECORDS.

PARCEL 5:

THAT PART OF HOMESTEAD LOT 42, OF THE SAN JUSTO RANCHO, ACCORDING TO THE MAP THEREOF FILED JULY 21, 1876, IN VOLUME 1 OF MAPS, AT PAGE 64, SAN BENITO COUNTY RECORDS, BOUNDED AND PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EAST LINE OF SAID HOMESTEAD LOT 42 THAT IS NORTH 3° EAST 19.381 CHAINS FROM THE SOUTHEAST CORNER OF SAID HOMESTEAD LOT 42, SAID POINT OF BEGINNING BEING IN THE CENTER OF HOLLISTER AND TRES PINOS ROAD, AND SAID POINT OF BEGINNING BEING ALSO SOUTH 86° 30' EAST .41 CHAINS FROM AN IRON PIPE SET IN THE WESTERLY LINE OF SAID ROAD; THENCE NORTH 86° 30' WEST 24.129 CHAINS TO A 3/4 INCH PIPE; THENCE NORTH 3° 10' EAST 6.064 CHAINS TO A BURIED 2" X 4" STAKE AT THE SOUTHWEST CORNER OF LAND CONVEYED TO J.G. HAMILTON AND N.C. BRIGGS BY DEED FROM L.M. LADD, ET AL DATED OCTOBER 20, 1893, AND RECORDED IN VOLUME 13 OF DEEDS, AT PAGE 390, SAN BENITO COUNTY RECORDS; THENCE SOUTH 86°

20' EAST 24.114 CHAINS TO A POINT IN THE EAST LINE OF SAID HOMESTEAD LOT 42, SAID POINT BEING ALSO IN THE CENTER LINE OF SAID HOLLISTER AND TRES PINOS ROAD, AND FROM SAID POINT A BURIED 3/4 INCH PIPE IN THE WEST LINE OF SAID ROAD BEARS NORTH 86° 20' WEST 0.41 CHAINS; THENCE ALONG SAID EAST LINE OF HOMESTEAD LOT 42, AND CENTER LINE OF SAID ROAD, SOUTH 3° WEST 6.025 CHAINS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PART OF HOMESTEAD LOT 42, OF THE SAN JUSTO RANCHO, ACCORDING TO THE MAP THEREOF FILED JULY 21, 1876, IN VOLUME 1 OF MAPS, AT PAGE 64, SAN BENITO COUNTY RECORDS, BOUNDED AND PARTICULARLY DESCRIBED AS FOLLOWS:

THE WESTERLY 436.90 FEET MEASURED AT RIGHT ANGLES FROM THE WESTERLY LINE OF THE LANDS DESCRIBED IN THAT CERTAIN QUIT CLAIM DEED FILED FOR RECORD ON SEPTEMBER 17, 2002 AS DOCUMENT NUMBER 2002-0014716 AT SAID COUNTY RECORDER'S OFFICE.

ALSO EXCEPTING THEREFROM ONE HALF OF ALL OIL, GAS AND OTHER MINERALS THAT MAY HEREAFTER BE PRODUCED IN OR ON SAID LAND, AS RESERVED IN DEED FROM CLYMER M. NOBLE ETUX, TO PAUL WILLIAM BERTUCCIO, DATED APRIL 29, 1958 AND RECORDED MAY 2, 1958, FILE NO. 68876, SAN BENITO COUNTY RECORDS.

BEING PARCEL 2 AS SHOWN ON LOT LINE ADJUSTMENT 12-550 RECORDED APRIL 17, 2012 AS INSTRUMENT NO. 2012-0003517 OF OFFICIAL RECORDS.

