

PART 2

ATTACHMENT 3



2020-0010615

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Development Services Department
City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA

When Recorded Mail To:

City Clerk
City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA 95993



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DEVELOPMENT AGREEMENT

by and between

NEWKOM RANCH LLC
A California Limited Liability Company

and

CITY OF YUBA CITY
A General Law City

(Newkom Ranch Development Agreement)

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THIS DEVELOPMENT AGREEMENT dated Feb 21, 2020 (Effective Date), at Yuba City, California (hereinafter referred to as "Agreement"), is entered into by and between Newkom Ranch, LLC, a California limited liability company (hereinafter referred to as "Newkom Ranch Landowner," "Landowner" or "Developer") and the City of Yuba City, a general law city, created and existing under the laws of the State of California (hereinafter referred to as "the City"), pursuant to the authority of Sections 65864-65869.5 of the Government Code of the State of California.

RECITALS

A. State Authorization. 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 Section 65864 *et seq.* of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a binding property development agreement with any person having a legal or equitable interest in real property for the development associated with such property in order to establish certain development rights in the property which is the subject of the development project application.

B. City Procedure and Requirements. The City has implemented the provisions of Government Code Section 65864 *et seq.* and is authorized to enter into development agreements with persons having legal or equitable interests in real property located in the City.

C. Landowner. The Landowner is Newkom Ranch LLC, a California limited liability company organized under the laws of the State of California.

D. Property. The subject of this Agreement is the development of that certain property commonly known as Newkom Ranch, consisting of approximately 161.17 acres located in the County of Sutter, as described in Exhibit A-1 and depicted in Exhibit A-2, attached hereto and incorporated herein by reference (referred to as "the Property"). Landowner owns the Property in fee and represents that all other persons holding legal or equitable interests in the Property shall be bound by this Agreement.

E. Bogue-Stewart Master Plan ("Master Plan" or "BSMP"). The Property is located within the area subject to the Bogue-Stewart Master Plan.

F. Project. The development of the Property is in accordance with the City's General Plan, as amended, the Master Plan, and the Development Approvals shall be referred to herein as the "Project."

G. The Environmental Impact Report. The City examined the environmental effects of this Agreement and the Development Approvals in the Environmental Impact Report (the "EIR") (SCH No. 2017012009) prepared pursuant to the California Environmental Quality Act (CEQA). The City Council reviewed and certified the EIR as adequate and complete as part of the approval of the Development Approvals.

H. Purposes. The Landowner and City desire to enter into an agreement for the purpose of implementing the plan for subdividing and development of Newkom Ranch as set forth herein and in the Master Plan, and Development Approvals and for mitigating the environmental impacts of such development as identified in the EIR. The City has an expressed interest in ensuring the proper growth of the community by entering into Development Agreements as a method whereby a level of assurance can be achieved to meet that interest. The City has determined that the development of Newkom Ranch pursuant to the proposed Tentative Subdivision Maps Nos. 14-06 (large lot) and 14-07 (small lots) is a development for which a Development Agreement is appropriate. A Development Agreement will provide certain benefits to the City; will eliminate uncertainty in the City's land use planning for and secure orderly development of the Property in accordance with the policies and goals set forth in the City's General Plan and consistent with the BSMP. The Landowner has incurred and will incur substantial costs in order to comply with the conditions of approval and to assure development of the Property in accordance with this Agreement. In exchange for these benefits to the City and the public, the Landowner desires to receive assurance that the City shall grant permits and approvals required for the development of the Property in accordance with the Existing City Laws, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the Parties desire to enter into this Agreement.

I. Entitlements Needed Prior to the Development Agreement. The application for approval of this Agreement and the appropriate CEQA documentation required for approval of this Agreement, including:

- General Plan Amendment 14-05.
- Specific Plan Amendment 16-05.
- Rezoning 14-04.
- Tentative Subdivision Maps 14-06 and 14-07 (approvals may occur after adoption of the Development Agreement).
- Environmental Assessment 14-14 (Certification of the EIR).

The entitlements are collectively referred to as "Development Approvals."

J. Adequacy of CEQA Environmental Documentation. The Yuba City City Council certified the EIR, which also included a project level review of the Newkom Ranch Tentative Subdivision Maps (TSM) 14-06 (large lot) and 14-07 (small lots). In January, 2014 Newkom Ranch LLC submitted an application to the City to develop a

portion of the BSMP referred to as the Newkom Ranch Tentative Subdivision Maps. The original application included the Newkom Ranch properties, with some surrounding properties along Bogue Road. The original application request was for a large lot and small lot Tentative Map, General Plan Amendment, and Pre-annexation Zoning for those properties. An EIR and Technical Master Plan were then prepared for the expanded BSMP area, including the Project properties, which includes a project-level analysis of the Property. Following consideration of the CEQA environmental documentation and after conducting a duly noticed public hearing, the City Council found that the provisions of this Agreement are consistent with and within the scope of the EIR and that adoption of this Agreement involves no new impacts not considered in the EIR. Specifically, the Development Agreement does not change the environmental assessment of the EIR. Further, the EIR was recently certified. The City Council found that no subsequent review is required under CEQA Guidelines section 15162 as since that time no substantial changes have been proposed in the project which will require major revisions of the previously certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Likewise, no substantial changes have occurred since that time with respect to the circumstances under which the project is undertaken which will require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There is also no new information, which was not known and could not have been known at the time of the EIR that the project will have significant effect not discussed in the EIR. As such, the City Council determined the Development Agreement has already been fully assessed in accordance with CEQA, no subsequent review is required under CEQA Guidelines Section 15162, and no further action or review is required under CEQA.

