DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF SAN JUAN BAUTISTA
AND R.L. FULTON HOLDING COMPANY, LLC
REGARDING THE RANCHO VISTA PROJECT

This Development Agreement ("**Development Agreement**"), dated this17th day of April, 2015 (the "**Effective Date**"), is entered into by and between the City of San Juan Bautista, a California municipal corporation ("**City**"), and R.L. Fulton Holding Company, LLC, a California Limited Liability Company (**"Developer"**), pursuant to section 65864 *et seq*. of the Government Code of the State of California, and pursuant to City's police powers (Article XI, section 7 of the California Constitution). City and Developer are, from time to time, hereinafter referred to individually as a "**Party**" and collectively as the "**Parties."** This Development Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 *et seq*. ("**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property providing for the development of that property and establishing certain development rights in the property. Developer owns the below-described "**Property."** This Development Agreement has been drafted and processed pursuant to the Development Agreement Statute.

B. The Rancho Vista property, a 28.35 acre parcel of land located inside of the City's corporate boundary, is depicted and legally described on *Exhibit A* to this Development Agreement (the "**Property**"). Developer has a legal or equitable interest in the Property. 1.08 acres of the Property currently lies immediately outside the City's corporate limits. Such portion shall be annexed into the City.

C. The planning, development, construction, operation and maintenance of the proposed uses on the Property are collectively referred to in this Development Agreement as the "**Project.**" The Project will be reviewed and analyzed by a Environmental Document prepared in accordance with the California Environmental Quality Act (Pub. Res. Code §§ 21000 *et seq*.) and its Guidelines (C.C.R., Title 14 §§ 15000, *et seq*.), as each is amended from time to time (collectively, "**CEQA**"). The City will determine that no additional environmental review is necessary in connection with its consideration, approval and execution of this Development Agreement. Any reference in this Development Agreement to the "Project" shall mean and include the "Property," and any reference in this Development Agreement to the "Property" shall mean and include the "Project."

D. As of the execution of this Development Agreement by the Parties, various land use regulations, entitlements, grants, permits and other approvals will be or have been adopted, issued, and/or granted by City relating to the Project (collectively, "**Existing Approvals**"), including without limitation, all of the following:

1. Environmental Document.

2. General Plan Amendment.

3. Rezoning.

4. Vesting Tentative Map.

E. Additionally, as stated above, after the execution of this Development Agreement by the Parties, City shall commence annexation of the approximately 1.9 acre portion of the Property into City's corporate limits.

F. Throughout the public planning process, the Developer has exhibited a remarkable willingness to assist the City in the solution to its water problem (high nitrates in the water) by providing funds to the City in excess of that which the City could otherwise require under controlling law. To ensure that such benefits are properly secured by City, and to ensure that the Developer have the ability to develop the Project, this Development Agreement is necessary. Through this Development Agreement, "**Existing City Laws**" (defined herein) and the Existing Approvals are vested into by City and by Developer, and "**Subsequent Approvals**" (defined herein) regarding the Project are later vested into and included in this Development Agreement, without further action of the Parties, provided such Subsequent Approvals are compliant with all controlling California law, have secured approval of the Parties, and are adopted by City. The Existing Approvals and Subsequent Approvals are collectively referred to in this Development Agreement as the "**Project Approvals.**"

G. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Development Agreement is appropriate. This Development Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieves the goals and purposes for which the Development Agreement Statute was enacted.

H. On February 3rd, 2015, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**"), the hearing body for purposes of the Development Agreement Statute, adopted Resolutions that affirmed CEQA compliance for this Development Agreement, adopted findings that this Development Agreement is consistent with the City's General Plan, and recommended that this Development Agreement be approved by the City Council.

I. On February 17th, 2015, following a duly noticed and conducted public hearing, the "**City Council**" (defined herein) of City introduced and conducted the first reading of an ordinance that affirms CEQA compliance, that adopts findings that this Development Agreement is consistent with the City's General Plan, that approves this Development Agreement, and that

directs this Development Agreement's execution by City ("**Approving Ordinance**"). The City adopted the Approving Ordinance on the 17th day of March, 2015 and the Approving Ordinance became effective on April 17th 2015, the Effective Date for purposes of this Development Agreement.

ARTICLE 1
DEFINITIONS, EFFECTIVE/OPERATIVE, TERM

1.01 Definitions.

(a) As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) "**Additional Staff**" shall have that meaning set forth in Section 2.06(g) of this Development Agreement.

(2) "**Administrative Amendment**" shall have that meaning set forth in Section 3.02(b)(2) of this Development Agreement.

(3) "**Annual Review**" shall have that meaning set forth in Section 4.02(a) of this Development Agreement.

(4) "**Applicable Law**" shall have that meaning set forth in Section 2.02 of this Development Agreement.

(5) "**Approving Ordinance**" shall have that meaning set forth in Recital paragraph I of this Development Agreement.

(6) "**Assignee**" and "**Assignees**" shall have that meaning set forth in Section 5.01(a) of this Development Agreement.

(7) "**Assigned Property**" shall have that meaning set forth in Section 5.01(b) of this Development Agreement.

(8) "**Assignment**" shall have that meaning set forth in Section 5.01(b) of this Development Agreement.

(9) "**Benefits and Burdens"** shall have that meaning set forth in Section 5.01(a) of this Development Agreement.

(10) "**CEQA**" shall have that meaning set forth in Recital paragraph C of this Development Agreement.

(11) "**City**" shall have that meaning set forth in the Preamble of this Development Agreement.

(12) "**City Authorization To Record Development Agreement**" shall have that meaning set forth in *Exhibit C* of this Development Agreement.

(13) "**City Council**" shall mean the City Council of City.

(14) "**City Determination**" shall have that meaning set forth in Section 2.04(b)(4) of this Development Agreement.

(15) "**City Response**" shall have that meaning set forth in Section 2.04(b)(3) of this Development Agreement.

(16) "**Claims**" shall have that meaning set forth in Section 6.01(d) of this Development Agreement.

(17) "**Construction Codes**" shall have that meaning set forth in Section 2.02(a)(6) of this Development Agreement.

(18) "**CC&Rs"** shall have that meaning set forth in Section 2.11(c) of this Development Agreement.

(19) **"Defaulting Assignee"** shall have that meaning set forth in Section 5.01(b) of this Development Agreement.

(20) "**Developer**" shall have that meaning set forth in the Preamble of this Development Agreement, and shall include Developer' Assignee or Assignees.

(21) "**Development Agreement**" shall mean this Development Agreement, as set forth in the Preamble of this Development Agreement.

(22) "**Development Agreement Statute**" shall have that meaning set forth in Recital paragraph A of this Development Agreement.

(23) **"Development Fees**" shall have that meaning set forth in Section 2.10 of this Development Agreement.

(24) "**Effective Date**" shall have that meaning set forth in the Preamble and in Recital paragraph H of this Development Agreement.

(25) "**Estoppel Certificate**" shall have that meaning set forth in Section 4.05(b) of this Development Agreement.

(26) "**Existing Approvals**" shall have that meaning set forth in Recital paragraph D of this Development Agreement.