APN: 020-280-041-000 (Portion of Parcel 2), 020-320-007-000 (Portion of Parcel 2), 020-280-043-000 (Parcel 1) and 020-280-022-000 (Parcel 5 and other property)

EXHIBIT 1(b)

MAP OF PROPERTY

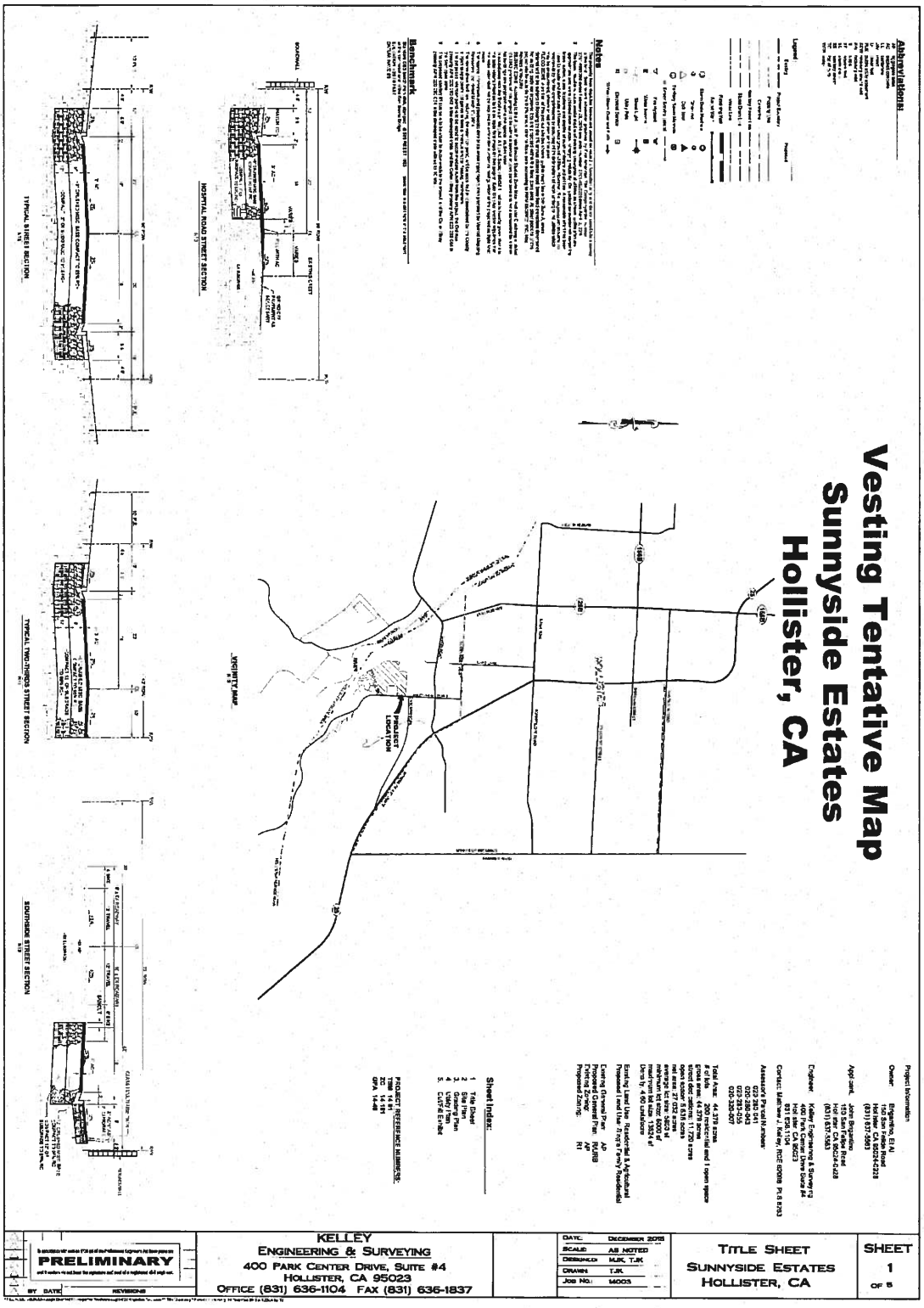


EXHIBIT 2

FORM OF ESTOPPEL CERTIFICATE

EXHIBIT 2

FORM OF ESTOPPEL CERTIFICATE

Date:

Parties:

This document is intended to confirm the terms and conditions of the DEVELOPMENT AGREEMENT BY AND AMONG THE COUNTY OF SAN BENITO, a political subdivision of the State of California ("*County*"), J & V BRIGANTINO FAMILY LIMITED PARTNERSHIP, a California limited partnership, the D & D BRIGANTINO FAMILY LIMITED PARTNERSHIP, a California limited partnership, BRIGANTINO FAMILY FARMS, LLC, a California limited liability company, RALPH BRIGANTINO, TRUSTEE OF THE TESTAMENTARY TRUST CREATED IN THE FINAL DISTRIBUTION FILED SEPTEMBER 26, 1986, RECORDERS FILE NO. 8606369, SAN BENITO COUNTY RECORDS, ARNOLD TOGLIATTI, TRUSTEE OF THE TOGLIATTI LIVING TRUST DATED MARCH 21, 1994, the JOHN BRIGANTINO RETIREMENT PLAN AND TRUST U/A/D 01/17/03, JOHN BRIGANTINO AND VICKI BRIGANTINO TRUSTEES, and the BRIGANTINO FAMILY FARMS, LLC RETIREMENT TRUST, VINCENT BRIGANTINO AND DENISE BRIGANTINO, TRUSTEES (collectively, "*Owners*").

1. On _____, 2017, the County of San Benito approved the above referenced Development Agreement.

2. This Estoppel Certificate certifies that, as of the Date of Certificate set forth above [CHECK ANY/ALL THAT APPLY]:

   The Development Agreement remains in full force and effect and constitutes a binding obligation of Owners and County.

   The Development Agreement has not been amended either orally or in writing.

   The Development Agreement has been amended in the following aspects: [SPECIFY THE NATURE OF SAID AMENDMENT(S)].

   There are no existing defaults in the performance of [SPECIFY PARTY REQUESTING ESTOPPEL CERTIFICATE] obligations under the Development Agreement to the actual knowledge of the individual executing this Estoppel Certificate.

This Estoppel Certificate may be relied upon by an Assignee or Mortgagee (as those terms are defined in the Development Agreement).

Executed this day of _____, in Hollister, California. I declare that the foregoing is true and correct.

COUNTY OF SAN BENITO

_____
Planning Director

SABE\52422\1061702.1

EXHIBIT 3

FORM OF CONSENT TO ASSIGNMENT AND ASSUMPTION

EXHIBIT 3

FORM OF CONSENT TO ASSIGNMENT AND ASSUMPTION

The COUNTY OF SAN BENITO, a political subdivision of the State of California (the "*County*"), hereby consents to the Assignment and Assumption Agreement by and between _____, as Assignor, and _____, as Assignee (the "*Assignment*"), to which this Consent to Assignment and Assumption is attached as Exhibit A, and releases Assignor from its obligations under the Development Agreement that are expressly assumed by Assignor as set forth in said Assignment and Assumption Agreement relating to the period from and after the effective date of the Assignment, so long as the parties to said Assignment and Assumption Agreement have expressly and with specificity set forth therein each and every right and obligation that comprise the Assigned Interests.

COUNTY:
COUNTY OF SAN BENITO, a political subdivision of the State of California

_____
Planning Director
Date: _____

APPROVED AS TO FORM:
San Benito County Counsel's Office

_____
County Counsel
Date: _____

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EXHIBIT 4

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT 4

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

_____
_____
_____

Attention:

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT
(Development Agreement By and Among the County of San Benito and the Brigantino Family)

This Assignment and Assumption Agreement ("***Assumption and Assumption Agreement***") is made effective as of _____, by and between _____ ("***Assignor***") and _____ ("***Assignee***").

A. Numerous Owners (as that term is defined therein) and the County of San Benito ("***County***") entered into that certain Development Agreement, as of _____, 2017 and recorded as Instrument No._____, on _____ ("***Development Agreement***"), relating to certain real property in located in unincorporated San Benito County, State of California ("***Property***"). The Property is more particularly described in the Development Agreement. All capitalized terms used herein shall have the definitions given to them in the Development Agreement unless otherwise expressly stated herein.

B. The Development Agreement provides for development of the Project (as that term is defined therein) on the Property, as more particularly described in the Development Agreement, subject to the obligations and rights set forth therein.