K. Development Agreement Adoption. After conducting a duly noticed public hearing and making the requisite findings, the City Council by the adoption of an Ordinance approved this Agreement and authorized its execution. The City has determined that this Agreement furthers the public health, safety and general welfare, that the provisions of this Agreement are consistent with the goals and policies of the General Plan and is a community benefit. The City and Developer have determined that the project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Development Approvals and certain subsequent development approvals, thereby encouraging planning for, investment in and commitment to use and develop the Property. Continued use and development of the Property is anticipated to, in turn, provide the following substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement laws were enacted, including (1) providing for the development of unused land; (2) providing increased tax revenues for the City; (3) providing for jobs and economic development in the City; and (4) providing for infrastructure improvements that can be utilized by regional users and future users.

L. Consistency with Yuba City General Plan and Bogue-Stewart Master Plan. Development of the Property in accordance with this Agreement will provide for orderly growth and development in accordance with the policies set forth in the City General Plan, as amended, the Master Plan and the Development Approvals. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City Council finds and declares that this Agreement is consistent with the General Plan of the City, the Master Plan, and with the Development Approvals.

M. Landowner Payments for the Costs of Public Infrastructure, Facilities, and Services. Landowner agrees to pay the costs of such City of Yuba City public facilities and services as herein provided to mitigate impacts of the development of the Property, and City agrees to assure that Landowner may proceed and complete development of the Property, in accordance with the terms and conditions of this Agreement. City's approval of development of the Property as provided herein is in reliance upon and in consideration of Landowner's agreement to make such payments toward the costs of public improvements and services as herein provided to mitigate the impacts of development of the Property.

N. Development Agreement Ordinance. City and Landowner have taken all actions mandated by and fulfilled all requirements set forth in the California Government Code Sections 65864 through 65869.5 regulating the use of development agreements.

O. Flood Hazard. The City has imposed conditions on the project that will protect the property to the urban level of flood protection in urban and urbanizing areas. Such conditions may also be implemented as conditions of tentative maps or other entitlements.

NOW THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5, and in consideration of the mutual covenants and promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Landowner and the City, each individually referred to as a Party and collectively referred to as the Parties ("Parties"), agree as follows:

AGREEMENT

1. General Provisions.

1.1 Incorporation of Recitals. The Preamble, the Recitals and all defined terms set forth in both, are hereby incorporated in this Agreement as if set forth herein in full.

1.2 Definitions. In addition to the defined terms in the Preamble and the Recitals, each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

1.2.1 Approvals. Any and all permits or approvals of any kind or character required under the City Laws in order to develop the Project, including, but not limited to, architectural review approvals, building permits, site clearance and demolition permits, grading permits and utility connection permits.

1.2.2 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City govern the permitted uses of land, density, design, improvements and construction standards and specifications applicable to the development of the Property. Specifically, but without limiting the generality of the foregoing, City Laws shall include the City's General Plan, the BSMP, the Zoning Regulations of the City of Yuba City, and the Subdivision Regulations of the City of Yuba City.

1.2.3 Conditions. All conditions, exactions, fees or payments, dedication or reservation requirements, obligations for on or off-site improvements, services or other conditions of approval called for in connection with the development of or construction on the Property under the existing City Laws, whether such conditions of approval constitute public improvements, or mitigation measures in connection with environmental review of any aspect of the Project.

1.2.4 Director. The Director of the Development Services Department.

1.2.5 Existing City Laws. The City Laws in effect as of the Effective Date of this Agreement.

1.2.6 Laws. The laws and Constitution of the State of California, the laws and Constitution of the United States and any codes, statutes or executive mandates in any court decision, state or federal, thereunder.

1.2.7 Mortgagee. "Mortgagee" means: (a) the holder of the beneficial interest under a Mortgage; (b) the lessor under a sale and leaseback Mortgage; and (c) any successors, assigns and designees of the foregoing.

1.2.8 Party. A signatory to this Agreement; or a successor or assign of a signatory to this Agreement.

1.2.9 Property. The Property is that property described and shown on Exhibits A-1 and A-2. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors-in-interest to the parties hereto.

2. Effective Date: Term.

2.1 Recordation. Not later than ten (10) days after the Effective Date, the Parties shall cause this Agreement to be recorded in the Official Records of the County of Sutter, State of California, as provided for in Government Code Section 65868.5. However, failure to record this Agreement within ten (10) days shall not affect its validity or enforceability by and between the Parties.

