

EXHIBIT B

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

(Space Above Line For Recorder's Use)

DEVELOPMENT AGREEMENT BY AND AMONG

THE COUNTY OF SAN BENITO,

~~PULTE HOME CORPORATION~~ AND SAN JUAN OAKS, LLC

**DEVELOPMENT AGREEMENT BY AND AMONG THE COUNTY OF SAN BENITO, ~~PULTE~~
~~HOME CORPORATION~~ AND SAN JUAN OAKS, LLC**

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into on _____, 2015 by and among the County of San Benito, a political subdivision of the State of California ("**County**"), ~~Pulte Home Corporation, a Michigan corporation ("**Pulte**")~~ and San Juan Oaks, LLC, a California limited liability company ("**SJO**"). ~~Pulte and SJO are-is~~ sometimes herein referred to ~~individually~~ as an "**Owner**," ~~and collectively as "**Owners**"~~Owner intends. County and ~~Owners~~Owner are sometimes herein referred to individually as a "**party**" and collectively as "**parties**."

RECITALS

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

A. Capitalized Terms.

This Agreement uses certain terms with initial capital letters that are defined in Section 1 below. 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~~Owner intends 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 therein. 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 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 is 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. ~~Owners~~Owner's Respective Interests in the Property.

The land governed by this Agreement consists of a total of approximately one thousand nine hundred ninety four (1,994) acres in unincorporated San Benito County, as more particularly described in attached Exhibit 1 and depicted on attached Exhibit 2 ("**Property**"). ~~Pulte Owner has has~~ an equitable interest in approximately ~~five hundred (500) acres of the Property ("**Pulte Property**") and SJO has a legal interest in the remaining approximately~~ one thousand ~~four nine~~ hundred ninety-four (~~1,494~~1,994) acres of the Property ("**SJO Property**"), as depicted on attached Exhibit 2. The Property currently contains multiple legal parcels that are contiguous, which are intended to be part of a single integrated plan of development.

E. Existing Uses on the Property; Background on Prior Development Proposal.

In connection with the below-referenced prior development proposal, the Property was designated by the San Benito County Board of Supervisors ("**Board**") in the County's 1992 General Plan as Rural Transitional (RT)/Planned Unit Development (PUD) Overlay designations as well as Commercial Thoroughfare (C-1), Agricultural Productive (AP), and Agricultural Rangeland (AR) designations; these designations allow for agricultural uses, recreational uses, commercial uses, and residential uses. Existing uses on the Property consist of an 18-hole golf course and a clubhouse with related dining facilities and a pro shop ("**Existing Golf Club**"), along with rangeland and cultivated dry farming. In October 2002, the property owner of the Existing Golf Club submitted a development application (including a vesting tentative subdivision map application) for the purpose of constructing one hundred fifty six (156) non-age-restricted, market rate single-family residential units, thirty (30) affordable units, a resort hotel, a village commercial site, a park, open space, an additional 18-hole golf course, and an additional 9-hole golf course. County approved this proposed development application, including, among other approvals, the vesting tentative subdivision map in July 2004, TSM-02-67 ("**2004 VTM**"), pursuant to Board Resolution 2004-85. Collectively, the above-referenced approvals shall be referred to herein as "**2004 Development**".

F. Proposed Development of the Property.

~~Owners~~Owner now seeks to amend the 2004 VTM and to obtain the additional required approvals, entitlements and permits so that they may develop the Property with the Project as further set forth herein. Specifically, ~~Owners~~Owner, with County's input, has~~ve~~ prepared the draft San Juan Oaks Specific Plan, which relates to the proposed development of the Property as described more fully therein, including, without limitation, the following: an age-restricted active adult community of up to one thousand and seventeen (1,017) single family detached residential units (collectively, "**Active Adult Units**"); an amenity center to serve Project residents and users (approximately 17,500 to 25,000 square feet) ("**Amenity Center**"); sixty seven (67) non-age-restricted, single family detached residential units (collectively, "**Conventional Units**"); a resort hotel with up to two hundred (200) rooms; an approximately

sixty-five thousand (65,000) square foot neighborhood commercial and office center; an approximately four (4) acre facility (with up to a total of one hundred (100) beds) providing a mix of assisted living, skilled nursing and memory care services; approximately forty-one (41) acres for the On-Site Agricultural Preserve; approximately seven (7) acres of private parkland to serve Project residents and users ("**Private Parkland**"); two (2) community parks (totaling approximately seventeen (17) acres) available to the public (collectively, "**Community Parks**"), which will consist of approximately thirteen (13) acres of passive recreational uses within the existing olive orchards on the Property ("**Olive Hill Park Area**") and approximately four (4) acres located further south on San Juan Oaks Drive for community gardens, dog parks and related facilities ("**Community Garden and Dog Park**"); approximately one hundred fourteen (114) acres of common open space area (including landscaped areas and informal trails); approximately one thousand two hundred and forty three (1,243) acres to be set aside for the Permanent Wildlife Habitat Preservation Area; trails and bicycle networks throughout the Property; and other on- and off-site infrastructure and improvements necessary to serve the Project. In connection with the Project, ~~Owners-Owner are-is~~ also proposing to preserve approximately one hundred fifty three (153) acres for the Off-Site Agricultural Preserve; the Existing Golf Club will remain largely unchanged except for some minor renovations. For purposes of this Agreement, the development described in this Recital F and as further detailed in the Specific Plan and the other Project Approvals shall be known as the "**Project**."

G. Initial Project Approvals.

County has taken or intends to take various planning, land use entitlement and environmental review actions relating to the Project (collectively, "**Initial Approvals**") as follows:

1. Subsequent Environmental Impact Report (Resolution No. _____). On _____, 2015, pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*), the CEQA Guidelines (14 Cal. Regs. § 15000 *et seq.*), and County's local Implementing Procedures for CEQA (collectively, "**CEQA**"), and following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board took the following actions: (a) certified a Subsequent Environmental Impact Report (State Clearinghouse No. 2013101006) for the Project ("**Project SEIR**"); (b) adopted written findings relating to significant environmental impacts; (c) adopted a Statement of Overriding Considerations; and (d) adopted a mitigation monitoring and reporting plan ("**MMRP**").

2. General Plan Amendment (Resolution No. _____). On _____, 2015, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board took the following actions: (a) approved General Plan Amendment No. _____ as an amendment to the County's General Plan ("**General Plan Amendment**") in connection with the Project; and (b) made determinations regarding the Project's consistency with the County's General Plan (as amended).

3. Specific Plan Adoption (Resolution No. _____). On _____, 2015, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board adopted the Specific Plan ("**Specific Plan Adoption**").

4. County Code, Zoning Text and Zoning Map Amendments (Ordinance No. _____). On _____, 2015, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board took the following actions: (a) amended the text in the County's Zoning Code to reflect the new zoning designation of "San Juan Oaks – Specific Plan (SJO-SP)" to be applied to the Property; (b) amended the County's Zoning Map to show

the Property as rezoned to "San Juan Oaks – Specific Plan (SJO–SP)," and (c) made other conforming amendments to ensure consistency between the County Code and the Project (collectively, "**Code Amendments**").

5. Development Agreement (Ordinance _____). On _____, 2015, following review and recommendation by the Planning Commission and after a duly noticed public hearing, the Board made the following findings with respect to the Agreement:

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

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

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

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

(e) It is fair, just and reasonable.

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

(g) 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 _____, 2015, the Board adopted Ordinance No. _____, enacting this Agreement ("**DA Ordinance**"). This Agreement shall become effective on _____, 2015 (the date thirty (30) days after the adoption of Ordinance No. _____) ("**Effective Date**").

H. Intent of Parties.

County and OwnersOwner 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 other Project Approvals. Among other things, the parties desire to: delineate how OwnersOwner' obligations as set forth herein including, without limitation, those relating to the provision and/or funding of Project infrastructure, improvements, services and facilities will be met; eliminate uncertainty in planning and provide for the orderly development of the Property with the Project and to obtain assurance that OwnersOwner 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~~Owner and County agree as follows:

AGREEMENT

Section 1 Definition of Terms.