(27) "**Existing City Laws**" shall have that meaning set forth in Section 2.02(a)(4) of this Development Agreement.

(28) "**Financing Mechanisms**" shall have that meaning set forth in Section 2.12(a) of this Development Agreement.

(29) "**Force Majeure Event**" shall have that meaning set forth in Section 4.03(a) of this Development Agreement.

(30) "**Good Faith and Fair and Expeditious Dealing**" shall have that meaning set forth in Section 2.05 of this Development Agreement.

(31) **"HOA**" shall have that meaning set forth in Section 2.11(a) of this Development Agreement.

(32) **"HOA Property**" shall have that meaning set forth in Section 2.11(b) of this Development Agreement.

(33) "**Legal Effect**" shall mean that the ordinance, resolution, permit, license, Approval, or other grant of approval (collectively, "permit"), has been adopted by City and/or other governmental agency, as appropriate, that all applicable administrative appeal periods and statutes of limitations have run, that the permit has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and that the permit has taken effect under the applicable law.

(34) **"LAFCO**" shall have that meaning set forth in Section 2.15 of this Development Agreement.

(35) "**Mandated New City Law(s)**" shall have that meaning set forth in Section 2.04(e) of this Development Agreement.

(36) "**Meet and Confer Period**" shall have that meaning set forth in Section 2.04(b)(4) of this Development Agreement.

(37) "**Memorandum of Assignment**" shall have that meaning set forth in EXHIBIT D of this Development Agreement.

(38) "**New City Law(s)**" shall have that meaning set forth in Section 2.04 of this Development Agreement.

(39) "**Notice of Default**" shall have that meaning set forth in Section 4.01(a) of this Development Agreement.

(40) "**Notice of New Law(s)**" shall have that meaning set forth in Section 2.04(b)(1) of this Development Agreement.

(41) "**Objection to New City Law(s)**" shall have that meaning set forth in Section 2.04(b)(2) of this Development Agreement.

(42) "**Offsite**" shall have that meaning set forth in Section 2.09(b) of this Development Agreement.

(43) **"Offsite Facilities and Infrastructure**" shall have that meaning set forth in Section 2.09(b) of this Development Agreement.

(44) "**Onsite**" shall have that meaning set forth in Section 2.09(a) of this Development Agreement.

(45) "**Onsite Facilities and Infrastructure**" shall have that meaning set forth in Section 2.09(a) of this Development Agreement.

(46) "**Oversizing**" shall have that meaning set forth in Section 2.09(c) of this Development Agreement.

(47) "**Party**" and "**Parties**" shall have that meaning set forth in the Preamble and in Section 5.01(a) of this Development Agreement, and shall include a Party's or the Parties' Assignee or Assignees.

(48) "**Planning Commission**" shall mean the Planning Commission for the City, as set forth in Recital paragraph H of this Development Agreement.

(49) "**Processing Fee(s)**" shall have that meaning set forth in Section 2.02(a)(5) of this Development Agreement.

(50) "**Project**" shall have that meaning set forth in Recital paragraph C of this Development Agreement.

(51) "**Project Approvals**" shall have that meaning set forth in Recital paragraph F of this Development Agreement.

(52) "**Project CEQA Compliance**" shall have that meaning set forth in Section 2.06(j) of this Development Agreement.

(53) "**Project Debt"** shall have that meaning set forth in Section 2.12(a) of this Development Agreement.

(54) "**Property**" shall have that meaning set forth in Recital paragraph B of this Development Agreement.

(55) **"Residential Unit Owner"** shall have that meaning set forth in Section 1.02(a) of this Development Agreement.

(56) "**Second Notice**" shall have that meaning set forth in Section 4.05(c) of this Development Agreement.

(57) "**Subdivision Document**" shall have that meaning set forth in Section 1.02(d) of this Development Agreement.

(58) "**Subdivision Map Act**" means that legislation set forth in California Government Code Sections 66410 through 66499.58.

(59) "**Subsequent Approvals**" (each referred to individually as a "**Subsequent Approval**") shall mean those permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City on or after the Effective Date of this Development Agreement, and that comply with Section 3.02 of this Development Agreement. Subsequent Approvals include without limitation new permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), as well as amendments to Existing Approvals.

(60) "**Tender**" shall have that meaning set forth in Section 4.04(b) of this Development Agreement.

(61) "**Term**" of ten years, as further described in Section 1.02(a) of this Development Agreement.

(62) "**Third Party Challenge**" shall have that meaning set forth in Section 4.04 of this Development Agreement.

(63) "**Vesting Tentative Map**" shall have that meaning set forth in Section 1.02(f) of this Development Agreement.

(64) **"Enterprise Funds"** shall have that meaning set forth in Section 2.01(a) of this Development Agreement.

(b) To the extent that any defined terms contained in this Development Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them in this Development Agreement and/or Existing City Laws.

1.02 Term.

(a) The "**Term**" of this Development Agreement shall generally be fifteen (15) years from the Effective Date. Therefore, the Term shall commence upon April 17th, 2015 (the Effective Date) and shall continue until and then terminate upon 12:01 a.m. on April 16th, 2030, unless this Development Agreement is otherwise terminated, modified or extended as provided in this Development Agreement. Following the expiration of the Term or any extension thereof, or if sooner terminated, this Development Agreement shall have no force and effect; provided, however, that in no event shall the expiration or termination of this Development Agreement affect or limit, without further action of City, any right then held by Developer under any Project Approvals. Notwithstanding the foregoing, this Development Agreement shall not apply to an individual residential unit not owned by Developer (**"Residential Unit Owner"**) at such time as City has issued the last permit necessary for the Residential Unit Owner to take possession, and the Residential Unit Owner has in fact taken possession.

(b) If any "**Third Party Challenge**" (as defined in Section 4.04) is filed and approved by the City Council, then the Term of this Development Agreement shall be extended automatically (without any further action of the Parties required) for that period of time commencing from the date of the filing of such Third Party Challenge until that date which is the date of the dismissal or entry of a final judgment regarding such Third Party Challenge.

However, the filing of any Third Party Challenge(s) against City or Developer shall not be used by City to delay or stop the processing of, and/or issuance of any Project Approvals, unless City is enjoined or otherwise controlled by a court of competent jurisdiction and ordered to delay or stop the processing of, and/or issuance of any Project Approvals. The Parties shall not stipulate to the issuance of any such court order unless all Parties mutually agree to the stipulation.

(c) Any subdivision improvement agreement entered into pursuant to the Subdivision Map Act or other State or local regulation shall have a term no shorter than two (2) years from execution of such subdivision improvement agreement, unless a shorter term is agreed to in writing by both Parties.

(d) Pursuant to Government Code section 66452.6(a) and this Development Agreement, and subject to subdivision (f) of this Section, in addition to other extensions available under the Subdivision Map Act, the term of any tentative map, vesting tentative map, tentative parcel map, vesting tentative parcel map, final map or vesting final maps, or any new such map or any amendment to any such map, or any resubdivision (collectively referred to as "**Subdivision Document**") relating to the Project shall automatically be extended to and until the later of the following:

(1) The Term of this Development Agreement; or

(2) The end of the term or life of any such Subdivision Document otherwise given pursuant to the "**Subdivision Map Act**" (defined herein) and/or local regulation not in conflict with the Subdivision Map Act.