2.2 Term. Except as provided herein, the term of this Agreement shall commence on the Effective Date and terminate twenty (20) years thereafter; provided, however, that the initial term shall be automatically extended for an additional five (5) year term if the Parties have not completed their obligations pursuant to Section 4 ("Term"), for a total of twenty-five (25) years. If the parties still have not completed their obligations pursuant to Section 4 by the end of the initial automatic extension period, either the City or the Landowner shall have the right to request up to two (2) additional five (5) year extensions [for a total of thirty-five (35) years] in order to complete any obligations under this Agreement. In order to consider the request for an extension timely, the extension must be requested by either the City or Landowner in writing delivered to the other party prior to the expiration date of the then current Term. Following the expiration of the Term, this Agreement shall be deemed terminated and be of no further force and effect; provided, however, said termination of the Agreement shall

not affect any right or duty emanating from City Entitlements on the Property approved concurrently with or subsequent to the approval of this Agreement.

2.3. Operative Date. The Property has not been annexed into the City. Consistent with Government Code section 65865, this Agreement shall not become operative unless annexation proceeding(s) annexing the Property to the City are completed within the Term of this Agreement, or earlier if required by law. If the annexation of the Property is not completed within the Term of this Agreement, or earlier if required by law, then the Agreement shall be null and void. Nothing in this paragraph shall toll or otherwise extend the Term, which shall commence on the Effective Date notwithstanding the Property may not be annexed to the City as of the Effective Date.

3. General Development of the Project.

3.1 Project: Vested Entitlements.

3.1.1 The City has adopted certain approvals in connection with the Property, including the adoption of the Master Plan, the tentative maps and the EIR Certification. To the extent the provisions of this Agreement conflicts with the General Plan and Bogue-Stewart Master Plan, those plans shall take precedence.

3.1.2 Development of the Property shall be governed by this Agreement, and the Development Approvals. This Agreement does not impose affirmative obligations on the Landowner to commence development of the Project, or any phase thereof, in advance of its decision to do so.

3.1.3 The permitted uses of the Property, the density and intensity of use, including, but not limited to, minimum landscape areas, maximum lot coverage, minimum and maximum number of parking spaces, and the allowable floor area ratios), and provisions for public improvements and all mitigation measures and conditions required or imposed in order to minimize or eliminate environmental impacts or any impacts of the Property applicable to development of the Property, are as set forth in ordinances, policies, and standards in effect as of the Effective Date and are hereby vested subject to the provisions of this Agreement ("Vested Entitlements").

3.2 Project Phasing. Landowner and City acknowledge and agree that the Project is designed to be developed in phases. The Parties also acknowledge and agree that presently the Landowner cannot predict the timing of the Project phasing. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that failure of the Parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the Parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that the Landowner shall have the right to develop the building components of the Project in phases in accordance with the Development Approvals and at such times as the Landowner deems appropriate within the exercise of its subjective business judgment and the provisions of this Agreement.

3.3 Other Government Permits. The Landowner or City (whichever is appropriate) shall apply for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project (such as public utility districts, Gilsizer County Drainage District, the U.S. Army Corps of Engineers, or

CalTrans) as may be required for the development of, or provision of services to, the Project. The City shall promptly and diligently cooperate, at no cost or damage to the City, with the Landowner in its endeavors to obtain such permits and approvals and, from time-to-time at the request of the Landowner, and shall attempt with due diligence and in good faith to enter into binding agreements with any such entity in order to assume the availability of such permits and approvals of services. To the extent allowed by law, the Landowner shall be a party or third-party beneficiary to any such agreement and shall be entitled to enforce the rights of the Landowner or City thereunder or the duties and obligations of the parties thereto. The Landowner shall reimburse the City for all its expenses, including, but not limited to, legal fees and staff time incurred in entering into such agreements, in accordance with the terms and conditions of that certain Funding Agreement for Staff Costs and Consulting Contract entered into between the parties in 2016.

3.4 Additional Fees. Except as set forth in this Agreement, the City shall not impose any further or additional fees, taxes or assessments, whether through exercise of the police power, the taxing power, or any other means, other than those required by Existing City Laws and this Agreement, provided that:

3.4.1 [Intentionally deleted]

3.4.2 Community Facilities District. Prior to the approval of any final map within the area covered by this Agreement, the Developer shall be required to enter into a Community Facilities District ("CFD") or similar funding mechanism acceptable to the City for the purpose of funding on-going operational costs for police, fire, and other government services and for the on-going maintenance costs for road and park facilities.

Developer shall cooperate in the formation or annexation to the CFD or funding mechanism, and irrevocably consents herewith to the levy of such special taxes, establishment of funding mechanisms, or collection of other fees or charges, as are necessary to fund the operational and/or maintenance costs.

3.4.3 The City may charge the Landowner the standard processing fees for land use approvals, building permits and other similar permits, which are in force and effect on a City-wide basis at the time application is submitted for those permits.

3.4.4 City shall have the authority to enact or increase development impact fees provided the fees are consistent with the fees applied to other properties in the City or area wide that is similarly situated.