The following defined terms are used in this Agreement:

- 1.1 **"2004 VTM"** has the meaning set forth in Recital E.
- 1.2 **"2004 Development"** has the meaning set forth in Recital E.
- 1.3 **"Active Adult Units"** has the meaning set forth in Recital F.
- 1.4 **"Agreement"** means this Development Agreement between County and ~~Owners~~Owner.
- 1.5 **"Amended VTM"** has the meaning set forth in Recital G(6).
- 1.6 **"Amenity Center"** has the meaning set forth in Recital F.
- 1.7 **"Assignment"** has the meaning set forth in Section 10.1.
- 1.8 **"Assignment and Assumption Agreement"** has the meaning set forth in Section 10.2.
- 1.9 **"Basic Community Park Improvements"** has the meaning set forth in Section 2.4(b).
- 1.10 **"Board"** has the meaning set forth in Recital E.
- 1.11 **"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.
- 1.12 **"CDFW"** has the meaning set forth in Section 2.9(a).
- 1.13 **"CEQA"** has the meaning set forth in Recital G(1).
- 1.14 **"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.
- 1.15 **"Code Amendments"** has the meaning set forth in Recital G(4).
- 1.16 **"COG"** shall mean the Council of San Benito County Governments.
- 1.17 **"Community Benefit Fee"** has the meaning set forth in Section 2.6(a)(i).

- 1.18 **“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.*
- 1.19 **“Community Garden and Dog Park”** has the meaning set forth in Recital F.
- 1.20 **“Community Parks”** has the meaning set forth in Recital F.
- 1.21 **“Consent to Assignment”** has the meaning set forth in Section 10.1.
- 1.22 **“Conventional Units”** has the meaning set forth in Recital F.
- 1.23 **“County”** has the meaning set forth in the preamble.
- 1.24 **“County Development Agreement Procedures”** has the meaning set forth in Recital C.
- 1.25 **“DA Ordinance”** has the meaning set forth in Recital G(5).
- 1.26 **“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.
- 1.27 **“Defense Counsel”** has the meaning set forth in Section 12.17.
- 1.28 **“Development Agreement Statute”** has the meaning set forth in Recital B.
- 1.29 **“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.
- 1.30 **“Dispute”** has the meaning set forth in Section 9.1.
- 1.31 **“Effective Date”** has the meaning set forth in Recital G(5).
- 1.32 **“Endowment”** has the meaning set forth in Section 2.9(a).
- 1.33 **“Enforced Delay”** has the meaning set forth in Section 7.
- 1.34 **“Existing Golf Club”** has the meaning set forth in Recital E.
- 1.35 **“Existing Rules”** means the Rules, Regulations and Official Policies in effect on the Effective Date; provided, however, that the parties acknowledge and agree that pursuant to Section 3.2(a)(i) below, for purposes of determining the date upon which ~~Owners~~Owner vests for purposes of Development Impact Fees only, the Fee Vesting Date rather than the Existing Rules shall govern.

- 1.36 **“Fee Vesting Date”** shall mean March 6, 2014, which is the date upon which County deemed the Amended VTM application complete.
- 1.37 **“Fee Vesting Time Period”** has the meaning set forth in Section 3.2(a)(i).
- 1.38 **“Full Build Out”** shall mean upon the issuance of the last Certificate of Occupancy for all or any component of the Project; e.g., Full Build Out of the residential portion of the Project shall occur when County issues the last Certificate of Occupancy for the Project’s residential component.
- 1.39 **“General Plan Amendment”** has the meaning set forth in Recital G(2).
- 1.40 **“GHAD”** has the meaning set forth in Section 1.82.
- 1.41 **“Initial Approvals”** has the meaning set forth in Recital G.
- 1.42 **“Innocent Owner”** has the meaning set forth in Section 6.1.
- 1.43 **“JAMS”** has the meaning set forth in Section 9.1.
- 1.44 **“Legal Challenge”** has the meaning set forth in Section 12.17.
- 1.45 **“MAI”** has the meaning set forth in Section 3.8.
- 1.46 **“MMRP”** has the meaning set forth in Recital G(1).
- 1.47 **“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.
- 1.48 **“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.
- 1.49 **“Mortgagee Successor”** has the meaning set forth in Section 11.1.
- 1.50 **“New Rules”** has the meaning set forth in Section 3.3.
- 1.51 **“Notice of Default”** has the meaning set forth in Section 6.1.
- 1.52 **“Notice of Intent to Terminate”** has the meaning set forth in Section 8.2.
- 1.53 **“Offsite Land”** shall mean lands other than the Property that are necessary to support Project Infrastructure, as is further detailed in Section 3.8.
- 1.54 **“Olive Hill Park Area”** has the meaning set forth in Recital F.
- 1.55 **“Off-Site Agricultural Preserve”** has the meaning set forth in Section 2.9(b).
- 1.56 **“On-Site Agricultural Preserve”** has the meaning set forth in Section 2.9(b).

- 1.57 **“Owner”** ~~or “Owners”~~ has the meaning set forth in the Preamble, and also includes their respective successors and assignees.
- 1.58 **“Periodic Review”** has the meaning set forth in Section 5.
- 1.59 **“Permanent Wildlife Habitat Area”** has the meaning set forth in Section 2.9(a).
- 1.60 **“Planning Commission”** shall mean the San Benito County Planning Commission.
- 1.61 **“Planning Director”** shall mean the head of the Planning and Building Departments and the Chief Planning Officer of San Benito County.
- 1.62 **“Private Parkland”** has the meaning set forth in Recital F.
- 1.63 **“Project”** has the meaning set forth in Recital F.
- 1.64 **“Project Approvals”** shall mean the Initial Approvals and Subsequent Approvals, collectively.
- 1.65 **“Project SEIR”** has the meaning set forth in Recital G(1).
- 1.66 **“Project Infrastructure”** has the meaning set forth in Section 2.3(a).
- 1.67 **“Project Land Use Plan”** shall mean the anticipated location of various Project components, as set forth in more detail in the Specific Plan and other Project Approvals (as may be amended from time to time).
- 1.68 **“Project Revenues”** shall mean, collectively, any and all revenues generated in connection with the Project, whether by property taxes, sales taxes, special taxes, special assessments or otherwise.
- 1.69 **“Property”** has the meaning set forth in Recital D.
- 1.70 **“Public Safety Facility Site”** has the meaning set forth in Section 2.7.
- ~~1.71 — “Pulte” has the meaning set forth in the Preamble.~~
- ~~1.72 — “Pulte Property” has the meaning set forth in Recital D.~~
- ~~1.73~~ 1.71 **“Recorder”** shall mean the San Benito County Recorder.
- ~~1.74~~ 1.72 **“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.
- ~~1.75~~ 1.73 **“Revenue Neutral”** has the meaning set forth in Section 3.12(a).

~~1.76~~1.74 “**RWQCB**” has the meaning set forth in Section 2.9(a).

~~1.77~~1.75 “**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.

~~1.78~~1.76 “**SJO**” has the meaning set forth in the Preamble.

~~1.79~~1.77 “**SJO Property**” has the meaning set forth in Recital D.

~~1.80~~1.78 “**Specific Plan**” means the San Juan Oaks Specific Plan adopted by the Board on _____, 2015 by Resolution No. _____.

~~1.81~~1.79 “**Specific Plan Adoption**” has the meaning set forth in Recital G(3).

~~1.82~~1.80 “**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 Geologic Hazard Abatement District (“**GHAD**”) and/or a CFD or similar financing district/mechanism; tentative and 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.

~~1.83~~1.81 “**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.

~~1.84~~1.82 “**Substantial Completion**” shall mean when the improvement at issue has been constructed such that it may be used for its intended purpose.

~~1.85~~1.83 “**Term**” has the meaning set forth in Section 4.1.