(e) The term of any Subsequent Approvals, including without limitation, all development plans, development permits, or other permit, grant, agreement, approval or entitlement for the general development of all or any part of the Project and Property, shall automatically be extended to and until the later of the following:

(1) The Term of this Development Agreement; and/or

(2) The term or life of any Subdivision Document pursuant to the Subdivision Map Act or local regulation not in conflict with the Subdivision Map Act.

(f) If this Development Agreement terminates for any reason prior to the expiration of vested rights otherwise given under the Subdivision Map Act to any vesting tentative map, vesting parcel map, vesting final map or any other type of vesting map on the Property (or any portion of the Property) (collectively, "**Vesting Tentative Map**"), such termination of this Development Agreement shall not affect Developer' right to proceed with development under such Vesting Tentative Map in accordance with only the then-current (in place) applicable law so vested under the Vesting Map, for the term (life) of such veted rights given by such Vesting Map.

ARTICLE 2
APPLICABLE LAW

2.01 City Water Problem.

(a) Developer recognizes that City is undergoing a severe problem with high nitrates in its water supply. Developer is willing to contribute a public benefit to the City in finding a solution to this problem by providing funds to the City in excess of that which the City could otherwise require under controlling law. Therefore, Developer shall provide funds to the City to address water problems as provided by this Section 2.01 (**"Enterprise Funds"**). City may use such Enterprise Funds in the manner City determines appropriate, in City's sole and exclusive discretion.

(b) Developer shall pay to City four thousand dollars ($4000.00) per approved buildable lot shown on that vesting tentative map approved by City. For example, if eighty six (86) buildable lots are approved by City (through City's approval of developer's vesting tentative map), then Developer shall pay to City Enterprise Funds in the amount of $344,000. The timing of Developer's such payment in the amount of the lots within the phase being constructed to the Enterprise Funds shall occur at the later of the following events:

(1) The issuance of a subdivision improvement agreement and permit by City on the phase of the Vested Tentative Map.

(2) The recordation of the Final Map of the phase relating to Developer's Vesting Tentative Map Phasing schedule.

(c) Once such payment becomes due to City pursuant to subsection (b) above, City shall withhold any and all permits for the building of any structure on the Property until such payment is made in full by Developer.

2.02 Applicable Law.

(a) As used in this Development Agreement, "**Applicable Law**" shall exclusively mean all of the following:

(1) The terms and conditions of this Development Agreement, including without limitation, this Article 2.

(2) The Existing Approvals.

(3) The Subsequent Approvals, when granted, provided such Subsequent Approvals are:

(A) Mutually agreed to by the Parties;

(B) Adopted by the City; and

(C) Take "**Legal Effect**" (defined herein).

(4) Those City rules, regulations, ordinances, policies, standards, specifications, practices and standard operating procedures of City (whether adopted by the City Council, the Planning Commission, the City staff or the voters of the City), including without limitation, those set forth in the General Plan, Specific Plan, and San Juan Bautista Municipal Code, that are in Legal Effect as of the Effective Date of this Development Agreement ("**Existing City Laws**").

(5) Those City "**Processing Fee(s)**" in Legal Effect as of the Effective Date of this Development Agreement. For the purposes of this Development Agreement, "**Processing Fee(s)**" mean planning fees, building fees, inspection fees, plan-check fees, impact fees, electrical permit fees, plumbing permit fees, mechanical permit fees, fire sprinkler permit fees, strong motion instrumentation permit fees, green building and standards fees and those other fees and charges which represent the costs to City for City staff and consultant time and resources spent reviewing, processing and conditioning Developer' applications for Approvals.

(6) The California Building Code (as modified by City), and those other State-adopted construction, fire and other codes, including "Green Codes" (as all may be modified by City) applicable to improvements, structures and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time (date) that building plans subject to such Construction Codes are submitted by Developer to City for an Subsequent Approval, provided that such Construction Codes have been adopted by City and are in effect on a Citywide basis.

(7) The "**Mandated New City Law(s),**" pursuant to Section 2.04(e) of this Development Agreement.

(8) The "**New City Law(s)**" that Developer elect to be subject to pursuant to Section 2.04(d).

(b) In the event of any conflict between any of subparts (1), (2), (3), (4), (5), (6), (7) and/or (8) of subdivision (a) of this Section 2.01 (above), the hierarchical order of authority shall be subpart (1) first, then subpart (2), then subpart (3), then subpart (4), then subpart (5), then subpart (6), then subpart (7), then subpart (8).

2.03 Vested Right to Applicable Law.

(a) During the Term of this Agreement:

(1) Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, unless Developer, in its sole and exclusive discretion, decides otherwise (for example, decides not to develop the Project).

(2) Any development of the Property, any City regulation of the development of the Property, and any discretion exercised by City on this Agreement and/or Project Approval shall occur pursuant to only the Applicable Law.

(b) Under this Development Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City,

and/or when Developer becomes subject to a New City Law pursuant to this Development Agreement.

2.04 New City Law(s).

(a) Any City ordinance, resolution, minute order, rule, motion, policy, standard, specification, or a practice adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not part of the Applicable Law and that takes effect on or after the Effective Date of this Development Agreement is hereby referred to as a "**New City Law(s).**" City shall not apply any New City Law(s) to the Property that is inconsistent with, or in conflict with, with this Development Agreement or that is excessive under controlling law. A New City Law shall be deemed to be inconsistent with, or in conflict with, this Development Agreement or the Applicable Law or to reduce the development rights provided hereby if the application of the New City Law to the Property would accomplish any of the following results (which is an inclusive not exclusive list), either by specific reference to the Property and/or as part of a general enactment which affects or applies to the Property:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Property or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements.

(2) Limit or control the availability of public or private utilities, services, or facilities otherwise allowed by the Applicable Law, including without limitation, water, wastewater, storm water, gas, electricity, and telecommunications.

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Property and/or Project Approvals in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction on the Property or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law.

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Property in a manner that is inconsistent with or more restrictive than the limitations in the Project Approvals and Applicable Law with exception to limitations of the Planning Commission's design review and approval of the exterior elevations of the residential dwelling constructed on each lot of the phases of the development.

(5) Limit the processing of Project Approvals.

(6) Impose any rent control, union shop, public bidding, prevailing wage or other regulation, if any, not in force and effect on the Effective Date of this development Agreement.

(b) If City believes that it has the right under this Development Agreement to impose/apply a New City Law on the Property/Project, then the following shall apply:

(1) City shall send written notice to Developer of that City position ("**Notice of New Law(s)**"). Such Notice of New City Law(s) shall contain the following sentence somewhere in its text: "This is a Notice of New City Law(s) provided pursuant to Section 2.03 of the Rancho Vista Ranch Development Agreement."

(2) Within thirty (30) days of Developer' receipt of City's Notice of New Law, if Developer believes that such New City Law is in conflict with this Development Agreement, Developer shall send written notice to City ("**Objection to New City Law(s)**"). Developer' Objection to New City Law(s) shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law(s) to the Property.