3.4.5 If the City exercises its taxing power in a manner which will not change any of the conditions applicable to the Project and so long as any taxes are uniformly applied on a City-wide or area-wide basis, as defined below, the Property may be so taxed, which tax shall be consistent with the taxation of other properties in the City or area wide that is similarly situated.

3.4.6 If state or federal laws are adopted which enable cities to impose fees on existing projects and if, consequently, the City adopts enabling legislation and imposes fees on existing projects on a City-wide basis, these fees may be imposed on the Project, which fees shall be consistent with the fees imposed on other properties in the City similarly situated.

3.4.7 Landowner shall pay the following fees:

i. City-wide development impact fees, which may include but not be limited to:

- Parks and Recreation
- Community Civic Center
- Fire Protection
- Library Services
- Police Protection
- Roadways/Traffic
- Flood Protection/Levee Improvements
- City Corporation Yard
- Drainage
- Administration Component
- Connection and Trunk Line Fees (Water and Sewer)

ii. A neighborhood park fee per Paragraph 4.2.5 of this Agreement.

iii. Any fees that Developer is obligated to directly pay to any Federal, State, County or local agency (other than any City Agency) under applicable Federal, State, County or local law.

iv. Any fees the City is legally required to collect for other State or Federal agencies pursuant to State or Federal law or any City agreement or City ordinance that the City is legally mandated or required to adopt or enter into to comply with State or Federal law or a judgment of a court of law, but only to the extent necessary to satisfy such compliance.

Fees shall be paid at the then-applicable rate in effect at the time building permits are obtained. Certain City fees may be deferred to prior to issuance of a certificate of occupancy if otherwise allowed by City ordinance, regulation, or policy.

The parties also acknowledge that the City is currently assessing a publically administered fee program for the Bogue-Stewart Master Plan area. If adopted, this program may impose fee(s) applicable to the entire area including the Property. Landowner agrees to pay such fee(s) once adopted by the City. Nothing in this Agreement shall preclude Landowner from objecting to or contesting the adoption of the fees in the same manner as any other member of the public.

3.4.8 For purposes of this Agreement, "area wide" shall cover not only the Property, but also at least all parcels zoned and/or developed in a manner similar to the Property and located in the combined area of the Master Plan. The Parties acknowledge that the provisions contained in this Section 3.4 are intended to implement the intent of the Parties that the Landowner has the right to develop the Project pursuant to specified and known criteria and rules, and that the City receives the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations.

3.5 Applicable Laws and Standards. Notwithstanding any change in any Existing City Law, including but not limited to, any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws and policies applicable to the Property are set forth in Existing City Laws (regardless of future changes in these by the City), and this Agreement. The Project has vested rights to be built and occupied on the Property, provided that the City may apply and enforce the

Uniform Building Code (including the Uniform Mechanical Code, Uniform Electrical Code and Uniform Plumbing Code) and Uniform Fire Code and all applicable hazardous materials regulations in effect at the time the Landowner applies for any particular building permits for any particular building or other development aspect of the Project.

3.6 Application of New Laws. Nothing herein shall prevent the City from applying to the Property new federal, state or City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement; and which do not alter the terms, impose any further or additional fees or impose any other conditions requiring additional traffic improvements requirements or additional off-site improvements that are inconsistent with this Agreement or the intent of this Agreement. Any action or proceeding of the City that has any of the following effects on the Project shall be considered to be in conflict with this Agreement and the existing City Laws, and shall not be applied by the City to the Project or this Agreement:

3.6.1 Limiting the uses permitted on the Property;

3.6.2 Limiting or reducing the density or intensity of uses, the maximum height, the allowable floor area ratios, the required number of parking spaces, increasing the amount of required landscaping or reservations and dedications of land for public purposes;

3.6.3 Limiting the timing or phasing of the Project in any manner that is inconsistent with or more restrictive than the provisions of this Agreement;

3.6.4 Limiting the location of building sites, grading or other improvement on the Property in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement; or

3.6.5 Applying to the Project or the Property any law, regulation, or rule restricting or affecting a use or activity otherwise allowed by this Agreement.

3.7 Moratorium, Quotas, Restrictions, or Other Limitations.

Without limiting the City's standard application processing procedures, no moratorium or other limitation affecting building permits or other land use entitlements, or the rate, timing or sequencing thereof shall apply to the Project.

3.8 Easements: Improvements. The City shall cooperate with the Landowner in connection with any arrangements for abandoning existing utility or other easements and facilities and the relocation thereof or creation of any new easements within the Property necessary or appropriate in connection with the development of the Project.

3.9 Farming Rights. The City shall acknowledge that the Landowner shall have the right to continue to farm the lands non-developed portion of the Property.

4. Developer Obligations

4.1 Public Improvements: Developer shall be responsible for constructing and financing the public infrastructure improvements necessary to serve the Project and as provided in this Agreement and the Development Approvals including the BSMP Public Facilities Financing Plan. Developer agrees to dedicate, construct or acquire the improvements or facilities and to perform the obligations set forth in this Section at its expense, subject only to those reimbursements and credits as specified in this Agreement. Public infrastructure improvements shall be designed and constructed in accordance with the improvement plans approved by City for such improvements, and in accordance with the requirements and regulations pursuant to California State law.