~~1.86~~1.84 “**Traffic Impact Mitigation Fee Program**” or “**TIMF Program**” shall mean the City of Hollister/San Benito County Regional Traffic Impact Fee Program.

~~1.87~~1.85 “**Traffic Impact Mitigation Fees**” or “**TIMF Fees**” shall mean the fees required under the TIMF Program.

~~1.88~~1.86 “**USFWS**” has the meaning set forth in Section 2.9(a).

Section 2 ~~Owners~~Owner's Obligations.

2.1 Development of the Project. Subject to compliance with the provisions of this Agreement, during the Term, ~~Owners~~Owner shall have the vested right to develop all or a portion of the Project in accordance with the Project Approvals including, without limitation, the Specific Plan and this Agreement. Such development shall occur pursuant to the following: (a) this Agreement; (b) the San Benito County General Plan as it existed on the Effective Date as modified by the General Plan Amendment; (c) the San Benito County Code as it existed on the Effective Date as modified by the Code Amendments; (d) the other Initial Approvals, including, without limitation, the Specific Plan; (e) the Subsequent Approvals, as and when they are issued, approved, or adopted, including, without limitation, all conditions of approval attached thereto; and (f) all other applicable Existing Rules except in the case of payment of Development Impact Fees in which case the Fee Vesting Date shall govern development of the Project. Notwithstanding anything to the contrary in this Section 2.1, in the event of a conflict between any provision of this Agreement and the Specific Plan or other Project Approvals, the Specific Plan shall prevail over any other Project Approval except for this Agreement which shall prevail over the Specific Plan.

2.2 Site Plan Adjustments. ~~Owners~~Owner retain the right to apportion uses, intensities and densities in each area identified in the Specific Plan between themselves and any Subsequent Owner(s), upon the Assignment (pursuant to Sections 10.1 and 10.2 below) in accordance with the requirements set forth in Section 8.1.9 of the Specific Plan. Further, subject to Section 2.4(b) below, nothing in this Agreement shall preclude an Owner from subsequently applying to increase the total number of residential units that may be constructed on the Property upon proper application to County to amend this Agreement, the Specific Plan, the Amended VTM, and any other necessary Project Approvals to effectuate such a request. Notwithstanding anything to the contrary in this Section 2.2, the parties acknowledge and agree that County is under no obligation under this Agreement or otherwise to approve any such application(s), and that County retains its authority under its local police power and other applicable laws and regulations in making any and all such decisions related to any such application(s).

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

(a) County Reliance on ~~Owners~~Owner's Provision of, or Contribution Towards, Project Infrastructure. The parties acknowledge and agree that County's approval of the Project is, in part, in reliance upon and in consideration of ~~Owners~~Owner's provision of, or pro rata or fair 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 Specific Plan and other Project Approvals (collectively, "**Project Infrastructure**") in accordance with ~~Owners~~Owner's obligations set forth herein and in the Specific Plan.

(b) Formation of GHAD. It is the intent of the parties to form a GHAD to effectively respond to, address, and abate any identified geologic hazards within the Property and, among other responsibilities, to provide for the long-term monitoring and maintenance of identified areas covered by the approved GHAD's Plan of Control and consistent with applicable law (which may include, without limitation, open space, slopes, drainages, storm water facilities and water treatment improvements), and to perform such monitoring and maintenance in a timely, cost-effective and efficient manner consistent with the approved GHAD Plan of Control.

Upon formation, the GHAD's source of funding to perform such responsibilities shall be through landowner assessments imposed on the Project in accordance with applicable law. The parties agree to work together in good faith and in a timely fashion to form the GHAD, subject to ~~Owners~~Owner' payment of any and all costs incurred by County (including, without limitation, staff and attorney time) in connection therewith.

(c) Formation and Purpose of CFDs or Other Financing Districts. It is the intent of the parties to form a CFD or other financing district(s)/mechanisms to provide funding to County to be used, in County's sole discretion, to fund various public safety infrastructure, facilities, improvements and services as well as maintenance and operation of the Community Parks. The parties agree to work together in good faith and in a timely fashion to form the CFD as further specified herein. Upon formation, the CFD's source of funding to perform such responsibilities shall be through special taxes on ~~landowners~~landowners within the Property in accordance with applicable law and as follows:

(i) Upon Full Build Out of the residential component of the Project or seven and one half (7 ½) years from the Effective Date (June 3, 2023), whichever is earlier, the total annual amount to be generated through the CFD for public safety purposes shall be Two Hundred Thousand Dollars (\$200,000), plus an inflationary rate of two percent (2%) per annum. Imposition of said special taxes for public safety purposes shall commence upon the recordation of the grant deed for the first (1st) residential unit within the Project and shall be in the amount of Two Hundred Fifty Six Dollars (\$256) for each Conventional Unit; One Hundred Sixty Seven Dollars (\$167) for each Active Adult Unit; Four Cents (\$0.04) per building square foot for neighborhood commercial and office uses (up to sixty-five thousand (65,000) square feet) but not hotel uses; and Twenty Three Cents (\$0.23) per building square foot for the assisted living facility uses (up to forty-six thousand (46,000) square feet).

(ii) Upon Substantial Completion of the Community Parks, the total annual amount to be generated through the CFD for park operation and maintenance purposes shall equate to the actual cost to perform all ongoing operation and maintenance obligations for the Community Parks as determined during the CFD formation process, plus an inflationary rate of two percent (2%) per annum. In addition to the special taxes to be imposed pursuant to this CFD to cover the maintenance and operation of the Community Parks, ~~Pulte~~Owner shall be obligated to pay to County the amount of Forty Thousand and Seven Dollars (\$40,007) at the time of the recordation of the first (1st) final map that covers any portion of the Active Adult Units in order to cover the anticipated shortfall to ensure that all actual costs for the operation and maintenance of the Community Parks are fully covered. Imposition of said special taxes for park maintenance and operations purposes shall commence upon the Substantial Completion of the Olive Hill Park Area and the Community Garden and Dog Park, respectively, and shall be in the amount determined during the CFD formation process that is sufficient to fully cover all costs of operation and maintenance and shall be imposed only on the Active Adult Units.

(d) Funding of Permanent Wildlife Habitat Area. It is the parties' intention that ongoing maintenance of the Permanent Wildlife Habitat Area on which a conservation easement shall be recorded as required by the applicable USFWS, CDFW and RWQCB permits and the Project SEIR and MMRP will be funded either: (i) through the GHAD, if allowed by the relevant resource agencies and if otherwise permitted under applicable law (including, without limitation, Proposition 218), or (ii) the Endowment funded by ~~Owners~~Owner by such time as is specified in

the above-referenced permits, but in any event no later than the issuance of the first (1st) grading permit or Building Permit for the Project (whichever is earlier).

2.4 Construction of Neighborhood Parks and Trail Network.

The parties acknowledge and agree that ~~Owners~~Owner, collectively, are providing a substantial amount of private park and recreational facilities consisting of the Private Parkland (approximately seven (7) acres) directly serving the new Project residents in the new neighborhoods, recreational facilities (including construction of new multi-purpose facilities, club houses, pools, and active play areas as well as the maintenance and minor enhancements of the Existing Golf Club), and common open space (approximately one hundred fourteen (114) acres) as part of the Project. However, the parties further acknowledge and agree that pursuant to County Code Section 23.15.008, private park and recreational facilities do not qualify for receipt of credit in order to satisfy County's parkland requirements. Accordingly, to satisfy said requirements, ~~Owners~~Owner shall construct all of the following additional public park and recreational facilities, and offer them for dedication to County (with operations and maintenance of said facilities funded as provided for herein):

(a) Class 2 bicycle and pedestrian routes along both sides of San Juan Drive connecting Union Road to the Project's neighborhood commercial area, as set forth more fully in Section 2.6(b)(iv) below and the Specific Plan. Provided, however, that for purposes of said Class 2 bicycle and pedestrian routes, the parties acknowledge that, as of the Effective Date, the intention is for said land and improvements to remain private, and therefore the following shall occur: (i) the homeowner's association(s) formed in connection with the Project shall be responsible to cover all costs associated with the maintenance and operation of said lands and improvements until such time as County may accept the offer of dedication, if at all; and (ii) ~~Owners~~Owner shall grant an easement to County, in a form acceptable to County, to allow for public access on, and use of, said lands and improvements until such time as County may accept the offer of dedication, if at all.