(3) Within thirty (30) days of receipt of said Developer Objection to New City Law(s), City shall respond to Developer' Objection to New City Law(s) ("**City Response**"). The City's Response shall address the factual and legal arguments set forth in Developer' Objection to New City Law(s).

(4) Within thirty (30) days of receipt of said City Response, the Parties shall meet and confer and shall continue to meet over the next sixty (60) days ("**Meet and Confer Period**") with the objective of arriving at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination ("**City Determination**").

(5) The New City Law(s) shall not be considered imposed/applied to the Property/Project during any of the time periods described above prior to the City Determination. If the City Determination is to impose/apply the New City Law(s) in question, then the New City Law(s) in question shall be considered imposed/applied to the Property/Project on Developer' receipt of such City Determination, and Developer shall have a period of ninety (90) days from the date of receipt of such City Determination within which to file legal action challenging such City Determination. In other words, a New City Law shall not be considered imposed/applied to the Property/Project until Developer' receipt of the City Determination, and a 90-day statute of limitations regarding Developer' right to judicial review of the New City Law(s) shall commence upon Developer' receipt of the City Determination. If upon conclusion of judicial review of the New City Law(s) (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law(s), such New City Law(s) shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law(s) (*e.g.*, City return fees paid, return dedications made, etc.).

(c) The above-described procedures shall not be construed to interfere with City's right to adopt or apply any New City Law(s) with regard to all other areas of City that do not involve and/or include the Property, Project Approvals, Developer, etc.

(d) Developer, in its sole and absolute discretion, may elect to be subject to a New City Law(s) that is/are not otherwise a part of the Applicable Law (without Developer's consent). In the event Developer so elects, Developer shall provide notice to City of that election

and thereafter such New City Law(s) shall be part of the Applicable Law without further action by the Parties.

(e) City shall not be precluded from applying any New City Law(s) to the extent that such New City Law(s) are specifically mandated to be applied to developments such as the development of the Property/Project by changes in State or Federal laws or regulations (and implemented through the Federal, State, regional and/or local level) ("**Mandated New City Law(s)**"). In the event such Mandated New City Law(s) prevent or preclude compliance with one or more provisions of this Development Agreement or require changes in plans, maps or permits approved by City for the Property, this Development Agreement shall be modified, extended or suspended as may be necessary to comply with such Mandated New City Law(s). Immediately after enactment of any such Mandated New City Law(s) that will materially affect the terms and conditions of this Development Agreement, the Parties shall meet and confer in good faith (pursuant to subdivision (e) above) to determine the feasibility of any such modification, extension or suspension based on the effect such modification, extension or suspension would have on the purposes and intent of this Development Agreement. In the event that an administrative challenge and/or legal challenge (as appropriate) to such Mandated New City Law(s) preventing compliance with this Development Agreement is brought and is successful in having such Mandated New City Law(s) determined to not apply to this Development Agreement, this Development Agreement shall remain unmodified and in full force and effect. To the extent that any such Mandated New City Law(s) (or actions of regional and local agencies, including City, required by such Mandated New City Law(s) or actions of City taken in good faith in order to prevent adverse impacts upon City because of such Mandated New City Law(s)) have the effect of preventing, delaying or modifying Developer' ability to use or develop the Property or any portion thereof, in a material fashion, then Developer shall have the option to terminate (unilaterally) this Development Agreement.

2.05 Good Faith and Fair and Expeditious Dealing.

(a) Unless this Development Agreement expressly provides a Party with sole and exclusive discretion, all review, cooperation, consideration, provision, and any and all other actions of and by one or both of the Parties under this Development Agreement (including without limitation, all actions required by one or both of the Parties under Section 2.06 of this Development Agreement, including without limitation accepting, processing, reviewing and acting upon all applications for Subsequent Approvals), shall involve and require "**Good Faith and Fair and Expeditious Dealing.**" When this Development Agreement expressly provides a Party with sole and exclusive discretion, that Party may take the action (over which this Development Agreement has given them sole and exclusive discretion) as they decide to take it, or the Party may refrain from taking the action (over which this Development Agreement has given them sole and exclusive discretion).

(b) For the purposes of this Development Agreement, "**Good Faith and Fair and Expeditious Dealing**" shall mean that the Parties shall act toward each other and execute the tasks necessary or desirous to the action contemplated by this Development Agreement pursuant to the Applicable Law in a fair, diligent, best efforts, expeditious and reasonable manner, and that no Party or Parties shall take any action that will prohibit, impair or impede any other Party's or

Parties' exercise or enjoyment of its rights and obligations secured through this Development Agreement.

2.06 Processing.

(a) City shall inform the Developer, upon request by Developer, of the necessary submission requirements for a complete application for each Subsequent Approval.

(b) City and Developer shall act on requests by Developer for the approval and issuance of the Subsequent Approvals, and shall cooperate to obtain the issuance of Subsequent Approvals, including to:

(1) Interpret any New City Laws in a manner which provides for the approval and issuance of Subsequent Approvals.

(2) Require modifications to Subsequent Approvals consistent with this Development Agreement and the Applicable Law whenever reasonably possible, rather than City denying applications for Subsequent Approvals.

(3) Not oppose Developer' application for a Subsequent Approval provided such application is consistent with the requirements of this Development Agreement.

(c) The City shall provide all necessary public notice and shall hold all public hearings required by law with regard to the Subsequent Approvals.

(d) City shall meet with Developer prior to Developer' submission of applications for Subsequent Approvals for the purpose of ensuring all requested information is understood by Developer so that Developer' applications, when submitted, will be accurate and complete.

(e) Developer shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and Developer shall cause the Developers planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor.

(f) Upon submission by Developer of a complete application for a Subsequent Approval, together with appropriate Processing Fees, City shall process the application for Subsequent Approval.

(g) If City is unable to timely process any such application, or upon request by Developer, City shall engage outside consultants ("**Additional Staff**") to aid in such processing. Developer shall pay all of City's actual costs related to such Additional Staff.

(h) City shall cooperate with Developer to facilitate the construction of the infrastructure required for development of the Project. At the request of Developer, City shall assist with (and where requested by Developer, approve) the formation of one or more assessment districts, landscape and lighting districts, community facilities districts, tax-exempt and taxable

financing mechanisms, or other funding mechanisms (as further discussed in Section __ of this Development Agreement).

(i) If City denies an application for a Subsequent Approval, City shall explain why, and City shall specify in detail the modifications, changes, or improvements which are required to obtain approval. City and Developer shall cooperate to obtain and issue Subsequent Approvals. City shall seek to approve any subsequently submitted Subsequent Approval which complies with the specified modifications. Both sides shall work in good faith.