4.2 Developer Obligations. Developer shall be obligated to construct and finance the public infrastructure improvements as called out in the BSMP Public Facilities Finance Plan and as provided below, in accordance with the BSMP and consistent with the City's infrastructure Master Plans. Developer shall be required to post appropriate financial security with City prior to recordation of Final Maps, consistent with Project conditions of approval and as called out in the Public Facilities Financing Plan. The developer may be entitled to fee credits as provided in Section 5.1.

4.2.1 Roads. Roads shall be constructed per the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan and as provided in the approved tentative maps or other discretionary City permits. On-site improvements shall be as per project approvals and approved improvement plans.

Bogue Road from Highway 99 to Railroad Avenue is to be constructed to the ultimate number of lanes required for traffic mitigation as indicated in the Master Plan Traffic Study with the development of commercial zone property in Large Lot 11 per the tentative subdivision map. Reimbursement would be applicable per the Development Impact Fee Program Credit/Reimbursement Agreement.

4.2.2 Storm Drainage. Developer shall provide necessary on-site and off-site improvements for storm drainage consistent with Project conditions of approval and as required by the City and the Gilsizer County Drainage District. Improvements shall be constructed for the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan, and as provided in the approved tentative maps or other discretionary City permits.

4.2.3 Sewer. Developer shall construct sewer lines consistent with the Master Plan and conditions of approval of the tentative maps and other discretionary City permits. Improvements shall be constructed for the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan, and as provided in the approved tentative maps or other discretionary City permits.

4.2.4 Water. Developer shall construct water line improvements consistent with the Master Plan and conditions of approval of the tentative maps and other discretionary City permits. Developer shall also be responsible for all on-site water line improvements. Improvements shall be constructed for the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan, and as provided in the approved tentative maps or other discretionary City permits.

4.2.5 Park and Open Space Improvements and Dedications.

Developer shall irrevocably offer for dedication to the City all park land and open space within Newkom Ranch during each phase of development as provided for in the Master Plan, and per the approved phased infrastructure improvement matrix, required per the tentative map conditions of approval, prior to the recordation of the final map for each small lot within the Newkom Ranch property, and as prescribed per the Master Plan.

Developer is to pay to the City a specific Bogue Stewart Master Plan Neighborhood Park fee in the amount of \$3,206 per single-family residential unit and \$2,298 per multifamily unit, prior to certificate of occupancy of each parcel. This fee is subject to inflation utilizing the Engineering News and Record Construction Index beginning January 2020.

With the application of the 117th single family residential building permit in total, in either properties described as Large Lot Parcel 1 or Large Lot Parcel 2 of the Newkom Ranch Tentative Subdivision Map, the Developer is to construct and dedicate the Neighborhood Park designated as Parcel A, in total (1.05 gross acres +/- or 0.80 net acres), as designated on the tentative subdivision map(s). The construction improvement scope of the park is to include the:

Grading of the park area to drain, at a minimum cross slope of 1% to a maximum of 2%, or as approved by the Public Works Department.

Installation of an acceptable grass throughout the designated area with an approved irrigation system tied to the City's water distribution system.

4.3 Reimbursement by Developer to Third Parties. In the event that facilities, including, but not limited to, roadway, sewer, water, drainage, and parks are constructed by third parties which benefit Developer, Developer agrees that it will pay to City for reimbursement to the third parties, Developer's pro-rata share, as reasonably determined by the City, of the cost of construction prior to the issuance of the first building permit in the Project. Third party reimbursement will include, in addition to construction costs, those costs associated with planning, design and permitting as set forth in Section 4.1 of this Agreement.

4.4 Covenants, Conditions and Restrictions; Enforcement by City. Upon the recordation of each final subdivision map or other development project, Developer shall record against such portion of the Property a master set of covenants, conditions and restrictions ("CC&R's") to require the development and use of the property to be consistent with the Project Entitlement development plan or other appropriate City designation and applicable design guidelines for the Project. The CC&R's shall include the covenants that all structures and landscaping within the Project are to be built, installed and maintained in accordance with the Master Plan and subject to an obligation to obtain design approval from the City prior to any construction or modification of such improvements. The CC&R's shall provide that the City shall be a third party beneficiary thereof and may not be amended without the City's consent. As a third party beneficiary, the City shall have the right, but no obligation, to review and/or enforce any covenant under the CC&R's and the City shall not be obligated hereby to respond to any demands or complaints thereunder or otherwise take any action with respect thereto. The CC&R's shall give the City the same rights as any other owner of record and enforce liens to recover the costs of such enforcement, which may include costs to perform maintenance obligations, remove trash or debris, tow any unlawfully parked vehicles, or other such violations, all at the cost of any defaulting party. The form of such CC&R's shall be subject to the review

and approval by the City Attorney, which shall not be unreasonably withheld, prior to recordation thereof and prior to any amendment thereof that may affect the City's enforcement rights thereunder. City acknowledges that Developer shall not be obligated by the foregoing to form a homeowner's association.