(b) The Community Parks within the Property, which shall total approximately seventeen (17) acres in size and which shall be improved in accordance with the Specific Plan and other Project Approvals and shall include, at a minimum, the following amenities (or other such similar facilities as proposed by ~~Owners~~Owner and approved by County): dog park(s); a community garden area for County residents to set up garden plots and "urban agriculture" programs; parking areas for visitors; park restroom facilities; trails within the olive grove area; a pedestrian crossing connecting the Olive Hill Park Area and the Community Garden and Dog Park; and sitting and picnicking areas with firepits; and trails and trail access (collectively, "**Basic Community Park Improvements**"). Construction of, and the related offer of dedication for, the Community Parks including, without limitation, the improvements thereon shall be in lieu of paying otherwise applicable County park impact fees (under County Code Section 23.15.008). The Project is providing an approximately four (4) acre Community Garden and Dog Park and related open space facility. In addition, the Project is providing a hiking trail system through the Olive Grove Park now at the Project's entrance of approximately thirteen (13) acres. Said facilities would be located on the publicly accessible San Juan Oaks Drive, and would include parking facilities to allow free unrestricted access and use of said facilities by residents throughout the County. The Community Garden and Dog Park also would include a Project-constructed and Project-maintained restroom facility to improve the experience of park users, which exceeds the typical County Park requirements. The Dog Park component is designed to provide a variety of recreational activities to help ensure that recreational opportunities are available to all members of the community. Pursuant to this Section 2.4(b),

the Project shall also fund the ongoing operation and maintenance costs associated with the Community Park, including, without limitation, long-term capital replacement, which is not required by the County Parkland Dedication to Park and Recreation Impact Codes. **OwnersOwner** shall construct the Community Parks in the general location specified on the Project's Land Use Plan (see Specific Plan), and shall be constructed in accordance with the Specific Plan and other Project Approvals as well as all other requirements under the County Code to receive parkland credit under County Code Section 23.15.008. The Olive Hill Park Area shall be Substantially Complete no later than issuance of the Certificate of Occupancy for the Two Hundred Fiftieth (250th) Active Adult Unit, and the Community Garden and Dog Park shall be Substantially Complete no later than issuance of the Certificate of Occupancy for the Five Hundredth (500th) Active Adult Unit; provided, however, that **OwnersOwner** shall construct both of said parks in any event no later than seven and one half (7 ½) years from the Effective Date regardless of the status of the Project's buildout. Upon Substantial Completion of each of the above referenced parks, **OwnersOwner** shall offer to dedicate said park(s) (including the land and all improvements located thereon) to County; provided, however, that such dedication shall not affect the agricultural easement and right to continue agricultural uses of the existing Olive Grove. Provided, however, that even after such time as County accepts said offer, County shall not be responsible at any time to fund or perform any portion of the operation and maintenance of the Community Parks; rather, **OwnersOwner** shall ensure an ongoing source of CFD funding for this purpose pursuant to Section 2.3 above. To effectuate this arrangement, County and **OwnersOwner** shall enter into a mutually acceptable agreement prior to County's acceptance of said offer(s) of dedication whereby County agrees to allow the homeowner's association(s) formed in connection with the Project to perform the maintenance and operation responsibilities in connection with the Community Parks subject to adherence to, among other terms and conditions: (1) all applicable County and other standards and requirements; and (2) acceptable indemnification and insurance provisions for the County's benefit. Until such time as County accepts said offer of dedication, **OwnersOwner** shall be responsible for operating and maintaining the Community Parks (including the land and all improvements located thereon), including, without limitation, any and all costs associated therewith. Further, County and **OwnersOwner** acknowledge and agree that the public park acreage and construction of the public park amenities provided for under this Section 2.4(b) exceeds current County standards and thus reflects an additional public benefit that could not otherwise be achieved without this Agreement. To ensure the Project continues to so exceed County parkland standards, in the event any Owner subsequently seeks and obtains all necessary approvals to construct additional residential units in the Project beyond the maximum number currently permitted in the Specific Plan as of the Effective Date, the applicable Owner(s) agree to construct an additional amount of qualifying public parks and related improvements pursuant to applicable County Code requirements, rather than relying on the Project's park acreage that was provided pursuant to this Agreement, to ensure that the Project continues to exceed the County park standards as contemplated herein.

2.5 Street Improvements and Other Project Infrastructure.

(a) General Construction Obligations. **OwnersOwner** shall construct, or cause to be constructed or contribute their respective pro rata or fair share towards the construction of, the Project Infrastructure in accordance with the provisions of this Agreement, the Specific Plan, 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 in accordance with the Specific Plan, the other Project Approvals, and the County Code, 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 benefiting the Property and the Project.

(b) On-Site Improvements. OwnersOwner 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 Specific Plan, the other Project Approvals (including, without limitation, all conditions of approval attached thereto), and the Project SEIR (including, without limitation, the MMRP). Said improvements shall include, without limitation, construction of San Juan Oaks Drive (including, without limitation, construction of thirty two (32) feet of pavement width that shall include Class 2 bicycle and pedestrian routes); an emergency vehicle access (EVA) to connect from Del Webb Boulevard to the existing State Route 156; utility improvements; and integrated storm drainage facilities into the Project's landscape design. With respect to the above-referenced improvements on San Juan Oaks Drive, County agrees that OwnersOwner's construction of said improvements shall occur prior to issuance of the Certificate of Occupancy for the Two Hundred Seventieth (270th) Active Adult Unit; construction of said improvements shall be governed by the applicable standards set forth in the Specific Plan rather than those set forth in the County Code with respect to curbs, gutters, attached sidewalks, and street width. County further agrees that: (i) with respect to: the southbound Class 2 route on San Juan Oaks Drive that would cross the existing drainage channel, OwnersOwner may construct it by building a separate pre-fabricated bridge instead of widening the existing narrow bridges, and it shall connect to the planned Class 1 facility in order to provide access to the residential portions of the Project as well as the Existing Golf Club; and (ii) with respect to the northbound Class 2 route, OwnersOwner may construct it by building a separate pre-fabricated bridge, which is anticipated to cross the existing drainage channel through the Project's neighborhood commercial area (initially constructed as a Class 3 route) and then continue onto San Juan Oaks Drive as a Class 2 facility from the northerly commercial road.

(c) Off-site Improvements. OwnersOwner shall provide, or contribute 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 Specific Plan, the other Project Approvals (including, without limitation, all conditions of approval attached thereto), and the Project SEIR (including, without limitation, the MMRP). Said obligations shall include, without limitation, the following:

(i) State Route 156 and Bixby Road. To mitigate for the Project's cumulative impacts and as set forth more fully in the Project SEIR and the MMRP, OwnersOwner shall pay their respective pro rata or fair share contributions towards the funding of the proposed traffic signal at the intersection of State Route 156 and Bixby Road, which amounts shall be based on the Project's overall percentage contribution of trips towards the cumulative scenario. For purposes of this Section 2.5(c)(i), the parties agree that OwnersOwner's collective pro rata or fair share contribution shall be paid at the time of the recordation of the final map that covers the two hundred seventy fifth (275th) Active Adult Unit, and shall equate to seven percent (7%) of the total estimated costs (including, without limitation, both hard and soft costs (i.e., design, administration and installation costs) to construct the above-referenced proposed signal based on an engineer's report approved by County and paid for by OwnersOwner.