(j) The Parties recognize that the City adopted as adequate and complete the Mitigated Negative Declaration for the Project. Subsequent activities undertaken pursuant to the Project will be examined in the light of the Mitigated Negative Declaration to determine whether any additional environmental document must be prepared ("**Project CEQA Compliance**"). In connection with any future process resulting in the attainment of Project CEQA Compliance, City shall commence and process with Good Faith and Fair and Expeditious Dealing any and all initial studies and assessments required by CEQA, and to the extent permitted or required by CEQA, City shall use the Mitigated Negative Declaration and other existing environmental declarations, reports and studies as adequately addressing the environmental impacts of the Project and its Subsequent Approvals without requiring new or supplemental environmental documentation. Once Project CEQA Compliance has been secured, City shall not impose any environmental mitigation measures or avoidance measures or both beyond those referenced in the Project CEQA Compliance. Where legally feasible, City shall not – through the Project CEQA Compliance process or through the Subsequent Approval process – impose any mitigation measures or avoidance measures (as either legislative rules, adjudicatory decisions or conditions of approvals) beyond those required by the existing Mitigated Negative Declaration. Where applicable, City shall reject such additional mitigation and/or avoidance measures as infeasible on the basis, among other things, that this Development Agreement legally bars the implementation of such additional mitigation measures. City shall streamline the environmental review of Subsequent Approvals under CEQA including, without limitation, relying on the Project CEQA Compliance, subject to the availability of staff, or Section 2.06 (g) of this Development Agreement. If any legal challenge is made against the project of CEQA requirements or process, the Developer shall defend, indemnify and hold harmless the City, its officers, officials, employees, agents, advisory agencies, appeals board, legislative body and volunteers (collectively "City"), from and against any and all claims, demands, actions, losses, damages, injuries, or liabilities, including but not limited to reasonable attorney's fees and damages for death or injury to any person, or damage or destruction to any property arising out of the approval of the CEQA documents for project.

(k) Multiple applications by Developer for Subsequent Approvals shall be processed concurrently by City, subject to the availability of staff, or Section 2.06 (g) of this Development Agreement. unless otherwise requested by Developer.

(l) Notwithstanding any provision to the contrary, for purposes of interpretation of this Development Agreement and for purposes of determining whether Subsequent Approvals are consistent with this Development Agreement and the Applicable Law it describes (including, without limitation, the determination of whether any final subdivision maps substantially comply and conform to any tentative maps), changes to setbacks, size(s), dimensions, configuration, number or placement of lots, or public infrastructure regarding the

Project shall be allowed by City without requiring an amendment of or to the Subsequent Approvals and/or without requiring any additional Subsequent Approvals, provided such changes:

(1) Do not increase the then-existing total square footage of the Project in a substantial amount.

(2) Do not vary substantially from the then-existing layout and placement of uses, backbone infrastructure and design standards for the Project.

(3) Are consistent with the provisions of the then-existing Development Agreement.

(4) Are consistent with the applicable General Plan of the City (applicable given the Applicable Law).

(5) Do not change the permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes.

(m) Developer shall be responsible for the acquisition of permits, approvals, easements and services required to serve the Project from all non-City governmental agencies, subject to the following:

(1) Developer shall also be responsible for coordinating with any non-City governmental agencies to ensure the proper installation and construction of non-City utilities in accordance with the Applicable Law

(2) At Developer' sole and exclusive discretion and in accordance with Developer' construction schedule, Developer may apply for such other permits and approvals as may be required by other private and public and quasi-public entities in connection with the development of, or the provision of services to, the Property. City shall cooperate with Developer, in Developer' efforts to obtain such permits and approvals and City shall, from time to time (at the request of Developer), enter into binding agreements with any such other entity as may be necessary to ensure the timely availability of such permits and approvals to Developer, provided such permits and approvals are mutually determined by City and Developer to be reasonably necessary or desirable and are consistent with Applicable Law. In the event that any such permit or approval as set forth above is not obtained within three (3) months from the date application is deemed complete by the appropriate entity, and such circumstance materially deprives Developer of the ability to proceed with development of the Property or any portion thereof, or materially deprives City of a bargained-for public benefit of this Development Agreement, then, in such case, and at the election of Developer, Developer and City shall meet and confer with the objective of attempting to mutually agree on alternatives, Project Approvals, and/or an amendment to this Development Agreement to allow the development of the Property to proceed with each Party substantially realizing its bargained-for benefit there from.

(3) City may from time to time enter into joint exercise of power agreements or memoranda of understanding with other governmental agencies consistent with and to further the purposes of this Development Agreement.

2.07 Requirements of Development Agreement Statute.

(a) The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project/Property shall be those set forth in the Applicable Law (which includes, without limitation, the General Plan, Zoning, Existing City Laws, and later Subsequent Approvals).

(b) As Subsequent Approvals are adopted and therefore become part of the Applicable Law of the Project, the Subsequent Approvals will refine the permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project and Property.

2.08 Timing of Development.

(a) The most efficient and economic development of the Property depends upon numerous factors and that it will be most economically beneficial to have the rate of development determined by Developer. Accordingly, the timing, sequencing, and phasing of the development, as specified on the approved Vested Tentative Map, shall be in the sole and exclusive discretion of Developer. Any changes, modifications or alternating the timing, sequencing, or phasing shall be approved by the city prior to implementation.

(b) In particular, the Parties desire to avoid the result of the California Supreme Court's holding in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, where the failure of the parties therein to consider and expressly provide for the timing of the development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement. Therefore, its sole and exclusive discretion, Developer shall develop the timing of the Project at such time as Developer, alone, deem appropriate with concurrence with the City.

2.09 Overcapacity, Oversizing.

(a) For the purposes of this Development Agreement, "**Onsite**" shall mean that area within the boundaries of the Specific Plan, and "**Onsite Facilities and Infrastructure**" shall mean those Project facilities and infrastructure located Onsite.

(b) For the purposes of this Development Agreement, "**Offsite**" shall mean that area outside the boundaries of the Specific Plan, and "**Offsite Facilities and Infrastructure**" shall mean those Project facilities and infrastructure located Offsite.

(c) City shall not require Developer to fund or construct Onsite Facilities and Infrastructure and/or Offsite Facilities and Infrastructure in a manner that provides for oversizing or overcapacity so that such constructed Onsite Facilities and Infrastructure and/or Offsite Facilities and Infrastructure will serve other development or residents or facilities and service outside of/beyond that of the Project ("**Oversizing**"), unless an Oversizing reimbursement agreement is agreed to in writing by the Parties. The City shall require three competitive bids of the oversized infrastructure in determining the reimbursement cost.

(d) In the event that City requires Developer to install a specific improvement (for example, a traffic signal), Developer' obligation to pay the fees otherwise owing under this Development Agreement regarding the category of improvement Developer are installing shall be satisfied by the installation of such improvement; and if the costs of the improvement to Developer exceed Developer' fair share fee obligation, Developer shall be entitled to credits or reimbursement agreement of such improvement costs in excess of Developer' obligation.

(e) The Parties recognize that certain Conditions of Approval attached to Project Approvals require some Offsite Facilities and Infrastructure (such as the widening of Third Street), and that such requirements shall addressed in an Oversizing reimbursement agreement of 2.09 (a),(b),(c) and (d).

2.10 Development Fees.

(a) Developer shall be obligated to pay only those building permit fees and impact fees (collectively, "**Development Fees**") listed in this Section 2.10.