4.5 Reimbursement for City Costs. Developer shall reimburse City for all of City's costs incurred in the drafting, negotiating, development, and implementation of this Agreement, including, but not limited to, the annual review pursuant to Section 6.1 in accordance with the terms and conditions of the Funding Agreement for Staff Costs and Consulting Contract entered into between the parties in 2016. Said costs shall include, but not be limited to, the full cost recovery of all City's staff time and City's attorney fees. This Agreement shall not take effect until the City costs, as provided for in this section, owed by Developer to City are paid to the City.

4.6 Building and Site Design. Developer shall comply with the design intent of the Design Guidelines contained in the Bogue-Stewart Master Plan or in the City-wide adopted Design Guidelines, whichever is more restrictive as may be reasonably determined by the Development Services Director.

5. Reimbursement and Fee Credits, Financing, and Right-of Way

5.1 Reimbursement to Developer for Oversizing

5.1.1 Developer agrees the City may require Developer to construct certain on-site and off-site improvements in a manner that provides for oversize or excess capacity beyond that size or capacity needed to serve the project (collectively "Oversizing") so that the constructed improvement will be available to serve other development or residences or facilities outside of the Property. The City shall not require any Oversizing from the Developer except in connection with project approvals or in Development Approvals, and in accordance with the provisions of the Subdivision Map Act. Developer may be entitled to a fee credit or reimbursement for Oversizing improvements per Section 5 of this Agreement.

5.1.2 In the event that City requires Developer to install a specific improvement (for example, a traffic signal), Developer's obligation to pay the relevant development impact fees otherwise owed under this Agreement regarding the category of improvement the Developer is installing shall be satisfied by the installation of such improvement in the manner mutually agreed upon by the City and the Developer so long as the amount of the development impact fees for this category of improvement does not exceed the cost of such improvement. City shall accept Developer's dedication of such improvements, consistent with the terms and conditions of this Agreement.

By entering into this Agreement, City and Developer agree that certain facilities, including, but not limited to, roadway, sewer, water, and drainage will be constructed by Developer pursuant to this Agreement which will benefit third-party landowners. Developer shall be entitled to a fee credit for any such facilities to the extent they benefit third party landowners in an amount as reasonably determined by the City. If Developer's fee credit for a particular facility exceeds the amount of the fee owed, then Developer shall be reimbursed for the amount the fee credit exceeds the fee owed by the benefited third-party landowners. Developer shall request the City enter into a Reimbursement Agreement, which shall specify the reimbursement calculations and amounts as determined by the City. The Reimbursement Agreement will require future development by third-party landowners benefiting from the

Oversizing to reimburse Developer's pro-rata share for a period of up to twenty (20) years from the installation of the oversizing or other qualifying improvements benefiting third-party landowners, provided, that Developer shall have the right to extend the initial twenty (20) year period with five (5) year extension requests until such time that Developer has been reimbursed in full from the benefited third party Landowners. The extension request must be received, by the City, in writing six months prior to the expiration of the Reimbursement Agreement. The City Council is authorized to enter into a Reimbursement Agreement on behalf of the City subject to approval as to legal form by the City Attorney.

5.1.3 Reimbursement Calculations. City will provide Developer with the available documentation showing the basis for the reimbursement amounts pursuant to Section 4.1. The reimbursement obligations provided in this Agreement will be in amounts as reasonably determined by the City.

5.1.4 Reimbursement Personal to Constructing Owner. All rights to reimbursement created pursuant to Section 4.1 shall be personal to the owner installing the improvements and shall not run with the land unless such rights are expressly assigned in writing.

5.2 Reimbursement to Developer for Cost of Preparing Master Plan and Environmental Impact Report. City and Developer agree that preparation of the Bogue-Stewart Master Plan and its accompanying draft and final Environmental Impact Report will benefit third-party landowners that are also located within the boundary of the Master Plan. Developer shall be entitled to a fee credit for the cost of preparation of the Master Plan and EIR to the extent they benefit third-party landowners. Developer shall be reimbursed for the fair share amount owed by the benefited third-party based on the pro-rata share of the acreage to be developed. Reimbursement Agreements shall be established consistent with a City-adopted Capital Improvement Program. The pro-rata share of such up-front planning costs shall be calculated at the time of reimbursement, and shall be paid to Developer by City, and such payment will be funded by such benefited third-party landowners.

5.3 City's Support of Public Financing for Project Improvements. Development of the Project requires the investment of significant capital to fund the Project's necessary major infrastructure. Developer may, at its discretion, seek public financing mechanism for financing the construction, improvement or acquisition of major infrastructure. At the request of Developer, the City may consider the use of finance districts, special assessment districts, and other similar project-related public financing mechanisms to fund the Project's necessary infrastructure.