C. Assignor desires to assign to Assignee all of Assignor's rights and obligations as an "Owner" under the Development Agreement with respect to [ALL OR THAT PORTION OF THE PROPERTY DESCRIBED FURTHER HEREIN] in whole or in part (collectively, "***Assigned Interests***") and Assignee desires to assume from Assignor the Assigned Interests.

NOW, THEREFORE, in consideration of the promises and the mutual agreements and covenants set forth herein and intending to be legally bound hereby, Assignor and Assignee do hereby agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of Assignor's right, title and interest in and to the Assigned Interests.

2. Assumption. Assignee hereby assumes from Assignor all of Assignor's right, title and interest in and to the Assigned Interests relating to the period from and after the effective date of this Assignment and Assumption Agreement, and agrees to perform all of Assignor's obligations as "Owner" under the Development Agreement with respect to the Assigned Interests relating to the period from and after the effective date of this Assignment and Assumption Agreement.

3. Consent; Release. The County has consented to such assignment and assumption pursuant to the executed Consent set forth in attached Exhibit A.

4. Severability. Any term or provision of this Assignment and Assumption Agreement that is held by a court of competent jurisdiction as invalid or unenforceable in this situation shall not affect the validity or enforceability of the offending term or provision in any other situation.

5. Successors and Assigns. This Assignment and Assumption Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and assigns.

6. Applicable Law. This Assignment and Assumption Agreement shall be governed by, and constructed in accordance with, the laws of the State of California, applicable to contracts executed in and to be performed entirely within that state, and without regard to the conflict of law provisions thereof.

7. Counterparts. This Assignment and Assumption Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ASSIGNOR:

_____

By:
Name:

ASSIGNEE:

_____

By:
Name:

PLANNING COMMISSION RESOLUTION 2017-__, EXHIBIT D

SUNNYSIDE ESTATES PROJECT ADDENDUM TO

ENVIRONMENTAL IMPACT REPORT (SCH # 2014091018)

COUNTY OF SAN BENITO, CALIFORNIA

Introduction

This document is an Addendum that has been prepared under the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code § 21000 *et seq.*) and the CEQA Guidelines (14 Cal. Code. Res. § 15000 *et seq.*) (collectively, "CEQA") based on an Environmental Impact Report (SCH # 2014091018) ("EIR") prepared for the Sunnyside Estates Project ("Project"). The San Benito County Board of Supervisors ("Board") certified the EIR in March 2016.

The Project concerns an approximately 44.4-acre site located approximately one-half mile south of the City of Hollister (outside the City's sphere of influence), approximately one-half mile west of State Route 25, and approximately 2.25 miles south of State Route 156, in unincorporated San Benito County, California. The Project consists of the development of 200 single-family residential units, approximately 5.3 acres of parks and open space (of which approximately 0.4 acre would be a retention/detention basin; approximately 2.0 acres of open space would be within the 100-year flood plain; and the remaining 2.9 acres would be dedicated and developed pursuant to the County Code requirements for parklands as a park open to the public), and other on- and off-site improvements necessary to serve the Project.

The Owners (as that term is defined therein) of the Project and the County now desire to enter into a Development Agreement under section 65864 *et seq.* of the California Government Code and Chapter 19.11 of the San Benito County Code. The Development Agreement, if approved, would facilitate development of the Project as envisioned by the previously approved discretionary entitlements (including the zone change (ZC 14-181) and the Vesting Tentative Tract Map (TSM 14-91) that were previously approved by the Board and the Planning Commission. To that end, it would not modify any key features of the Project (e.g., maximum unit count, density, site plan, other applicable development standards, design guidelines, etc.). However, it would vest rights in the Owners (for a period of 15 years, consistent with the County's local Development Agreement ordinance) to construct the Project as envisioned. The Development Agreement also contains provisions to ensure that the anticipated Project Infrastructure (as that term is defined therein); the requisite funding for same (including, without limitation, the formation of a Community Facilities District to ensure a perpetual funding source for purposes of Revenue Neutrality (as that term is defined therein)); and the necessary impact fees and other monies due are express obligations of the Owners and enforceable by the County under the provisions of the Development Agreement.