(b) Development Fees shall be paid on a dwelling by dwelling basis, and shall be due no sooner than building permit issuance, unless indicated otherwise below. For the Term of this Development Agreement, the Development Fees shall be as set forth below. The amount of these listed Development Fees are based on a typical 2,400 square foot home. If the size of the actual home for which a building permit is issued varies from the typical 2,400 square foot home standard the Development Fees shall be adjusted accordingly. For example, if the size of the actual home for which a building permit is requested is 2,640 square feet (a 10% increase over 2,400 square feet), then the amount of the Development Fees owing for that building permit shall be raised by ten percent (10%). Likewise, as another example, if the size of the actual home for which a building permit is requested is 2,160 square feet (a 10% decrease of 2,400 square feet), then the amount of the Development Fees owing for that building permit shall be reduced by ten percent (10%). Again, the amount of these listed Development Fees are based on a 2,400 square foot home, and are as follows:

(1) Building Permit (UBC) Fee in the amount of $2,125.25 per floor plan, payable at building permit issuance for each such building permit sought.

(2) Plan Check Fee in the amount of $1,034.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(3) Electrical Permit (Average) Fee in the amount of $280.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(4) Plumbing Permit Fee in the estimated amount of $190.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(5) Mechanical Permit Fee in the amount of $120.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(6) Strong Motion Instrumentation Fee in the amount of $30.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(7) Green Fee in the amount of $12.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(8) Water Connection Fee in the amount of $7,550.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(9) Traffic Fee in the amount of $1,717.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(10) Public Safety Fee in the amount of $1,543.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(11) Park Development Fee in the amount of $782.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(12) Storm Drain Fee in the amount of $1,554.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(13) Library Fee in the amount of $1,995.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(14) Civic/Public Improvement Fee in the amount of $1,483.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(15) In addition, it is understood that the Aromas/San Juan School District currently collects a School Fee of approximately $2.97 per square foot of habitable space.

(16) Fire Sprinkler inspection fee in the amount of $150.00 per dwelling unit, payable at building permit issuance for each such building permit sought.

(17) Sewer Connection Fee in the amount of $5,240.00 per dwelling Unit, payable at building permit issuance for each such building permit sought.

(c) If a request for a dwelling plan that has previously paid a plan check fees and is reused on another lot or site and there are no structural changed or modification other than cosmetic or exterior architectural appendages, no plan check fees will be required.

(d) No additional Development Fees shall be imposed on the Project during the Term of this Development Agreement.

2.11 HOA Establishment/Maintenance.

(a) Developer may form, in Developer's sole and exclusive discretion, a Home Owners' Association or other similar associations (collectively, "**HOA(s)**").

(b) For the purposes of this Development Agreement, "**HOA Property**" shall mean that property inside the Project that is owned and controlled by the HOA(s).

(c) If formed, the HOA(s) shall draft and record Conditions, Covenants and Restrictions ("**CC&Rs**") against the HOA Property and provide a copy to City Planning Department.

2.12 Establishment of Additional Finance Mechanisms.

(a) Upon Developers request or conditions of approval, City shall consider establishing a mechanism(s) that is legal and available to the City to aid in financing the construction, maintenance, operation (or other financeable aspect of) of the Project's onsite and/or offsite facilities and infrastructure responsibilities. These mechanisms may include, without limitation, direct funding of condemnation costs and construction costs, acquisition of improvements, establishing reserve accounts to fund capital improvement program projects, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facility and Service Districts, Geological Hazard Abatement Districts or other similar mechanisms (collectively, "**Financing Mechanisms**"), and issuing any debt in connection therewith ("**Project Debt**").

(b) Developer may request that City establish a Financing Mechanism and issue Project Debt shall be made to the City Council in written form, and shall outline the purposes for which the Financing Mechanism and Project Debt will be established or issued, the general terms and conditions upon which it will be established or issued and a proposed timeline for its establishment or issuance.

(c) City's participation in forming any Financing Mechanisms approved by City (and its operation thereafter) and in issuing any Project Debt approved by the City will include all of the usual and customary municipal functions associated with such tasks including, without limitation, the formation and administration of special districts, the issuance of Project Debt, the monitoring and collection of fees, taxes, assessments and charges such as utility charges, the creation and administration of enterprise funds, the enforcement of debt obligations and other functions or duties authorized or mandated by the laws.

2.13 Affordable Housing.

(a) Developer shall provide affordable housing on the Project pursuant to City's affordable housing requirements set forth in the Existing City Laws, except that Developer, in Developer's sole and exclusive option, may choose instead to do all of the following: (1) provide six (6) secondary units pursuant to the California Government Code, and (2) pay to City $2000 per residential dwelling unit. If Developer so elects to provide such secondary units and pay such $2000 fee, then such Developer election shall be considered full and complete compliance with City's affordable housing requirements set forth in the Existing City Laws. The payment of such $2000 fee shall be on a unit by unit basis, payable at building permit issuance for each such building permit sought including the building permit sought with the secondary unit. For example, if Developer applies for five (5) residential unit building permits, then in addition to the other fees owed by Developer for such residential building permits, Developer shall pay City $10,000 in such affordable housing fees (5 times $2000 per residential unit). City shall spend any such affordable housing fee money paid by Developer in the manner City determines. Developer, in Developer's sole and exclusive option, may choose to provide additional secondary units pursuant to the California Government Code and the City's inclusionary housing ordinance

beyond the 6 required. Each lot where a building permit is sought with a secondary unit will require a separate water service for each of the habitable units. Any secondary dwelling unit with equivalent plumbing fixture units of less than 11 may make an application for a reduced monthly sewer charge from the standard monthly sewer charge per dwelling unit.

(b) Developer's compliance with this Section 2.13 shall constitute, for all purposes, compliance with, and satisfaction of, all City requirements regarding the Project's provision of affordable housing, including any and all affordable housing fees otherwise owing.

2.14 City Services Guarantees.

(a) City shall provide the following services and facilities to the Project:

(1) Sewer.

(2) Water.

(3) Storm Drainage.

(4) Street Sweeping.

(b) The Project shall have a vested right to those above-listed services and facilities. City shall take all such actions as are necessary to ensure that such services and facilities are available to the Project when necessary and/or desirous to the Project.

2.15 Annexation.

(a) As stated in this Development Agreement,1.08 acres of the Property currently lies immediately outside the City's corporate limits. City shall make application to the San Benito County Local Agency Formation Commission ("**LAFCO**") on behalf of the Developer. The Developer shall pay all fees required by LAFCO and the City shall submit all materials required by controlling law and/or requested by LAFCO for the annexation of such 1.08 acre portion of the Property into the City as soon as practical.

(b) If such annexation of the Property cannot be accomplished without conditions that are unacceptable to Developer, then, at Developer's request, City shall terminate or request termination of the proceedings, as appropriate, with respect to the annexation of the approximately 1.08 acres of the Property to the City.

(c) If City's request to annex the approximately 1.08 acres of the Property is denied by LAFCO, then the Parties shall continue to work together to secure such annexation in such a manner as they may mutually agree, including annexing such 1.08 acres of the Property at a different time. To the extent that the law requires a date to be set forth within this Development Agreement by which annexation of the approximately 1.08 acres of the Property must be accomplished, that date shall be one (1) day prior to the termination of the Term of this Agreement.

(d) The Parties desire to annex the approximately 1.08 acres of the Property to the City at the earliest opportunity and shall use Good Faith and Fair and Expeditious Dealing (as that phrase is defined by this Development Agreement) to accomplish such annexation prior to the expiration of the Term.

2.16 Rights of Way, Easements, Public Improvements

(a) Developer shall acquire all rights of way and easements required by the Project Approvals.

(b) If private property outside the control of Developer is needed to be acquired for any of the necessary rights of way, easements and/or public improvements required by the Project Approvals, and if the owner of such needed private property refuses to sell such needed property to Developer at a price that such owner and Developer can each and mutually agree to, then the Parties may consider other alternatives regarding the acquisition of such private property. If the City determines to acquire such private property through condemnation or other means, the City shall follow all applicable procedural and substantive law. Pursuant to the Subdivision Map Act, if the City has not yet acquired such private property through condemnation or other means by the time Developer submits his relevant final map, then those rights of way, easements and/or public improvements sited on such private property shall be shown on the Project's relevant final map when it is submitted to the City. Then, within 120 days of that submission, the City shall either use its power of condemnation to acquire such private property needed from such private property owner or City shall forgive such rights of way, easements and/or public improvements obligations as it relates to such private property.

ARTICLE 3
AMENDMENT OF DEVELOPMENT AGREEMENT AND SUBSEQUENT APPROVALS

3.01 Amendment of Development Agreement.

(a) This Development Agreement may be amended from time to time in accordance with California Government Code section 65868, only upon the mutual written consent of City and Developer. However, any amendment which relates to the term, permitted uses, density, intensity of use, height and size of proposed buildings, or provisions for reservation and dedication of land shall require a noticed public hearing before the parties may execute an amendment.

(b) No amendment of this Development Agreement shall be required in connection with the issuance of any Subsequent Approval or any New City Law Developer elects to be subject to pursuant to this Development Agreement. Any Subsequent Approval or New City Law Developer elects to be subject to pursuant to this Development Agreement shall be vested into by Developer and City as if set forth in full when such Subsequent Approval and/or New City Law becomes Legally Effective. City shall not amend or issue any Subsequent Approval unless Developer requests such an amendment or issuance from City.

3.02 Amendments of Subsequent Approvals.

(a) The Subsequent Approvals may, from time to time, be amended or modified.

(b) The Subsequent Approvals shall not be amended or otherwise modified without the consent of the Developer. Upon the written request of Developer, the City shall determine:

(1) Whether the requested amendment/modification is minor; and

(2) Whether the requested amendment/modification is consistent with this Development Agreement. If the City finds that the amendment/modification is both minor and consistent with this Development Agreement, the amendment/modification shall be determined to be an "**Administrative Amendment,**" and the City shall approve the Administrative Amendment without notice and public hearing.

(c) Any request by Developer for an amendment/modification that is determined by the City not to be an Administrative Amendment shall be subject to review, consideration and action pursuant to the Applicable Law.

ARTICLE 4
DEFAULT, REMEDIES, TERMINATION

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Development Agreement, which failure continues uncured for a period of sixty (60) days following written notice of such failure from the other Party ("**Notice of Default**") (unless such period is extended by written mutual consent), shall constitute a default under this Development Agreement. Any Notice of Default given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period.

(b) No absence of, or delay in, giving Notice of Default shall constitute a waiver of default; provided, however, that the provision of Notice of Default and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default.

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

(d) City shall continue to process permits and applications during any cure period, but need not approve any such application if it relates to a development proposal on the Property with respect to which there is an alleged default hereunder (until the Default is cured).

(e) In the event either Party is in default under the terms of this Development Agreement, the non-defaulting Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action:

(1) Waive such default;

(2) Pursue administrative remedies; and/or

(3) Pursue judicial remedies.

(f) In no event shall City modify this Development Agreement as a result of a default by Developer, unless mutually agreed to by the Parties.

(g) Except as otherwise specifically stated in this Development Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by the other Party to this Development Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific performance. For purposes of instituting a legal action under this Development Agreement, any City Council determination under this Development Agreement shall be deemed a final agency action.

4.02 Annual Review.

(a) On or before September 1st of each calendar year during the Term of this Development Agreement, City shall initiate the "**Annual Review**" of this Development Agreement by providing written notice to Developer. Upon receipt of such written notice, Developer shall within thirty (30) days furnish to City a report demonstrating good faith compliance by Developer with the material terms of this Development Agreement.

(b) Following any such Annual Review, if Developer is determined to be in good faith compliance with the material terms of this Development Agreement, City shall furnish Developer, upon Developer' request, certification of such compliance in recordable form.

(c) Following any such Annual Review, if Developer is determined not to be in good faith compliance with the material terms of this Development Agreement, City shall furnish to Developer a notice of noncompliance, which notice may serve as a Notice of Default and may commence the cure period set forth in Section 4.01 above, if so indicated by City in a writing meeting the requirements of Section 4.01 of this Development Agreement.

(d) If City fails to either (1) hold the Annual Review, or (2) to notify Developer in writing (following the date the review meeting is to be held) of the City's determination as to compliance or noncompliance with the terms of this Development Agreement, such failure shall be deemed an approval by City of Developer' current compliance with the terms of this Development Agreement.

4.03 Force Majeure Delay, Extension of Times of Performance.

(a) In addition to specific provisions of this Development Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities other than City, its departments, agencies, boards and commissions, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Development Agreement whether instituted by Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

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

4.04 Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Development Agreement) challenging the validity of this Development Agreement, any Project Approval, or the sufficiency of any environmental review under CEQA ("**Third Party Challenge**"), this Section 4.04 shall apply. The City Attorney shall be notified of any such Third Party Challenge.

(b) The Parties shall mutually cooperate with each other regarding such Third Party Challenge. City shall tender the complete defense of any such Third Party Challenge to Developer ("**Tender**"), and upon acceptance of such Tender by Developer, Developer shall control all aspects of the defense and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge.

(c) If City wishes to assist Developer when Developer has accepted the Tender, City may do so if Developer consents to such assistance and if City pays its own attorney fees and costs (including related court costs).

(d) Should Developer refuse to accept such a Tender, City may defend such Third Party Challenge, and if City so defends, Developer shall pay City's attorney fees and costs (including related court costs).

(e) If any part of this Development Agreement (including, without limitation, any part of the exhibits and attachments thereto) or any Project Approval is held by a court of competent jurisdiction to be invalid, the following shall apply:

(1) City shall use its best efforts to sustain and/or re-enact that part of this Development Agreement and/or Project Approval; and

(2) City shall take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Development Agreement, and then adopting or re-enacting such part of this Development Agreement and/or Project Approval as necessary or desirable to permit execution of this Development Agreement and/or Project Approval.