(ii) San Juan Oaks Drive and Union Road Intersection. As required in the Project SEIR and the MMRP, OwnersOwner shall be responsible for funding and

constructing the traffic signal at the intersection of San Juan Oaks Drive and Union Road, and the widening of the roadway that is necessary to accommodate said signalization for safe operations of the Project entrance intersection until such time that Union Road is widened through the TIMF program to a full four (4) lane facility. Improvements at said intersection beyond those required (if any) to construct the signal and mitigate any operational safety issues, which may overlap with improvements identified in the TIMF shall be subject to credit against TIMF fees otherwise due consistent with attached Exhibit 3; and to the extent that a portion of the above-referenced improvements are subject to TIMF fee credit and said construction exceeds said Owner's mitigation requirements, then said Owner shall be eligible for reimbursement from the TIMF Program pursuant to Section 2.8(b) below.

(iii) Union Road and State Route 25. ~~Owners~~Owner shall be responsible for funding and constructing an eastbound right turn lane from Union Road onto southbound Airline Highway (State Route 25). Notwithstanding the fact that said improvement was not included in the TIMF Program as of the Fee Vesting Date, the constructing Owner shall be eligible for credit under the TIMF Program pursuant to Section 2.8(a) in the event that the TIMF Program is updated in the future to expressly include said improvement. Furthermore, in the event and to the extent the constructing Owner can demonstrate that said improvement exceeds the Project's mitigation requirements and it is expressly included in an updated TIMF Program, then the constructing Owner shall be eligible for reimbursement pursuant to Section 2.8(b) below.

(iv) Construction of Wastewater Collection and Conveyance Infrastructure. In the event and to the extent ~~Owners~~Owner desire to connect the Project to the City of Hollister's wastewater treatment plant, then ~~Owners~~Owner shall be responsible for funding and constructing the necessary Project Infrastructure to convey Project wastewater to the City of Hollister for processing. To facilitate said construction, County shall: (A) have the right to review and approve plans for pipeline construction to the extent said plans reflect work within the County's existing public right of way; (B) allow the constructing Owner reasonable access within County's existing right of way for said pipeline construction so long as said Owner has obtained the required encroachment permit and adheres to the standards and conditions set forth therein; and (C) adhere to the provisions set forth in Section 3.8 below in the event and to the extent triggered.

2.6 Additional Public Benefits of the Project.

(a) Community Benefit Fee. In addition to making the payments required in connection with Development Impact Fees, satisfying all Project SEIR mitigation measures, constructing the Community Parks, Private Parkland and other Project Infrastructure, and paying all other identified fees and contributions as required herein, ~~Owners~~Owner shall provide the following additional public benefits:

(i) Pay to County the total amount of Five Million Five Hundred and Fifty Nine Dollars (\$5,559,000) ("**Community Benefit Fee**)," which shall be used in County's sole and absolute discretion as it deems appropriate for the benefit of the County, which may include: general community benefits, street improvements, affordable housing, public safety services, library services, and communications.

(A) ~~Owner~~Owner shall pay the Community Benefit Fee as follows: (1) ~~Public-Owner~~ shall pay the amount of One Million Dollars (\$1,000,000) within five (5) days of County's approval of the Project's first (1st) final map that covers all or any portion of the

Active Adult Units; (2) SJO shall pay the total amount of Five Hundred and Five Thousand Nine Hundred and Ten Dollars (\$505,910), which may be divided into two (2) equal installments of Two Hundred Fifty Two Thousand Nine Hundred and Fifty Five Dollars (\$252,955), each due upon recordation of the first (1st) and second (2nd) final maps that cover all or any portion of the Conventional Units; provided, however, that if only one (1) final map is recorded for all of the Conventional Units, then the total amount of \$505,910 shall be due upon recordation of said map; and (3) ~~Pulte~~Owner shall pay the total amount of Four Million Fifty Three Thousand and Ninety Dollars (\$4,053,090), which may be divided in three (3) equal payments of One Million Six Hundred Thousand Eighty Four and Three Hundred Sixty Three Dollars (\$1,684,363), each due upon recordation of the first (1st), second (2nd) and third (3rd) final maps that cover the Adult Active Units; provided, however, that if fewer than three (3) final maps are recorded for all of the Adult Active Units, then the total amount of \$4,053,090 shall be due upon recordation of the final map that covers all such units. Notwithstanding anything to the contrary in this Section 2.6(a)(i)(A), if full payment of the Community Benefit Fee has not occurred within seven and one half (7 ½) years from the Effective Date ("Fee Vesting Time Period"), then the remaining balance shall be immediately due and payable by ~~Owners~~Owner at that time and County shall have the right to withheld issuance of any further Building Permits for the Project until full payment has been received.

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(ii) Notwithstanding the above, at Owner's sole discretion, Owner may elect to pay the entire Community Benefit Fee upon the date the first residential building permit is pulled, or March 31, 2021, whichever date occurs first ("Trigger Date"). If Owner makes such an election, then Owner shall pay an additional Five Hundred Thousand Dollars (\$500,000.00) to the County, bringing the total Community Benefit Fee to Six Million Fifty-Nine Thousand Dollars (\$6,059,000.00).

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(iii) Owner shall advise the County of its election regarding the Community Benefit Fee no later than sixty (60) days prior to March 31, 2021. If Owner makes the election to pay the entire Community Benefit Fee at once, pursuant to paragraph 1 above, that election shall be final.

(iv) If Owner make such an election, then County shall extend the Fee Vesting Time Period for the Development Impact Fees (see Exhibit 9), if any, to run seven and one-half years from the Trigger Date.

(b) Other Public Benefits. ~~Owners~~Owner shall also provide the following additional benefits as set forth herein and in the other Project Approvals, which the parties acknowledge and agree constitute additional public benefits justifying the Board's approval of this Agreement:

(i) Provide for the permanent preservation of the Off-Site Agricultural Preserve by recording an acceptable easement covering said land in favor of the San Benito Land Trust (which was recorded on October 15, 2014);

(ii) Provide for the permanent preservation of the On-Site Agricultural Preserve by SJO recording an acceptable easement covering said land in favor of the San Benito Land Trust in accordance with the provisions set forth herein prior to issuance of the Project's first (1st) Building Permit; said easement shall be in substantially the same form as attached Exhibit 4 or as otherwise may be required by the San Benito Land Trust or San Juan Oaks, subject to prior County approval of any such revised easement;

(iii) Provide for the permanent on-site conservation of the Permanent Wildlife Habitat Area by recording an acceptable conservation easement as required by the applicable permits issued by the relevant resource agencies (i.e., USFWS, CDFW, and RWQCB) and in accordance with the provisions set forth herein;

(iv) Construct Class 2 bicycle and pedestrian routes along both sides of San Juan Drive connecting Union Road to the Project's neighborhood commercial area in accordance with the provisions set forth herein; and

(v) Support and facilitate the formation of a CFD and GHAD on the Property in accordance with the provisions set forth herein, which, once formed, shall provide funding for public safety and Community Park operation and maintenance purposes, as well as funding to appropriately address any identified geologic hazards on the Property.

2.7 Public Safety Improvements.

As a condition of approval on the Amended VTM (and consistent with the prior conditions of approval imposed on the 2004 VTM), SJO shall offer to dedicate to County an approximately two (2) acre site (as shown on attached Exhibit 5) to be used by County for a public safety facility ("**Public Safety Facility Site**"). ~~Should County accept Owner ' offer of dedication for the Public Safety Facility Site, but subsequently decide to sell said site, County shall give Owner the right of first refusal to purchase said site back from the County at then-prevailing fair market price, as may be determined by a mutually agreed upon appraiser. Provided, however, in the event County has not accepted said offer of dedication and commenced construction of said public safety facility within fifteen (15) years of the offer of dedication, then said offer shall terminate and any interest of County in the Public Safety Facility Site shall automatically revert to SJO.~~ Notwithstanding anything to the contrary in this Section 2.7, the parties agree that ~~each Owner shall~~ Owner shall pay all applicable Fire Service Fees in connection with the Project pursuant to Section 3.2 below, and no Owner shall receive a credit against such fees as a result of making the offer of dedication required in this Section 2.7.