Prior to approval of subsequent actions under the EIR that constitute a "project" under CEQA, the County is required to determine whether the environmental effects of such actions are within the scope of the project covered by the EIR, and whether additional environmental analysis is required. If the County finds that none of the triggers set forth in Public Resources Code section 21166 or CEQA Guidelines sections 15162 or 15163 has occurred, then no further environmental review shall be required and the County may document these conclusions in an addendum pursuant to CEQA Guidelines section 15164(e).

CEQA Framework for Addendum

In an effort to provide a degree of finality, CEQA includes a strong presumption against requiring any further environmental review once an EIR has been prepared and certified for a project. Specifically, once an EIR has been completed, the lead agency may not require preparation of a subsequent or supplemental EIR unless one of the three triggering conditions described below exists.

Public Resources Code section 21166 states:

> When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:
>
> (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
>
> (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
>
> (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

Section 15162 of the State CEQA Guidelines states, in relevant part:

> (a) When an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:
>
> (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
>
> (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
>
> (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
>
> (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but project proponents decline to adopt the mitigation measure or alternative.

[...]

Section 15163 of the State CEQA Guidelines states in relevant part:

(a) The lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR; and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

[...]

CEQA Guidelines Section 15164(a) states, in relevant part: "The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred." Further, although not required under the law, a legal agency may prepare an addendum to an EIR to evaluate changes to a project, changes in circumstances, or new information, and to document the agency's determination that a subsequent or supplemental EIR is not required. *See* CEQA Guidelines § Section 15164(e).

No Subsequent Review is Required and an Addendum is Appropriate in Connection with the Proposed Development Agreement for the Sunnyside Estates Project

After a review of the above-referenced triggers, the County has determined that no subsequent or supplemental EIR or negative declaration is required, and an addendum is appropriate, for this Project. This is based on the following analysis:

a) Are there substantial changes to the Project involving new or substantially more severe significant impacts which require major revisions of the certified EIR?

There are not substantial changes to the Project involving new or more severe significant impacts. The Project now includes a Development Agreement for the purpose of confirming the Owners' vested rights to develop the Project as well as confirming the Owners' obligations to the County in connection therewith including, without limitation, those relating to specified public benefits. The Project, as vested under the proposed Development Agreement, contemplates the same land uses

originally analyzed in the EIR, and also includes the same number of residential units in the same configuration and at the same density, with the same related improvements (e.g., utilities, street layout, lighting, landscaping, etc.) and amenities (e.g., parks, open space). In addition, all conditions of approval, including, without limitation, those imposed in connection with the Vesting Tentative Tract Map as well as the EIR mitigation measures, as set forth in the adopted Mitigation, Monitoring and Report Program ("MMRP"), remain obligations of the Project, and are expressly provided for in the Development Agreement. Accordingly, the approval of such a Development Agreement for the Project does not involve substantial changes to the Project involving new or more severe significant impacts. No additional or different mitigation measures are required. Accordingly, no further environmental review may be required under this trigger (a).

b) Are there substantial changes in the conditions under which the Project is undertaken involving new or substantially more severe significant impacts which require major revisions of the certified EIR?

There are no substantial changes in the conditions under which the Project is undertaken involving new or more severe significant impacts. The Project's EIR was certified by the Board only approximately twelve months ago. The Project now includes a Development Agreement for the purpose of confirming the Owners' vested rights to develop the Project as well as confirming the Owners' obligations to the County in connection therewith including, without limitation, those relating to specified public benefits. The Project, as vested under the proposed Development Agreement, contemplates the same land uses originally analyzed in the EIR, and also includes the same number of residential units in the same configuration and at the same density, with the same related improvements (e.g., utilities, street layout, lighting, landscaping, etc.) and amenities (e.g., parks, open space). In addition, all conditions of approval, including, without limitation, those imposed in connection with the Vesting Tentative Tract Map as well as the EIR mitigation measures, as set forth in the adopted MMRP, remain obligations of the Project, and are expressly provided for in the Development Agreement. Furthermore, the EIR evaluated the Project's impacts in the cumulative context on all applicable environmental topic areas, and that analysis remains pertinent and accurate. Accordingly, no further environmental review may be required under this trigger (b).

c) *Is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified that shows the Project will have a significant effect not addressed in the previous EIR; or significant effects previously examined will be substantially more severe than shown in the previous EIR; or, previously infeasible mitigation measures or alternatives are now feasible and would substantially reduce one or more significant effects of the project, but the applicant declined to adopt them; or mitigation measures or alternatives considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the applicant declines to adopt them?*

There is no new information that indicates that new or more severe significant effects would occur beyond those identified in the prior EIR. The Project's EIR was certified by the Board only approximately twelve months ago. The Project now includes a Development Agreement for the purpose of confirming the Owners' vested rights to develop the Project as well as confirming the Owners' obligations to the County in connection therewith including, without limitation, those relating to specified public benefits. The Project, as vested under the proposed Development Agreement, contemplates the same land uses originally analyzed in the EIR, and also includes the same number of residential units in the same configuration and at the same density, with the same related improvements (e.g., utilities, street layout, lighting, landscaping, etc.) and amenities (e.g., parks, open space). In addition, all conditions of approval, including, without limitation, those imposed in connection with the Vesting Tentative Tract Map as well as the EIR mitigation measures, as set forth in the adopted MMRP, remain obligations of the Project. No new or different mitigation

measures are required for the Project. In fact, the Development Agreement further ensures this to be the case by expressly incorporating an obligation to that effect. The EIR adequately describes the impacts and mitigation measures associated with the proposed Project. Accordingly, no further environmental review may be required under this trigger (c).

d) If no subsequent EIR-level review is required, should a supplemental EIR be prepared?

No supplemental EIR is required because there are no impacts, significant or otherwise, of the Project beyond those already identified in the EIR. As explained above, there are not substantial changes to the Project involving new or more severe significant impacts. To the contrary, the Project now includes a Development Agreement for the purpose of confirming the Owners' vested rights to develop the Project as well as confirming the Owners' obligations to the County in connection therewith including, without limitation, those relating to specified public benefits. The Project, as vested under the proposed Development Agreement, contemplates the same land uses originally analyzed in the EIR, and also includes the same number of residential units in the same configuration and at the same density, with the same related improvements (e.g., utilities, street layout, lighting, landscaping, etc.) and amenities (e.g., parks, open space). In addition, all conditions of approval, including, without limitation, those imposed in connection with the Vesting Tentative Tract Map as well as the EIR mitigation measures, as set forth in the adopted MMRP, remain obligations of the Project, and are expressly provided for in the Development Agreement. In addition, there are no substantial changes in the conditions under which the Project is undertaken involving new or more severe significant impacts. The Project's EIR was certified by the Board only approximately twelve months ago. The approval of such a Development Agreement for the Project does not involve substantial changes to the Project involving new or more severe significant impacts. No new or revised mitigation measures would be required to reduce the environmental impacts of the Project. Accordingly, no further environmental review may be required under this trigger (d).

Conclusion

This Addendum is adopted pursuant to State CEQA Guidelines section 15164 based on an EIR dated October 2015 and certified by the Board in March 2016. The Addendum and EIR review of the proposed Project as discussed above. Through the adoption of this Addendum (supported by the environmental analysis set forth in the certified EIR), the County determines that the above Project changes do not require a subsequent or supplemental EIR or negative declaration under Public Resources Code section 21166 or CEQA Guidelines section 15162 or 15163. The County further determines that the EIR and this Addendum adequately address the potential environmental impacts of the proposed Project. As provided in CEQA Guidelines section 15164, this Addendum need not be circulated for public review but shall be considered with the prior environmental documentation before making a decision on this Project.

The EIR and related Addendum are available for public review at the San Benito County Resource Management Agency, Building and Planning Division, 2301 Technology Parkway, Hollister, CA 95023-9174. The documents are also available for review on the City's Web site: http://cosb.us