(3) If despite such efforts such part of this Development Agreement and/or Project Approval cannot be cured and/or re-enacted or re-adopted, and such invalidity or unenforceability would have a material adverse impact on the Developer, by depriving Developer of a material benefit of this Development Agreement, then Developer may terminate this Development Agreement by providing written notice thereof to the City, and upon such termination, Developer shall no longer be subject to the benefits and burdens of this Development Agreement.

4.05 Estoppel Certificate.

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

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

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

(b) Such a written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within thirty (30) days following the receipt thereof, unless the Party in order to determine the appropriateness of the Estoppel Certificate, shall promptly commence and proceed to conclude a review pursuant to the provisions of Section 4.02 of this Development Agreement. The Parties acknowledge that an Estoppel Certificate hereunder may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute for City such Estoppel Certificates.

(c) If a Party fails to deliver an Estoppel Certificate within the thirty (30) day period, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Development Agreement is without modification, or has been modified as described by the Party requesting the Estoppel Certificate, and that there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence upon the Party which fails to deliver such certificate that this Development Agreement is in full force and effect without

modification, or has been modified as described by the Party requesting the Estoppel Certificate, and that there are no unexcused defaults in the performance of the requesting Party.

ARTICLE 5
ASSIGNMENTS AND TRANSFER OF OWNERSHIP

5.01 Covenants Run With The Land.

(a) This Development Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants, obligations, and other benefits and burdens (collectively, "**Benefits and Burdens**") shall be binding upon and inure to the benefit and burden of the Parties and their respective heirs, successors (by merger, consolidation, or otherwise), assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Property, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit and of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns (collectively, "**Assignee**").

(b) Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer' Benefits and Burdens under this Development Agreement ("**Assignment**"), Developer shall be released from such Benefits and Burdens with respect to the Property, or any lot, parcel, or portion thereof so assigned ("**Assigned Property**") to the extent arising subsequent to the date of such assignment. Therefore, a default by any Assignee ("**Defaulting Assignee**") shall only affect the Assigned Property owned by such Defaulting Assignee, shall not be considered a default by Developer or any other Assignee who is not the Defaulting Assignee, shall not cancel or diminish in any way Developer' or any other non-defaulting Assignee's Benefits and Burdens rights hereunder, and otherwise shall not be considered a default by Developer or other Assignees who are not the Defaulting Assignee.

(c) All Assignees shall be responsible for the reporting and annual review requirements relating to their respective Assigned Property, and any amendment to this Development Agreement between City and Developer, and/or City and Assignee(s) shall only affect that Property owned by Developer at the time of such amendment and/or that Assigned Property owned by such Assignee(s) at the time of such amendment.

(d) Developer and Assignees shall provide written notice to City of all assignments. Such notice shall provide the name, address, telephone numbers and other relevant contact information of the new Assignee. Failure to provide such written notice shall not be grounds for a Notice of Default.

ARTICLE 6
GENERAL PROVISIONS

6.01 Miscellaneous.

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

(b) Governing Law, Venue, Attorneys' Fees. The interpretation, validity, and enforcement of this Development Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Development Agreement shall be filed and heard in a court of competent jurisdiction in San Benito County. Developer acknowledges and agrees that City has approved and entered into this Development Agreement in the sole exercise of their respective discretion and that the standard of review of the validity and meaning of this Development Agreement shall be that accorded legislative acts of City. Should any legal action be brought by a Party for breach of this Development Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(c) Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Development Agreement. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the Developer of such private Property.

(d) Hold Harmless and Indemnification. Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) (collectively, "**Claims**") resulting from or arising out of the development contemplated by this Development Agreement by Developer or Developer' agents, representatives, contractors, subcontractors, or employees, other than a liability or claim based upon City's gross negligence or willful misconduct. The indemnity obligations of this Development Agreement shall not extend to Claims arising from activities associated with the maintenance or repair by the City or any other public agency of improvements that have been accepted for dedication by the City or such other public agency. From time to time the City and Developer may enter into subdivision improvement agreements, as authorized by the Subdivision Map Act, and those subdivision improvement agreements may have language that is different from the language contained in this Development Agreement. In the event of any conflict between the provisions of this section and the indemnification provisions in such subdivision improvement agreements, the indemnification provisions in this Development Agreement shall prevail.

(e) Construction. As used in this Development Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(f) Notices.

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

If to City: City of San Juan Bautista
City Manager and Community Development Department
311 2nd Street
PO Box 1420
San Juan Bautista, CA 95045Tel: (831) 623-4661

Attn: City Manager and Planning Director

With a Copy To: City of San Juan Bautista
Office of the City Attorney
311 2nd Street
PO Box 1420
San Juan Bautista, CA 95045

Attn: City Attorney

If to Developer: RL Fulton Holding Company, LLC
1343 Locust Street, Suite 204
Walnut Creek, CA 94596
Tel: (925) 519-9020
Fax: (925)

Attn: Robert Fulton

With a Copy To: Michael Patrick Durkee
McKenna Long & Aldridge LLP
Spear Tower
One Market Plaza, 24th Floor
San Francisco, CA 94105
Office Tel: 415.356.4622
Fax: 415.356.3899

(2) Any Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Development Agreement shall also be given to all other signatory Parties hereto and any lender which requests that such notice be provided. Any signatory Party or lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Development Agreement.

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

(h) Severability. If any term or provision of this Development Agreement, or the application of any term or provision of this Development Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Development Agreement, or the application of this Development Agreement to other situations, shall continue in full force and effect. However, if such invalidity or unenforceability would have a material adverse impact on the Project, the Developer may terminate this Development Agreement by providing written notice thereof to City. Without limiting the generality of the forgoing, no judgment determining that a portion of this Development Agreement is unenforceable or invalid shall release Developer from its obligations to indemnify City under this Development Agreement.

(i) Waivers. Waiver of a breach or default under this Development Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Development Agreement.

(j) Entire Agreement. This Development Agreement may be executed in multiple originals, each of which is deemed to be an original. This Development Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(k) Signatures. The individuals executing this Development Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Development Agreement on behalf of the respective legal entities of Developer and City. This Development Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

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

EXHIBIT "A"

All that real property situated in the State of California, County of San Benito and being a portion of Section 29,32 and 33 of Township 12 South, Range 4 East, Mount Diablo Base and Meridian bounded and more particularly described as follows:

Being all that certain 28.35 acre parcel of land designated as Parcel 1 and shown upon that certain Parcel Map filed for record in Book 11 of Parcel Maps at Page 28, San Benito County Records.

IN WITNESS WHEREOF, City and Developer have executed this Development Agreement as of the date by which both Parties have signed. This Development Agreement shall take effect on the Effective Date.

"**City**":

CITY OF SAN JUAN BAUTISTA,
a municipal corporation

By: _____
Robert Lund, Mayor

ATTEST:

By: _____
Connie Schobert, City Clerk

APPROVED AS TO FORM:

By: _____
Deborah Mall, City Attorney

"**Developer**":

R.L. FULTON HOLDING COMPANY, LLC, a
California Limited Liability Company

By: _____
Robert L. Fulton
Its: Managing Member

Recording Request by

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SAN JUAN BAUTISTA

AND

R.L. FULTON HOLDING COMPANY, LLC

REGARDING

THE

RANCHO VISTA PROJECT