2.8 Reimbursement; Credits.

No Owner shall 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 for TIMF Improvements. If an Owner constructs an improvement that is expressly identified in the TIMF Program as of the Fee Vesting Date, then said constructing Owner shall be entitled to credit against its TIMF Fees it would otherwise owe in connection with Project development in the amount listed in the TIMF Program as the estimated cost for the improvement at issue. Notwithstanding the foregoing, the parties agree that, except pursuant to Section 2.5(c)(iii) above, no TIMF Fee credit shall be due if the improvement at issue is not expressly identified in the TIMF Program as of the Fee Vesting Date, even if said improvement is later identified in an updated TIMF Program.

(b) Reimbursement for TIMF Improvements. Subject to Section 2.5(c)(iii) above, if an Owner constructs an improvement that is expressly identified in the TIMF Program as of the Fee Vesting Date (i.e., Union Road and State Route 25 intersection improvements), and said improvement exceeds the constructing Owner's mitigation requirements, then said Owner shall be entitled to receive reimbursement for an amount that equates to the difference

between the estimated cost of the improvement at issue listed in the TIMF Program and said Owner's pro rata or fair share contribution of said improvement (based on the Project's contribution to the identified traffic impacts as described in the Project SEIR). Provided, however, that County shall be obligated to reimburse the constructing Owner under this Section 2.8(b) only if and to the extent sufficient funds are available in the TIMF Program to cover such reimbursement request(s) for the improvements at issue and under no circumstances shall County be required to reimburse said Owner with General Fund monies or TIMF funding slated for development of other non-related traffic improvements.

(c) Reimbursement From Other Property Owners ~~Generally~~ Owner Generally.

In the event and to the extent other private property ~~owners~~ Owner outside of the Property directly benefit from an Owner's construction of any Project Infrastructure on-site or off-site which is not covered under Section 2.8(b) above, the constructing Owner(s) shall be entitled to reimbursement from any such other property owner(s) based on an apportionment of the relevant pro rata or fair share contribution of costs of the improvement at issue. To the extent an Owner seeks reimbursement under this Section 2.8(c), County shall use diligent and good faith efforts to facilitate said reimbursement consistent with 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 the requesting Owner for the improvement at issue. Notwithstanding anything to the contrary in this Section 2.8(c), an Owner who is requesting reimbursement 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 Owner agree that County's obligations under this Section 2.8(c) are limited to facilitating reimbursement from other private property ~~owners~~ Owner, and County shall have no obligation to directly or indirectly reimburse Owners Owner. County's obligation to facilitate reimbursement as set forth in this Section 2.8(c) 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.

2.9 Permanent Habitat Conservation and Agricultural Preservation.

(a) Permanent Wildlife Habitat Area. Owners Owner shall provide for the permanent conservation of approximately one thousand two hundred and forty three (1,243) acres of the Property as shown on attached Exhibit 6 and referenced as Parcels W.1.1, W1.2, W1.3, W1.4, and W1.5 in the Specific Plan and the Project SEIR (collectively, "**Permanent Wildlife Habitat Area**"). Owners Owner shall record a conservation easement over the Permanent Wildlife Habitat Area, which shall be funded either by GHAD assessments (if permitted under applicable law and approved by the relevant resource agencies) or through Owners Owner establishing an endowment acceptable to the relevant resource agencies, which shall provide sufficient funding for management activities in perpetuity ("**Endowment**"). Owners Owner shall be responsible for ensuring that the conservation easement covering the Permanent Wildlife Habitat Area complies with all requirements of applicable resource agency permits issued, including those by United States Fish and Wildlife Service ("**USFWS**"), California Department of Fish and Wildlife ("**CDFW**") and Regional Water Quality Control Board ("**RWQCB**") as well as those set forth in the Project SEIR and the MMRP, and shall include all such necessary provisions to ensure the Permanent Wildlife Habitat Area is managed accordingly. County agrees that Owners Owner's provision of the Permanent Wildlife Habitat Area in accordance with the requirements of this Section 2.9(a), to be protected in perpetuity,

along with the provision of the Endowment, shall satisfy the purpose of the County's Habitat Conservation Mitigation Fee (Ordinance No. 541; Chapter 19.19 of the San Benito County Code) and shall be in lieu of payment otherwise due by ~~Owners~~Owner thereunder. Satisfaction of the obligations set forth in this Section 2.9(a) shall occur prior to the issuance of the first (1st) grading permit or Building Permit for the Project, whichever comes earlier.

(b) **Agricultural Preserves.** Pursuant to Section 2.6(b) above, SJO shall record easements covering the following acreage for the purpose of preserving said land in perpetuity for agricultural uses: approximately forty-one (41) acres within the Property (as shown on attached Exhibit 7) ("**On-Site Agricultural Preserve**") and approximately one hundred fifty three (153) acres off-site (as shown on attached Exhibit 8) ("**Off-Site Agricultural Preserve**").

Section 3 ~~Owners~~Owner's Vested Rights.

3.1 Vested Right to Develop the Project.

Subject to ~~Owners~~Owner's compliance with the provisions of this Agreement, ~~Owners~~Owner shall have the vested right to develop the Property with the Project in accordance with this Agreement and other Project Approvals. 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; provided, however, the parties acknowledge and agree that the Fee Vesting Date shall govern payment of the Development Impact Fees except as otherwise set forth herein. 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 Project Approvals. ~~Owners~~Owner retain the right to apportion the uses, intensities, and densities between itself and any subsequent ~~owners~~Owner, upon the sale, transfer or Assignment of all or any portion of the Property, so long as such apportionment is consistent with the Existing Rules and Section 2.1 above.

3.2 Development Impact Fees and Regulatory Processing Fees.

(a) Development Impact Fees Generally.

(i) **Fee Vesting Time Period.** ~~Each Owner 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 as identified in attached Exhibit 9 and in accordance with this Section 3.2(a). For a period of seven and one half (7 ½) years from the Effective Date, or, if Owner makes the election contemplated in section 2.6(a)(ii), seven and one half (7 ½) years from the Trigger Date, ("**Fee Vesting Time Period**"), the parties agree that (i) ~~each~~ Owner shall be vested such that it shall be permitted to pay said fees, including, without limitation, the TIMF Fees, in the amount that was in place as of the Fee Vesting Date, and (ii) no Owner shall be required to pay any said fees that are newly established after the Fee Vesting Date. Notwithstanding the foregoing, at the end of said Fee Vesting Time Period, if Full Build Out of the Project has not occurred, no Owner shall be vested into any Development Impact Fees (either amount or type) and therefore each Owner shall be required to pay any and all then-applicable Development Impact Fees (in both amount and type) at the time said Owner seeks to develop the remaining portion(s) of the Project. Each Owner shall pay the applicable

Development Impact Fees upon issuance of each Building Permit for the proposed development at issue unless otherwise provided for under applicable law.

(ii) Confirmation of Applicable TIMF Fees. County's TIMF Program as of the Fee Vesting Date (March 2014) shall govern the Project during the Fee Vesting Time Period, and the parties agree that the Project is located in Zone 2 identified in the TIMF Program. The parties agree that the TIMF Program, as of the Fee Vesting Date, provides that the following fees would apply to the Project during the Fee Vesting Time Period: (i) for the Conventional Units, it shall equate to Five Thousand One Hundred and Thirty Dollars (\$5,130) per unit; (ii) for the Active Adult Units, it shall be Five Thousand One Hundred Thirty Dollars (\$5,130) per unit; (iii) for the commercial uses, it shall be Three Dollars and Thirty Three Cents (\$3.33) per square foot; and (iv) for office uses, it shall be Eight Dollars and Eight Cents (\$8.08) per square foot. No TIMF shall be required for amenity space (including, without limitation, clubhouses, multi-purpose rooms, swim and tennis centers and other recreational facilities) that are solely for the non-commercial use of residents of the Project and their guests. Provided, however, that a constructing Owner shall be entitled to reimbursement in the event and to the extent said Owner constructed traffic improvements expressly identified in the TIMF Program as of the Fee Vesting Date in accordance with Section 2.8(b) above and subject to Section 2.5(c)(iii).