5.4 Right-of-Way Acquisition. With respect to the acquisition of any off-site interest in real property required by Developer in order to fulfill any condition required by the Project or the Entitlements, Developer shall make a good faith effort to acquire the necessary interest by private negotiations at the fair market value of such interest. If, after such reasonable efforts, Developer has been unable to acquire such interest and provided that Developer (i) provides evidence of a good faith effort to acquire the necessary property interest to the reasonable satisfaction of City and (ii) agrees to pay the cost of such acquisition, including reasonable attorney's fees, City shall make an offer to acquire the necessary property interest at its fair market value. If such offer has not been accepted within 60 days, City agrees, to the extent permitted by law, to cooperate and assist Developer in efforts to obtain such necessary property interest. Any such acquisition by City shall be subject to City's good faith discretion, which is expressly reserved by City, to make the necessary findings, including a

finding thereby of public necessity, to acquire such interest. Subject to the reservation of such good faith discretion, the City shall schedule the necessary hearings, and if approved by City, thereafter prosecute to completion the proceedings and action to acquire the necessary property interests by power of eminent domain.

Developer shall fund all costs of the acquisition of such necessary property interests, including reasonable attorney's fees and court costs in the event that such acquisition and/or condemnation is necessary.

6. Annual Review.

6.1 Good Faith Compliance. Developer shall annually provide documentation of good faith compliance with this agreement per Govt. Code Section 65865.1 to the City. The City may, at least every twelve (12) months, during the Term of this Agreement, conduct a public meeting to review the extent of good faith substantial compliance by Landowner with the terms of this Agreement at Landowner's expense. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to Government Code Section 65865.1. Notice of such annual review will be provided by the Development Services Director to Landowner thirty (30) days prior to the date of the public meeting by the Planning Commission and shall include the statement that any review may result in amendment or termination of this Agreement as provided herein. A finding by the City of good faith compliance by the Landowner with the terms of Agreement shall conclusively determine the issue up to and including the date of such review. Nothing in this Section shall be deemed to create a duty of responsibility of City or Landowner or define an event of default that but for such concurrent review would not have been so created or defined.

6.2 Failure to Comply in Good Faith. If the City Council makes a finding that the Landowner has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice to the Landowner describing: (i) such failure to comply with the terms and conditions of this Agreement (referenced to herein as a "Default"); (ii) the actions, if any, required by the Landowner to cure such Default; and (iii) the time period within which such Default must be cured. The Landowner shall have, at a minimum, thirty (30) business days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such thirty (30) day period but can be cured within one (1) year, the Landowner shall have commenced the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default within thirty (30) days from the date of notice. If the Default cannot be cured within one (1) year, as determined by the City during periodic or special review, the City Council may modify or terminate this, Agreement as provided in Section 6.4 and Section 6.5.

6.3 Failure to Cure Default. If the Landowner fails to cure a Default within the time periods set forth above, the City Council may modify or terminate this Agreement as provided below.

6.4 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.2 and the expiration of the cure period, the City determines to proceed with modification or termination of this Agreement, the City shall give written notice to the Landowner of its intention to do so. The notice shall be given at least fifteen (15) calendar days before the scheduled hearing and shall contain:

6.4.1 The time and place of the hearing;

6.4.2 A statement as to whether or not the City proposes to terminate or to modify the Agreement; and

6.4.3 Such other information as is reasonably necessary to inform the Landowner of the nature of the proceeding.

6.5 Hearings on Modification or Termination. At the time and place set for the hearing on modification or termination, the Landowner shall be given an opportunity to be heard, and the Landowner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on the issue shall be on the Landowner. If the City Council finds, based upon substantial evidence, that the Landowner has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City.

7. Permitted Delays.

7.1 Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party under this Agreement shall not be deemed to be in default where delays or, defaults are due to war, insurrection, strikes, lockouts, walkouts, drought, riots, floods, earthquakes, fire, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, restrictions imposed by governmental or quasigovernmental entities other than the City, unusually severe weather, acts of the other Party, acts or the failure to act of any public or government agency or entity other than the City, or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of cause. If, however, notice by the Party claiming such extension of time is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the joint agreement of the City and Landowner. Litigation attacking the validity of this Agreement, or any permit, ordinance, or entitlement or other action of a governmental agency necessary for the development of the Property pursuant to this Agreement shall also be deemed to create an excusable delay under this Section.

7.2 Supersededure by Subsequent Laws. If any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in the Landowner's reasonable business Judgment, then the Landowner shall have the right to terminate this Agreement by written notice to the City. The Landowner shall also have the right to challenge the new Law preventing compliance with the terms of this

Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

8. Termination.

8.1 City's Right to Terminate. The City shall have the right to terminate this Agreement if the Landowner is not in substantial compliance with the terms of this Agreement and this default remains uncured, all as set forth in Section 6.

8.2 Landowner's Right to Terminate. The Landowner shall have the right to terminate this Agreement only under the following circumstances:

8.2.1 The Landowner has found the City in breach of this Agreement, has given the City notice of such breach and the City has not cured such breach within thirty (30) days of receipt of such notice or, if the breach cannot reasonably be cured within such thirty (30) day period, if the City has not commenced to cure such breach within thirty (30) days of receipt of such notice and is not diligently proceeding to cure such breach.

8.2.2 The Landowner is unable to complete the Project because of supersedure by a subsequent law per Section 7.2 or court action.

8.2.3 The Landowner determines, in its business judgment, that it is not practical or reasonable to pursue development of the Property, however if termination occurs for this reason the City reserves the right to revoke any remaining entitlement to develop the property.

8.3 Mutual Agreement. This Agreement may be terminated upon the mutual Agreement of the Parties.

8.4 Effect of Termination.

8.4.1 General Effect. If this Agreement is terminated for any reason, such termination shall not affect any condition or obligation due to the City from the Landowner prior to the date of termination and such termination shall not otherwise affect any other City entitlement or approval with respect to the Property that has been granted prior to the date of termination.

8.5 Recordation of Termination. In the event of a termination, the City and Landowner agree to cooperate with one another in executing a Memorandum of Termination to record in the Official Records of Sutter County within thirty (30) days of the date of termination.

9. Remedies. Either Party may, in addition to any other rights or remedies, institute legal or equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the Parties hereto.

10. Waiver: Cumulative Remedies. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the

future. No waiver by a Party of an event of default shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such event of default. No express written waiver of any event of default shall affect any other event of default, or cover any other period of time, other than any event of default and/or period of time specified in such express waiver. Except as provided in this Section, all of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

11. Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties that the Project is a private development. This Agreement is made and entered into for the sole protection and benefit of the Landowner and the City and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement. The City and Landowner hereby renounce the existence of any third-party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third-party beneficiary status. No partnership, joint venture or other association of any kind is formed by this Agreement.

12. Cooperation in the Event of Legal Claim. In the event any legal action or proceeding is instituted by any third-party challenging the validity of any provision of this Agreement or any action or decision taken or made hereunder, the Parties shall cooperate in defending such action or proceeding.

13. Estoppel Certificate. Either Party may, at any time, and from time-to-time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the requesting Party has been found to be in compliance with this Agreement, and the date of the last determination of such compliance. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following receipt thereof. The Director shall have the right to execute any certificate requested by the Landowner hereunder. The City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

14. Right to Assign or Transfer. The Landowner's rights and responsibilities hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of the Property at any time during the term of this Agreement subject to the following conditions precedent:

14.1 No default by Developer shall be outstanding and uncured as of the effective date of the proposed transfer, unless the City Council has received adequate assurances satisfactory to the City Council that such default shall be cured in a timely manner either by Developer or the transferee under the transfer.

14.2 Prior to the effective date of the proposed transfer, Developer or the proposed transferee has delivered to the City an executed and acknowledged assignment and assumption agreement (the "Assumption Agreement") in recordable form. Such Assumption Agreement shall include provisions regarding: (a) the rights and interest proposed to be transferred to the proposed transferee; (b) the obligations of Developer under this Agreement that the proposed transferee will assume; and (c) the proposed transferee's acknowledgment that such transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity, and address of the proposed transferee, and shall provide that the transferee assumes the obligations of Developer to be assumed by the transferee in connection with the proposed transfer. The Assumption Agreement shall be recorded in the official records of the County of Sutter concurrently with the consummation of the transfer.

14.3 Prior to the effective date of the proposed transfer, the Developer must obtain the City's consent in writing to the transfer, which may be evidenced by the City Council's approval of an Assumption Agreement. City's consent shall not be unreasonably withheld. Factors the City may consider in determining whether to consent to the transfer include the financial capacity of the proposed transferee to comply with all of the terms of the Agreement and the history, if any, of compliance of transferee, its principals, officers or owners with the provisions of federal or state law, the Yuba City Municipal Code or agreements with the City relating to development projects within the City.

14.4 Mortgagee as Transferee. No Mortgage (including the execution and delivery thereof to the Mortgagee) shall constitute a transfer. A Mortgagee shall be a transferee only upon: (a) the acquisition by such Mortgagee of the affected interest of Developer encumbered by such Mortgagee's Mortgage; and (b) delivery to the City of an Assumption Agreement executed by the Mortgagee pursuant to which the Mortgagee assumes assuming, from and after the date such Mortgagee so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement. No further consent of the City shall be required for any such transfer to a Mortgagee.

14.5 Effect of Transfer. A transferee shall become a Party to this Agreement only with respect to the interest transferred to it under the transfer and then only to the extent set forth in the Assumption Agreement. If Developer transfers all of its rights, duties and obligations under this Agreement, Developer shall be released from any and all obligations accruing after the date of the transfer under this Agreement. If Developer effectuates a transfer as to only some but not all of its rights, duties and obligations under this Agreement, Developer shall be released only from its obligations accruing after the date of the transfer which the transferee assumes in the Assumption Agreement.

15 **Financing.** Mortgages, deeds of trust, sales and leasebacks, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Property ("Mortgages") are permitted without the consent of the City, provided the Landowner complies with the following:

15.1 **Mortgagee Protection.** This Agreement and any covenants entered into between the Developer and City shall be superior and senior to the conveyance of any Mortgage encumbering any interest in the Property. No default shall defeat, render invalid, diminish or impair the conveyance of any Mortgage made for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Property or any portion thereof or interest