(iii) Wastewater, Domestic and Reclaimed Water Fees. The parties agree that ~~Owners~~Owner shall not be required to pay any wastewater, domestic or reclaimed water Development Impact Fees to County since a private utility will be formed to provide such utility services; provided, however that ~~Owners~~Owner agree that in the event and to the extent the Project will utilize existing wastewater facilities owned and operated by the City of Hollister, the Project shall be subject to any applicable fees imposed by the City related thereto.

(b) Regulatory Processing Fees Generally. Each Owner 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 Effective Date except as provided herein and as otherwise provided for in accordance with applicable law. Notwithstanding the foregoing, the parties acknowledge and agree that County may adopt new or modified Rules, Regulations and Official Policies after the Effective Date (collectively, "**New Rules**"); provided, however, such New Rules shall be applicable to the Project or the Property only to the extent that such application will not modify, prevent or impede development of the Project on the Property or conflict with any of the vested rights granted to ~~Owners~~Owner under this Agreement. Any New Rules shall be deemed to conflict with ~~Owners~~Owner' 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 this Section 3.3, 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 Effective 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 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 Effective 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 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.

~~Owners~~Owner acknowledge that implementation of the Project will require County's consideration and approval of applications for Subsequent Approvals and that County will complete environmental review in connection with those Subsequent Approvals as required by CEQA and other applicable federal, state and local laws and regulations. County's environmental review of the Subsequent Approvals pursuant to CEQA shall utilize the Project SEIR to the fullest extent permitted by law; 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 regulation.

3.6 Timing of Development.

The parties acknowledge that ~~Owners~~Owner 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~~Owner's 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~~Owner 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~~Owner deem appropriate within their exercise of subjective business judgment, subject to any and all requirements. Provided, however, nothing in this section is intended to excuse an Owner 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 said Owner proceeds with any portion of the Project. The parties further acknowledge and agree that nothing in this Agreement or in the other Initial Approvals require that the hotel component of the Project be built at a specific time or at all, and that said hotel component will be built, if at all, at Owner(s)' sole and absolute discretion.

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, OwnersOwner 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 OwnersOwner are not successful in acquiring the Offsite Land, County and OwnersOwner 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, OwnersOwner shall be responsible for all costs associated therewith. Notwithstanding the foregoing, neither this Section 3.6 nor any other provision of this Agreement is intended to abrogate County's responsibilities, in the exercise of eminent domain, to satisfy the substantive and procedural requirements of the Eminent Domain Law (California Code of Civil Procedure Part 3, Title 7, Sections 1230.010-1273.050), as amended from time to time. In the event the Offsite Land is not ultimately acquired because OwnersOwner were unable to acquire said land privately and because the County determined not to pursue eminent domain of the Offsite Land after a request to do so by OwnersOwner has been made, then OwnersOwner's obligations in connection with that aspect of the Project Infrastructure that necessitated acquisition of the Offsite Land shall terminate and be of no further force or effect in accordance with Government Code section 66462.5 of the Subdivision Map Act.

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, 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 OwnersOwner's Applications for Subsequent Approvals.

Consistent with their respective vested rights hereunder, OwnersOwner shall be obligated to obtain any and all required Subsequent Approvals to develop the Project. OwnersOwner shall apply for such Approvals in a timely manner. OwnersOwner's 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 outside service agreements or district formation, 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 OwnersOwner seek such Project Approval(s) from non-County agencies, County agrees to reasonably cooperate and coordinate with OwnersOwner in such efforts for the purpose of implementing the Project, upon OwnersOwner's request and subject to the requesting Owner(s) paying any and all costs incurred by County in connection therewith (including, without limitation, costs associated with staff and attorney time).

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 the applicable Owner is in compliance with its respective obligations under this Agreement. In the event that County and the applicable Owner 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 said Owner 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 OwnersOwner's vested rights under this Agreement, including any action(s) to impose additional conditions, fees, and/or exactions.

(b) Financing and Conveyance Maps. Owner(s) may seek County approval of a "Master Tract Map" or "Large Lot Map" for the sole purposes of conveying portions 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 the Owner at issue shall pay all applicable Regulatory Processing Fees for said map application.

(c) Multiple Final Maps. Owner(s) 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.

(d) Building Permits. County agrees to implement a Master Plan check process to expedite plan check for issuance of Building Permits for the Project as follows: (a) OwnersOwner will present model house plans with all variations for one detailed plan check, County shall complete such plan check in accordance with applicable laws and regulations; (b) thereafter, so long as the Building Permit application(s) are otherwise complete, County shall issue, no later than twenty (20) business days after an application submittal is deemed complete, Building Permits for up to twenty five (25) plans at a time submitted for those identical model house styles. Notwithstanding the foregoing, said expedited review shall not apply to County's initial review and processing of the plans at issue.

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

(a) Revenue Neutrality Generally. The parties acknowledge and agree that so long as OwnersOwner satisfy their obligations hereunder as they relate to specified financial payments, contributions and fees and so long as OwnersOwner pursue, fund, support and

facilitate the formation of the GHAD and CFD as provided for herein, then the Project shall be considered “**Revenue Neutral**”.

(b) Formation of CFD. In addition to, among others, ~~Owners~~Owner's payment to County of the monetary benefits set forth in Section 2.3 above, and ~~Owners~~Owner's agreement to pursue, fund, support and facilitate formation of the GHAD, ~~Owners~~Owner shall request that County form a CFD or some other mutually acceptable financing district or mechanism, to the extent permitted under applicable law, to impose an annual special tax on the Project in accordance with Section 2.3(c) above. In connection with said request, ~~Owners~~Owner 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; preparing and submitting, at ~~Owners~~Owner's sole cost and expense, any and all studies and other documentation necessary to form the CFD (or, at County's request, funding County's consultant(s) for preparing such studies and other documentation); and paying all of County's actual costs and expenses associated with the formation process. After ~~Owners~~Owner have initiated said formation process, County shall use diligent and good faith efforts to complete said formation process within one hundred and eighty (180) days after County issues the required Notice of Intention to Form the San Juan Oaks CFD. Notwithstanding the foregoing, in the event that County elects not to form a CFD, ~~Owners~~Owner's obligations under Section 2.3(c) above to fund the annual \$200,000 (plus inflationary increases) for additional public safety services and all actual costs to operate and maintain the Community Parks (plus inflationary increases) shall terminate so long as ~~Owners~~Owner has~~ve~~ otherwise satisfied their obligations in this Section 3.12(b).

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 extended in accordance with other provisions of this Agreement, or 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 2.8(c), 8.1, 12.13~~-1~~, 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 Specific Plan or other Project Approvals or any expiration date related thereto.

4.2 Tolling In Event of Litigation. in the event litigation is filed challenging this Agreement and/or other Project Approvals 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 and other Initial Approvals such that said approvals are 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 and other related Initial Approvals become 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 other Initial Approvals and therefore said approvals are 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.

Section 5. Periodic Compliance Review.

County shall review each Owner's respective 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, and include, among other things, ~~Owners~~Owner ' Development Impact Fee payment obligations under Section 3.2 above and ~~Owners~~Owner ' other payment obligations hereunder ("**Periodic Review**"). The applicable Owner(s) 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 12 upon request of the applicable Owner(s).

If County finds and determines during the Periodic Review that an Owner is not in compliance with the terms and conditions of this Agreement for the period under review, County may provide a Notice of Default to said Owner pursuant to the provisions of Section 6.1 below. Prior to any further action taken under this Agreement, County and Owner not in compliance shall meet and confer regarding the alleged default as required by Section 9.1 below. If after compliance with the provisions of Section 9.1, a Dispute remains regarding compliance with this Agreement, County or applicable Owner(s), 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. The arbitration determination shall be binding on County and the Owner at issue.

Section 6. Default; Cure; Remedies.

6.1 Notice of Default. Failure or unreasonable delay by County or an Owner 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 an Owner's 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. Notwithstanding any provision in this Section 6.1 to the contrary, in the event and to the extent this Agreement expressly and solely obligates a particular Owner, then a default by the expressly obligated Owner shall not constitute a default by any other Owner(s) ("**Innocent Owner**"). No Innocent Owner shall have any liability to County for or concerning said default by the expressly obligated Owner, and County's decision to terminate this Agreement as a result of said default as it relates to said obligation shall not result in termination of this Agreement on that basis with respect to the Innocent Owner or that portion of the Property owned legally or equitably by the Innocent Owner.

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 Section 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 the applicable Owner(s) through binding arbitration proceedings for any fees, charges, costs or other monies owed under this Agreement, and to obtain recovery thereof. Likewise, ~~Owners~~Owner reserve the right to seek repayment from County of the actual amount of any Development Impact Fees (or land or improvements provided by ~~Owners~~Owner in lieu thereof) that County imposed on the Project that violated ~~Owners~~Owner's rights under Section 3.2 above.

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 expiration of the Term (plus any extensions mutually agreed upon in accordance with Section 4 above or as otherwise provided for in this Agreement) or when Full Build Out of the Project has occurred as provided for in this Agreement and other Project Approvals, and all of ~~Owners~~Owner's obligations hereunder have been satisfied, whichever is earlier. 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 Units Upon Sale to Ultimate User and Completion of Construction. The assignment and assumption provisions of Section 10.1 and 10.2 below shall not apply, and the obligations hereunder shall terminate with respect to any unit and the owner of such 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 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 the applicable Owner(s) 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 the applicable Owner(s) 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 the applicable Owner(s) may commence mediation by providing to JAMS and the other party(ies) a written request for mediation setting forth the subject of the Dispute and the relief requested. County and the applicable Owner(s) 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 each party 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 the applicable Owner~~(s)~~ 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 the applicable Owner~~(s)~~; provided, however, each party shall be responsible for its 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 the applicable Owner(s) 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 the applicable Owner(s) so mutually desire. Unless otherwise agreed to by County and the applicable Owner(s), 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 JAMS shall: (a) provide the parties with a list of ten (10) arbitrators and give each party the opportunity to strike three (3) names from the list and rank the remainder, and (b) shall select the arbitrator who is, collectively, the highest ranked by the parties. 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 the applicable Owner(s) 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 the applicable Owner(s); 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 the applicable Owner(s) hereby loses or waives its 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 the applicable Owner(s) 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; Rights and Duties of Mortgagees.

10.1 Assignment of Rights, Interests and Obligations. Subject to compliance with this Section 10.1 and Section 10.2 below, an Owner may sell, assign or transfer (collectively, "**Assignment**") in whole or in part the Property to any individual or entity at any time during the Term of this Agreement. Said Owner shall seek County's prior written consent to any Assignment (which shall be documented in a form substantially the same as attached Exhibit 10) ("**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 said Owner such that it holds a majority interest (fifty-one percent (51%) or more) therein, or if the proposed Assignment would involve an entity such that the Owner at issue would retain a minimum of fifty one percent (51%) of the ~~owners~~Owner hip 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) 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, ~~owners~~Owner hip, 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 said Owner to the Board, which shall also evaluate the decision based on the criteria specified above. Failure by County to respond within sixty (60) days to any request made by an Owner 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 11 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~~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.

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 the Owner at issue 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 Agreement with the County in a form acceptable to the County whereby said Mortgagee Successor expressly assumes any and all rights and obligations of the applicable Owner 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 any Owner or its successor, or (b) obligated to cure any breach or default under this Agreement on the part of any Owner or its successor. Provided, however, in the event such Mortgagee Successor desires to succeed to an Owner's rights, benefits, privileges and obligations under this Agreement, however, 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 the applicable Owner's 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 each Owner, any notice given to Owner with respect to any claim by County that said Owner is 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 Owner's 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 an Owner 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 Owner(s) 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 an Owner expressly seeks 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~~Owner 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~~Owner is such that ~~Owners~~Owner 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 each of the ~~Owners~~Owner is that of a government entity regulating the development of private property and the ~~owners~~Owner of such private property.

12.9 No Discrimination Permitted. No Owner 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 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~~Owner 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
3224 Southside Road
Hollister, CA 95023
Telephone: (831) 637-5313
Email: BTurner@cosb.us

Copy to: County Counsel's Office
Attn: County Counsel
481 4th Street, 2nd Floor
Hollister, CA 95023
Telephone: (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
Telephone: (925) 935-9400
Email: nadia.costa@msrlegal.com

~~Pulte: Pulte Home Corporation
Attn: John S. Kalmbach, Division President
6210 Stoneridge Mall Road, Suite 500
Pleasanton, CA 94588
Email: Steve.Kalmbach@PulteGroup.com~~

SJO: San Juan Oaks, LLC
Attn: Ken Gimelli, President
3825 Union Road
Hollister, CA 95023
Email: Kkgimelli@aol.com

~~Copy to: Pulte Group
Donald J. Sajor, Esq., Vice President & Division General Counsel
27101 Puerta Real, Suite 300
Mission Viejo, CA 92694
Email: don.sajor@pultegroup.com~~

AND ~~San Juan Oaks~~
~~Attn: Scott Fuller, General Manager~~
~~Project Development Manager~~
3825 Union Road
Hollister, CA 95023
Email: Scott@sanjuanoaks.com

AND Brownstein Hyatt Farber Schreck
Attn: Lisabeth Rothman, Esq.
2049 Century Park East, Suite 3550
Los Angeles, CA 90067
Telephone: 310.500.4600
Email: lrothman@bhfs.com

Any Notice to a Mortgagee by County shall be given as provided above using the address provided by such Mortgagee. Any Notice to a Subsequent Owner shall be given by County as required above only for those Subsequent ~~Owners who~~ Owner who have given County written notice of their addresses 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~~ Owner 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~~ Owner shall comply with those requirements. ~~Owners~~ Owner 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~~ Owner 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~~ Owner 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 OwnersOwner with notice of the pendency of such action or proceeding and may, in its discretion, request that OwnersOwner defend such action or proceeding. It being understood that the Project is a private undertaking, the parties may agree that it is OwnersOwner's primary responsibility to defend any Legal Challenge, as defined herein. In this event, OwnersOwner 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 OwnersOwner, 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 OwnersOwner 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. 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.

OwnersOwner further agrees 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 OwnersOwner's 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 OwnersOwner 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 OwnersOwner from liability hereunder. The provisions of this Section 12.17 shall survive the termination of this Agreement, for any reason other than the County's default.

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 OwnersOwner, 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) 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 the applicable Owner. The Estoppel Certificate shall be substantially in the same form as attached Exhibit 12. 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 an Owner fails 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 said Owner's 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:

- Exhibit 1: Legal Description of the Property
- Exhibit 2: Map of the Property
- Exhibit 3: San Juan Oaks Drive/Union Road Intersection Improvements
- Exhibit 4: Form of Agricultural Easement for On-Site Agricultural Preserve

- Exhibit 5: Public Safety Facility Site
- Exhibit 6: Permanent Wildlife Habitat Area
- Exhibit 7: On-Site Agricultural Preserve
- Exhibit 8: Off-Site Agricultural Preserve
- Exhibit 9: Development Impact Fees
- Exhibit 10: Form of Consent to Assignment
- Exhibit 11: Form of Assignment and Assumption Agreement
- Exhibit 12: Form of Estoppel Certificate

COUNTY OF SAN BENITO

Director, San Benito County Planning &
Building Department
Date:

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

Matthew Granger
County Counsel
Date:

SAN JUAN OAKS, a California limited liability company

By:

~~Scott Fuller~~ Ken Gimelli, Member

~~Its: General Manager~~

~~PULTE HOME CORPORATION, a Michigan corporation~~

~~By: _____~~

~~John S. Kalmbach~~

~~Its: Division President~~

APPROVED AS TO FORM:
Brownstein Hyatt Farber Schreck

Date: