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**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF REEDLEY**

**AND**

**DW LAND DEVELOPMENT, LLC**

**FOR**

**BLOSSOM TRAIL PROJECT**

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF REEDLEY  
AND DW LAND DEVELOPMENT HOMES, LLC  
FOR THE BLOSSOM TRAIL PROJECT**

This Development Agreement (“Development Agreement” and sometimes Agreement”), dated as of \_\_\_\_\_, 2010 (“Effective Date”), is entered into by and between the CITY OF REEDLEY, a California municipal corporation, (hereinafter “City”), \_\_\_\_\_, (hereinafter “Property Owner”), and DW Land Development, LLC., (hereinafter “Developer”), pursuant to section 65864 *et seq.* of the California Government Code and the City’s police powers. (Developer, Property Owner, and City are, from time to time, referred to individually in this Agreement as a “Party” and collectively as the “Parties”).

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

**RECITALS**

**A. Purpose.** 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.* (the “Development Agreement Law”) which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. This Agreement has been drafted and processed pursuant to the Development Agreement Law.

**B. Developer’s Interest in Property.** The Developer has an equitable interest in the Property (defined herein) in that it has the contractual right to purchase, in phases, approximately 40 acres of real property in the City from the Property Owner, known generally as the Blossom Trail Project, a part of the Barsoom Ranch located within the Sphere of Influence of the City of Reedley, which property is described in the Legal Description of the Property, attached hereto as Exhibit A-1, and shown on the map set forth in the Map of the Property, attached hereto as Exhibit A-2 (“Property”). The Property comprises all of the approximately 40 acres of property included in the Blossom Trail Land Use Plan attached hereto as Exhibit A-3.

**C. Planning Uses.** Consistent with the City of Reedley General Plan, Developer has proposed, and City has approved in the Project Approvals, the development of the Property as a new mixed-use community with residential, commercial, and park land uses as more specifically provided for in the Land Use Plan, together with construction, relocation, site preparation and installation of infrastructure (the “Project”).

**D. Project Approvals.** The Project Approvals (as applicable to the Project and the Property) include the following:

1. A Negative Declaration, prepared in accordance with California

Environmental Quality Act (California Public Resources Code section 21000 et seq) and approved by the City Council of Reedley by Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_ **{To be inserted at City Council Approval}**.

2. The Blossom Trail PUD, approved by the City Council of Reedley by Resolution No. \_\_\_\_ adopted on \_\_\_\_\_ **{To be inserted at City Council Approval}**.

3. General Plan map amendments approved by the City Council of Reedley Resolution No. \_\_\_\_ adopted on \_\_\_\_\_ **{To be inserted at City Council Approval}**.

4. Zoning Ordinance map amendments adopted by the City Council of the City of Reedley by Ordinance No. adopted on \_\_\_\_\_ **{To be inserted at City Council Approval}**.

5. A Tentative Map, including Conditions of Approval approved by the City Council of the City of Reedley by Ordinance No. adopted on \_\_\_\_\_ **{To be inserted at City Council Approval}**

6. This Development Agreement approved by the City Council of Reedley by Ordinance No. \_\_\_\_\_ adopted on \_\_\_\_\_ **{To be inserted at City Council Approval}** (the “Enacting Ordinance”).

7. All Subsequent Project Approvals, as defined below, immediately upon approval.

**E. Subsequent Project Approvals.** In addition to the Project Approvals, the Project will require various additional future land use and construction approvals and permits from City in connection with development of the Project (“Subsequent Project Approvals”), which shall be deemed to be part of the Project Approvals as they are approved. Subject to the terms and requirements of this Development Agreement, Developer may convey fee title interest in portions of the Property to affiliates or to third parties who will complete development of those portions of the Property. Developer may also convey portions of the Property to users who will apply to City, as needed, for required Subsequent Approvals to complete development of their portions of the Property. Following required public hearings, the City shall not deny or withhold approval of any and all applications for Subsequent Project Approvals that the City finds are consistent with the Project Approvals listed above and this Development Agreement. Notwithstanding the foregoing, Project Approvals and Subsequent Project Approvals do not include: (1) the PUD portion of the Project which will require additional submittals (e.g., elevations, floor plans) as required by the Reedley Municipal Code; no final map for the PUD portion of the Project can be accepted until after these submittals have been delivered, reviewed, and considered as provided in the Reedley Municipal Code; and (2) the multifamily phase of the Project which will require site plan approval and, potentially, a conditional use permit; and said approvals cannot be committed until application is made and additional submittals (e.g., elevations, floor plans) provided as required by the Reedley Municipal Code and the applications reviewed and considered as provided in the Reedley Municipal Code.

**F. Developer Requirements.** Developer desires to carry out the development of the Property as a mixed use development consistent with the General Plan, the Reedley Specific Plan, the Project Approvals and this Agreement. The complexity, magnitude and long term build-out of the Project would be difficult for Developer to undertake if the City had not determined, through this Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project. As a result of the execution of this Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project.

**G. City Interests.** City desires to advance the socio-economic interests of the City and its residents by encouraging quality development, economic growth, housing and mixed use development in the incorporated portion of the Blossom Trail Project, thereby enhancing housing and employment opportunities for residents and expanding the City's tax base. City is also desirous of creating a range of housing opportunities in Reedley serving all economic segments of the population by providing below market rate housing. The City is also desirous of encouraging development that maintains a healthy environment for its citizens and future residents. City is also desirous of gaining the public benefits of the Project under the Project Approvals and this Agreement, which are in addition to those dedications, conditions and exactions required by laws or regulations, and which advance the planning objectives of, and provide benefits to, the City.

**H. City Council Findings.** City has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code Section 65857. As required by Government Code Section 65867.5, City has found that the provisions of this Development Agreement and its purposes is consistent with the public health, safety and general welfare of the City and that all of its provisions are consistent with the goals, policies, standards and land use designations specified in the General Plan, as well as all other applicable plans, policies and regulations of the City.

**I. Compliance with CEQA.** The environmental impacts of the Project including the Development Approvals and the Subsequent Development Approvals have properly been reviewed and assessed by City pursuant to California Environmental Quality Act, Public Resources Code section 21000 et seq.; California Code of Regulations Title 14, section 15000 et seq. (collectively, "CEQA"). On \_\_\_\_\_, pursuant to CEQA and following consideration of the recommendations of the Planning Commission, the City Council approved a Negative Declaration covering the Blossom Trail Project.

**J. Enacting Ordinance.** On \_\_\_\_\_, \_\_\_\_\_, the City of Reedley Planning Commission (the "Planning Commission"), the initial hearing body for purposes of Development Agreement review, recommended approval of this Development Agreement pursuant to Resolution No. **{To be inserted upon approval by the Planning Commission}**. On \_\_\_\_\_, \_\_\_\_\_, the City Council of City adopted its Ordinance No. \_\_\_\_\_ approving

this Development Agreement and authorizing its execution, and that Ordinance (“Enacting Ordinance”) became effective on, \_\_\_\_\_, \_\_\_\_\_{To be inserted at City Council Approval}.

**K. Project Provides Substantial Benefits.** For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Project Approvals and Subsequent Project Approvals, thereby encouraging planning for, investment in and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial employment and tax benefits, housing, and other public benefits to City, and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

**L. Applicability to Property.** This Agreement shall be applicable to the Property and portions thereof and Developer shall be bound by the terms hereof.

## **SECTION 1 ADMINISTRATION**

**1.1 Definitions.** As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section. To the extent that any capitalized terms contained in this Agreement are not defined below, then such terms shall have the meaning otherwise ascribed to them in this Agreement or Applicable City Regulations.

**1.1.1** “Administrative Amendment” shall have the meaning set forth in Section 3.1.7.

**1.1.2** “Affiliate” means any limited liability company, partnership, joint venture, trust, or corporation who now or hereafter (a) is a member of Developer; (b) directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, the Developer; or (c) in which fifty percent (50%) or more of the equity interest of which is held beneficially or of record by the Developer, as the context may require; or (d) is Controlled by or under the day-to-day management of a member of Developer.

**1.1.3** “Agreement” shall mean this Development Agreement, as set forth in the preamble of this Agreement.

**1.1.4** “Applicable City Regulations” shall mean all of the following to the extent the following do not conflict with or are not inconsistent with the Project Approvals: The rules, regulations, ordinances, and official policies of the City (whether adopted by the City Council, the Planning Commission, or the voters of the City) existing on the Effective Date governing the permitted uses of the land, density, design, improvement, and construction standards and specifications, applicable to development of the Property. Applicable City Regulations, may include in whole or in part without limitation, (i) the General Plan, Specific Plan, and the Municipal Code (including standard specifications, design standards, and relevant public facility master plans), (ii) Exactions listed on Exhibit C to this Agreement; and (iii) all other City laws

that relate to or specify the permitted uses of land or improvements, the density or intensity of use, the subdivision of land for development, that are existing and in effect on the Effective Date; and (iv) all those existing and approved permits, entitlements, agreements, and other grants of approval having force and effect on the Effective Date relating to the Project and Property, including without limitation their text, terms and conditions of approval. A list of Applicable City Regulations, other than the Exactions and the Project Approvals, is set forth in Exhibit B to this Agreement. Exceptions to Applicable City Regulations include Construction Codes (as defined in Section 1.1.8 and referenced in Section 2.3), and the application of New City Laws (as defined in Section 1.1.22) permitted under Sections 2.4.1 and 2.4.5.

**1.1.5** “CEQA” shall mean the California Environmental Quality Act, California Public Resources Code Section 2100, et seq., and the State CEQA Guidelines, (California Code of Regulations, Title 14, Section 15000, et seq.), as each is amended from time to time.

**1.1.6** “City” shall mean the City of Reedley.

**1.1.7** “City Council” shall mean the City Council of the City of Reedley.

**1.1.8** “Construction Codes” shall mean the Uniform Administrative Code, the International Building Code, and any other recognized uniform construction, fire and other codes applicable to improvements, structures and development in the City, and the applicable version or revision of such codes.

**1.1.9** “Control” means the possession, directly or indirectly, of the power to cause the direction of the management and policies of any entity including but not limited to a limited liability company, a partnership, a joint venture, a trust, or a corporation, whether through the ownership of voting securities, by contract, or otherwise.

**1.1.10** “Developer” shall mean DW Land Development, LLC, and, subject to Section 5.3, its successors and assigns.

**1.1.11** “Development Agreement Law” shall have the meaning given in Recital A.

**1.1.12** [Blank]

**1.1.13** [Blank]

**1.1.14** “Effective Date” shall mean the date determined under Section 1.2.1.

**1.1.15** “Enacting Ordinance” shall mean the Ordinance Approving this Agreement as first referenced in Recital K of this Agreement.

**1.1.16** “Exactions” shall have the meaning given in Section 2.7.1

**1.1.17** “Force Majeure Event” shall mean a delay in performance beyond the

control of the Party claiming the same. For the purpose of this definition, a cause shall be beyond the control of the Party whose performance would otherwise be required only if such cause would prevent or hinder the performance of such a requirement by any reasonable person similarly situated and shall not apply to causes peculiar to the Party claiming the benefit of a Force Majeure Event (such as the failure to order materials in a timely fashion). A Force Majeure Event shall include, without limitation, any of the reasons set forth in this Section 1.1.17: (a) delay attributable to acts of God, accident, strikes or labor disturbances or disputes which directly involve the Developer or the Project, (b) unreasonable delay attributable to the actions or inaction of any governmental agency including the City that unreasonably delays development of the Property, (c) unreasonable delays of the City in processing any Project Approval beyond the period of time permitted by law or required by this Agreement for the processing of such Project Approval or Subsequent Project Approvals, (d) delay attributable to inclement weather, earthquake or other natural disaster resulting in suspension of Project work for safety purposes, e.g., heavy rainfall, (e) delay attributable to Developer's inability after diligent effort to procure or a general shortage of labor, equipment, materials or supplies in the open market, rationing or restrictions on the use of utilities, or failure of transportation (but not attributable to a mere increase in price unless such price is commercially unreasonable and will extend for a period of time under the circumstances), (f) delay caused by acts of a public enemy, war, terrorism, insurrections, civil disturbance, riots, mob violence, sabotage, malicious mischief, or casualty, (g) delay attributable to a development moratorium (including but not limited to a sewer or water moratorium) approved by the City or other entity having jurisdiction, (h) delay caused by litigation or administrative action preventing or delaying the approval or development of the Project or adversely affecting the ability of the City or other public entity or the Developer or its successors or assigns to obtain financing for the Project, (i) delay attributable to local, state or federal laws or regulations (other than those expressly permitted by this Development Agreement), (j) delay attributable to governmental agencies in issuing permits or approvals or taking other actions required for development of the Project, (k) delay attributable to the commencement of circulation of an initiative or referendum petition or the filing of any court action to set aside or modify this Development Agreement, the Project Approvals or any Subsequent Project approvals, (l) delay attributable to insufficient water or sewer capacity available to serve the Project or any phase or portion thereof, or (m) any delay claimed by a Party in the performance of any term, covenant, condition or obligation under this Agreement caused by a default of the other Party.

**1.1.18** "General Plan" shall mean the 2012 City of Reedley General Plan.

**1.1.19** "Moratorium" shall mean any action by or on behalf of the City or another public entity having jurisdiction (including but not limited to action taken by virtue of an initiative) which delays or halts the processing or approval of subdivision maps, building permits or other Project Approvals.

**1.1.20** "Municipal Code" shall mean the City of Reedley Municipal Code.

**1.1.21** "New City Laws" shall mean any ordinances, resolutions, orders, rules, official policies, standards, specifications or other regulations, which are promulgated or adopted by the City or its electorate (through their power of initiative or otherwise) after the Effective

Date. The application of New City Laws to the Project shall be governed by Sections 2.4.1 and 2.4.5.

**1.1.22** “Non-Curable Default” shall mean a default for which a cure period shall not exist, as set forth in Section 4.1.2.

**1.1.23** “Planning Commission” shall mean the Planning Commission for the City of Reedley.

**1.1.24** “Project” shall mean the project commonly known as “Blossom Trail” which is proposed to be constructed on the Property as more fully described in Recital C.

**1.1.25** “Project Approvals” shall mean the permits and approvals granted by the City for the Project, including each Subsequent Project Approval, as set forth in Recital D.

**1.1.26** “Property” shall mean the real property described in Exhibits A-1 and A-2 attached and incorporated herein by this reference.

**1.1.27** “Processing Fees” shall have the meaning given in Section 2.7.3.

**1.1.28** “Rights of Access” shall mean the right of Developer to enter or encroach on certain public improvements as set forth in Section 2.9.

**1.1.29** “Specific Plan” shall mean the City of Reedley Specific Plan as adopted by the City Council, and amended from time to time.

**1.1.30** “Community Development Director” shall mean that City official designated with such title or his or her designated representative and any City official who is authorized to assume and carry out the duties of such official under the same or a different title.

**1.1.31** “Subsequent Project Approvals” shall have the meaning given in Recital E.

**1.1.32** “Subdivision Map Act” means that legislation set forth in California Government Code Sections 66410 through 66499.58.

**1.1.33** “Tentative Map” shall mean one or more tentative subdivision maps, whether a vesting tentative map or not, for the Property, including Conditions of Approval.

**1.1.34** “Term” shall have that meaning as set forth in Section 1.2.2 of this Agreement.

**1.1.35** “Vested Elements” shall have that meaning as set forth in Section 2.1.1 of this Agreement.

## 1.2 Effective Date and Term.

**1.2.1** The Effective Date of this Agreement shall be the date that the Enacting Ordinance has become final, which is inserted at the beginning of this Agreement.

**1.2.2** The Term of this Agreement shall commence on the Effective Date and shall continue for a period of nine (9) years, and then terminate at 12:01 a.m., on **{Date to be inserted as effective date of the Enacting Ordinance}** (as may be extended, the “Term”), unless this Agreement is otherwise terminated or extended in accordance with the provision of this Agreement. The Term has been established by the Parties as a reasonable estimate of the time required to develop and build out the Project taking into consideration the phasing complexity of the Project, anticipated actions of other public agencies, normal market and economic conditions and other contemplated potential circumstances which could affect the timing of development. Notwithstanding the foregoing, the Term of this Agreement shall be automatically extended on the mutual agreement of the parties for the period that development is prevented or delayed, in whole or in part, due to a Force Majeure Event in accordance with Section 4.6. Following the occurrence of a Force Majeure Event and the passage of time giving rise to an extension of this Agreement, upon request of the Developer and the concurrence of the City Manager, the Developer and the City Manager shall extend, in writing, as a ministerial act, the Term of this Agreement in the form of an Administrative Amendment under Section 3.1.7 hereof, which extension shall be recorded in the Official Records of Fresno County Recorder. All other extensions shall require City Council approval, following public hearings by the Planning Commission and City Council.

**1.2.3** Section 65868.5 of the Development Agreement Law requires that this Agreement be recorded with the County Recorder no later than 10 days after the Effective Date, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

**1.2.4** This Agreement shall terminate as to each individual residential unit and lot and each non-residential building and the lot or site thereof on the date a Certificate of Occupancy is issued for such individual residential unit or non-residential building; provided, however, such termination shall not affect the rights or obligations of the Parties as to the remainder of the Property, which rights and obligations shall continue during the Term.

**1.2.5** In accordance with Government Code Section 66452.6(a), the term of any Tentative Map, including modifications or amendments thereto, relating to the Property or any portion thereof shall automatically be extended to and until the later of the following: (1) the duration of this Agreement; or (2) the expiration of the tentative map in accordance with the Subdivision Map Act without reference to any extension given under this Agreement.

**1.2.6** If this Agreement terminates for any reason before expiration of rights given under the Project Approvals or any Tentative Map pursuant to the Subdivision Map Act, such termination shall not affect Developer’s rights to proceed in accordance with the law governing such Project Approvals and/or Tentative Map. If this Agreement terminates for any reason, including expiration of the Term, the rules, regulations and policies specified in the

Development Agreement and Project approvals shall continue to govern the Project unless the City has previously specifically amended such rules, regulations and policies until such time as the City amends such rules, regulations and policies.

**1.2.7** The term of any and all Project Approvals may be extended by mutual agreement for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals.

## **SECTION 2 DEVELOPMENT OF THE PROPERTY**

### **2.1 Vested Rights.**

**2.1.1** The permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, the subdivision of land and requirements for infrastructure and public improvements, access to, and availability of the City's water, sewer, wastewater, storm drain and other applicable public utilities and infrastructure necessary to serve the Project, the general location of public utilities, and other terms and conditions of development of the Property shall be governed by the Project Approvals, Applicable City Regulations and this Development Agreement (collectively "Vested Elements"), except as expressly provided in this Agreement.

**2.2** Applicable City Regulations. The City shall have the right to regulate the development of the Property and uses within the Project pursuant to those laws, rules, regulations and official policies of City applicable to the Project at the time of execution of this Development Agreement which are listed in Exhibit B hereto, if, and only to the extent, such regulations do not conflict with or are not inconsistent with the Project Approvals. The parties agree that any density bonuses, incentives, concessions, waivers and reductions, reduced parking and all other incentives of any kind whatsoever that the Developer may be eligible for pursuant to the City's Density Bonus Ordinance and Government Code Section 65915 et seq. shall be waived unless set forth in the Below Market Rate Housing Agreement to be entered into by the Developer and the City pursuant to Section 2.17 of this Agreement.

**2.3** Construction Codes. In the construction of the Project, Developer shall be subject as to each particular improvement, to all Construction Codes in force and effect when a building, grading or other application for a building permit or equivalent permit is granted by the City, provided the following conditions are satisfied:

**2.3.1** The Construction Codes shall be interpreted and applied in a reasonable manner consistent with the express provisions and limits in the particular Construction Codes adopted by City; and

**2.3.2** The provisions of the Construction Codes shall be interpreted and applied to the Project in a manner consistent with the generally prevailing standards of interpretation of such provisions under the State Building Standards Code.

## **2.4 Applicability of New City Laws.**

**2.4.1** New City Laws (including referendums and initiatives, and amendments to Applicable City Regulations) shall not be applicable to the Property unless such New City Laws are (a) not inconsistent with the Vested Elements or the terms of this Agreement or (b) meet one of the following requirements: (i) they are mandated by State or Federal law pursuant to Section 2.4.6; or (ii) they are required for reasons of public health or safety, based on findings by the City Council supported by substantial evidence, that the failure of the City to do so would place the residents of the Property, or the residents of the City, or both, in a condition dangerous to their health or safety; provided, however, that no rent control or price control laws or regulations shall be applicable to the Property.

**2.4.2** Either Party shall have the right to challenge the application under subsections (a) and (b) of Section 2.4.1 of New City Laws to the Project. If Developer believes that the application by the City of a New City Law to the Project is inconsistent with the Vested Elements or the terms of this Agreement, Developer shall give written notice to the City of the inconsistency in accordance with Section 6.8 of this Agreement. Developer's written notice shall inform the City of the factual and legal reasons why Developer believes the City cannot apply the New City Law to the Project consistent with the Vested Elements and this Agreement. The City shall respond to Developer's notice within forty-five (45) days of receipt of such notice. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City's response with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution is reached at the conclusion of the meet-and-confer period, the Parties may initiate dispute resolution proceedings in accordance with Section 4.4 below, or Developer may initiate a legal action or proceeding challenging such application. If it is determined at the conclusion of such dispute resolution process or legal action that such New City Laws apply to the Project, and if such New City Laws have the effect of substantially and materially preventing development of the Project in accordance with the Vested Elements (i) the Parties shall process an amendment to this Agreement in accordance with the Development Agreement Law, and/or (ii) the Parties shall amend the Project Approvals or amend the Applicable City Regulations without amending this Development Agreement to allow the Project to be built as originally intended.

**2.4.3** The limitation in Section 2.4.1 shall not be construed to interfere with City's right to adopt or apply the New City Laws with regard to any areas of City except for the Property.

**2.4.4** There shall be a rebuttable presumption that any New City Laws affecting the Project and having any of the following effects shall be considered inconsistent with the Vested Elements and this Agreement:

**2.4.4.1** Limiting or reducing, directly or indirectly, the total number of Residential Units in the Project.

**2.4.4.2** Limiting or materially changing the location of Residential Units, buildings, grading, or other improvements on the Property.

**2.4.4.3** Imposing new or additional dedication requirements or materially affecting the costs of infrastructure and/or public improvements to be provided by Developer.

**2.4.4.4** Imposition of a Moratorium. This limitation on the City shall not apply when a Moratorium meets the requirements of Section 2.4.1 for application of New City Laws to the Property; provided that the application of any such Moratorium to the Property shall be limited in both scope and time to only effectuate the purpose for which it was imposed.

**2.4.4.5** Materially frustrating the intent or purpose of the Vested Elements or otherwise materially increasing the costs of the Project, including costs of lots and improvements.

**2.4.4.6** Limiting, reducing, or eliminating, directly or indirectly, access to the City's water, sewer, storm drain, and wastewater treatment infrastructure.

**2.4.5** Developer, by giving written notice to the City, may elect to have all or part of the Property subject to any New City Laws that are otherwise not applicable to the Property under Section 2.4.1. In the event Developer so elects, Developer shall provide written notice to the City of that election (such notice to be provided pursuant to this Agreement) and thereafter such New City Law shall be deemed part of the Applicable City Regulations.

**2.4.6** In the event State or Federal laws or regulations enacted after the Effective Date of this Development Agreement or action by any other governmental agency other than City prevent or preclude compliance with one or more provisions of the Vested Elements or this Development Agreement, or require changes in plans, maps or permits approved by City, this Development Agreement shall be modified, extended or suspended as may be necessary to comply with such State or Federal laws or regulations or the regulations of such other governmental agency. Immediately after enactment of any such new law or regulation, the Parties shall meet and confer in good faith to determine the necessity of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Development Agreement. It is the intent of the Parties that any such modification or suspension be limited to that which is necessary, and to preserve to the extent possible the original intent of the Parties in entering into this Development Agreement. If such modification or suspension is infeasible or the City does not fairly adjust the Development Agreement to allow close as possible the original intent of the Development Agreement, then either party shall have the right, at its sole election, to either: (1) submit the issue of whether City has acted in an arbitrary, capricious or unreasonable manner under this section to dispute resolution pursuant to Section 4.4, or (2) initiate a legal action or proceeding, or (3) to terminate this Development Agreement by written notice.

**2.4.7** The Property shall be exempt from, any law, regulation or policy imposing rental or sale restrictions on residential units and/or any requirements for provision of affordable rental or for-sale housing, or any in-lieu fee, exaction, dedication, tax or other requirement for such purposes. No price control, rent control or housing affordability criteria imposed by the City through Council action or by initiative or otherwise shall be applicable to the Property during the

period in which any contractual provisions or deed restrictions recorded against any portion of the Property limiting its use, occupancy, rental or sale based upon affordability criteria remain in effect.

## **2.5 Processing and Inspection.**

**2.5.1** A subdivision, as defined in Government Code Section 66473.7, shall not be approved unless any tentative map for the subdivision complies with the provisions of said Section 66473.7. This provision is included in this Agreement to comply with Section 65867.5 of the Development Agreement Law.

**2.5.2** The City shall promptly accept, process, review and act upon all applications for permits and approvals for the Project, in a professional, timely manner including Subsequent Project Approvals under Section 2.8. hereof. City shall insure that adequate staff is available to timely process all applications for permits and approvals for the Project. Upon request of the Developer, the City shall inform the Developer of the necessary application requirements for any requested City approval or requirement relating to the Project.

**2.5.3** City and Developer shall cooperate in processing all applications for permits and approvals for the Project, provided, however, that such cooperation shall not include any obligation, on the City's part, to incur any un-reimbursed expense, and the City shall be entitled, subject to the terms of this Agreement and Developer's rights hereunder, to exercise all discretion to which it is entitled by law in processing and issuing any permits and approvals for the Project.

**2.5.4** The Parties shall cooperate and diligently work to implement any zoning, tentative map, final development plan and/or land use, grading or building permits or approvals which are necessary or desirable in connection with the development of the Project in substantial conformance with the Vested Elements.

**2.5.5** Notwithstanding any administrative or judicial proceedings, initiative or referendum concerning any of the Project Approvals, City shall process applications for permits, and approvals as provided herein to the fullest extent allowed by law and Developer may proceed with development of the Project pursuant to the Project Approvals or Subsequent Project Approvals to the fullest extent allowed by law. City shall be entitled, subject to the terms of this Agreement and Developer's rights hereunder, to exercise all discretion to which it is entitled by law in processing and issuing any permits and approvals for the Project.

## **2.6 Development Timing.**

**2.6.1** The Parties acknowledge that Developer cannot at this time predict when or the rate at which the Project will be developed or the order in which the Project will be developed. Such decisions depend upon numerous factors which are not within the control of the Developer, market conditions and demand, interest rates, absorption, and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Ca1.3d 465 (1984), that the failure of

the Parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that, unless otherwise expressly so provided in this Agreement, Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment provided Developer is in compliance with the Project Approvals, provided, however, nothing herein shall override any phasing or timing for development set forth in the Tentative Map Conditions of Approval.

**2.6.2** The Tentative Map Conditions of Approval are intended to assure the timely provision of adequate infrastructure and services, including but not limited to water supplies, sewer, storm-water drainage, and streets, including emergency access.

**2.7** Impact Fees, Dedications and Processing Fees.

**2.7.1** Except as provided in Sections 2.7.2 and 2.7.3, City shall impose or exact only those taxes, assessments, development impact fees, other fees, mitigations on the Project (collectively, "Exactions") set forth in Exhibit C attached and incorporated herein by this reference and City shall not impose or exact any new, increased or modified Exactions on the Project, the Property or Developer, whether through the exercise of the police power, the taxing power, or any other means.

**2.7.2** Notwithstanding Section 2.7.1, the Property shall remain subject to general property taxes existing as of the Effective Date and to increases in such taxes permitted by law and Developer shall be obligated to incur Exactions in addition to those set forth in Exhibit C that may be imposed pursuant to State or Federal law, under the provisions of Section 2.4.6.

**2.7.3** Developer shall be obligated to pay only those processing fees, including application, plan check, map review, inspection and monitoring fees and fees of outside consultants, for land use approvals, grading and building permits, and other permits and entitlements ("Processing Fees") in connection with the Project as set forth in Exhibit D, provided, however, the Developer may request expedited processing for any approval, plan check, map review, or inspection or other services. If the City is able to accommodate expedited processing, the Developer shall pay any increased costs incurred by the City to accommodate the request for expediting.

**2.8** Subsequent Project Approvals. City may deny an application for a Subsequent Project Approval only if such application does not comply with this Agreement or Applicable City Regulations or is materially inconsistent with the Project Approvals. City may approve an application for a Subsequent Project Approval subject to any conditions reasonably necessary to bring the Subsequent Project Approval into compliance with this Agreement or Applicable City Regulations, or as necessary to make the Subsequent Project Approval consistent with the Project Approvals. If City denies any application for a Subsequent Project Approval, City shall specify in writing the reasons for such denial and suggest a modification consistent with this Agreement, the Project Approvals and Applicable City Regulations that would permit approval.

City shall respond to an application for a Subsequent Project Approval within sixty (60) calendar days of receiving such application. The City's response shall either state that the application as submitted is complete, or include a comprehensive and specific list of additional information required to complete the application. The City may require only such additional information as needed in order for the Subsequent Project Approval to comply with this Agreement, Project Approvals, or Applicable City Regulations. Once the applicant has submitted the required additional information listed in the City's initial response, the application shall be considered complete. Once an application for a Subsequent Project Approval is complete, the City shall consider said application within the next sixty (60) calendar days. Should the City choose not to respond to an application for a Subsequent Project Approval within sixty (60) calendar days of receiving an application, such application shall be deemed complete. Additionally, should the City choose not to consider the application within sixty (60) calendar days of such application being complete, the application shall be considered approved.

## **2.9 Streets and Related Easements.**

**2.9.1** Except as described below in Section 2.9.3, Developer shall improve or cause to be improved certain streets as specified in the Tentative Map to be dedicated as public streets and these streets shall be accepted upon completion by the City and maintained by the City upon expiration of the Developer's one year warranty period. Streets or alleys not specified on the Tentative Map to be dedicated shall remain private property, and shall be maintained by the Developer or by a homeowners' association or other equivalent assessment district, and use of such streets or alleys by the public shall be permissive only.

**2.9.2** The City shall grant to Developer Rights of Access subject to City's standard conditions for such Right of Access as may be necessary across, under, and over the surface and subsurface of all City streets as may be required from time to time for construction and installation of the following improvements:

**2.9.2.1** Gas, electricity, water, wastewater, drainage, telephone, cable media, computer, security, telecommunications, and all other utilities, facilities, Alta Irrigation District facilities, and like improvements (including without limitation their related conduits, wires, lines, pipes, mains, pumps, meters and other structures, stations and improvements) necessary or desirous to the Project; and

**2.9.2.2** Construction, paving, striping, cleaning, and repairing streets within the Project.

## **2.9.3 Tobu Avenue.**

**2.9.3.1** According to the Reedley General Plan, an eighty-six (86) foot right of way ("ROW") is required to be dedicated for public use. The Developer shall dedicate and construct the full street and right of way.

**2.9.3.2** City agrees to reimburse Developer for one third (1/3) of the Developer's cost of acquiring the eighty-six (86) foot ROW. The Developer's cost shall be

supported by a copy of the closing statement from escrow which shows the purchase price.

2.9.3.3 City agrees to reimburse Developer for one-half (1/2) of cost to improve Tobu Avenue, including curb-to-curb improvements, but excluding the cost of underground utilities, storm water, and water facilities and excluding the cost of landscaping, irrigation systems, and sidewalk on the east side of Tobu Avenue.

## **2.10 Improvement Plan Processing.**

**2.10.1** In any instance where Developer is required to install improvements that are subject to inspection and approval by the City, Developer shall obtain City approval of the plans and specifications, and provided Developer has supplied all information required by the City, the City shall promptly review and act on the application for such approval in a diligent manner in accordance with the timelines in Section 2.8.. The commentary on plans shall specify the changes required to comply with City regulations. Developer shall correct the plans as requested or shall explain in writing why any changes were not made, or deviated from the changes requested by the City.

**2.11 Significant Actions by Third Parties Necessary for Approval.** At Developer's sole discretion, but consistent with the Project Approvals, Developer may apply for such other permits, grants of authority, agreements, and other approvals from other private, public and quasi-public agencies, organizations, associations or other public entities as may be necessary to the development of, or the provision of services and facilities to, the Project. The City shall cooperate with Developer in its endeavors to obtain such permits and approvals.

**2.12 Cooperation of Parties.** Each of the Parties shall act toward each other and the tasks necessary or desirous to the Project in a fair, diligent, expeditious and reasonable manner (except in those cases where a Party is given sole discretion under this Agreement), and no Party shall take any action that will unreasonably prohibit, impair or impede the other Party's exercise or enjoyment of its rights and obligations secured through this Agreement. This agreement to cooperate shall not require either Party to incur any un-reimbursed expenses.

**2.13 Eminent Domain.** The City acknowledges that use of its eminent domain powers may be necessary to facilitate implementation of the Subsequent Project Approvals. Developer acknowledges the City must comply with Title 7 of the California Code of Civil Procedure prior to exercising its eminent domain powers. Developer agrees to reimburse the City for all costs and attorneys' fees that may be expended by the City should the City exercise such powers to facilitate implementation of the Subsequent Project Approvals in accordance with such laws.

**2.14 Developer's Right to Rebuild.** City agrees that Developer may renovate or rebuild portions of the Project within the Term of this Agreement should it become necessary due to natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

**2.15** Municipal Services Financing. The City has determined that the economic impact of the Project on the City will be fiscally beneficial, provided that the maintenance of infrastructure is shared between the City General Fund and the Project as follows:

**2.15.1** Assessment District-Maintained Streets, Alleys, Open Space Areas. An assessment district shall maintain all landscaped improvements, including the trees, and irrigation systems within all public streets, and parkway strips within the Project listed below as City-maintained streets, parks and recreational areas.

**2.15.2** City-Maintained Streets. The City shall maintain all surface improvements including the trees and landscaping within the Right of Way (all of the area dedicated to public use for public street purposes including, without limitation, roadways, medians, sidewalks and curbs).

**2.15.3** City-Maintained Parks. The City shall maintain all of the improvements within Tentative Map Parcel \_\_\_\_\_ including the trees and landscaping between the property line of the parcel and the back of curb.

**2.15.4** Construction and Dedication of Parks and Streets. The Developer shall construct or install all improvements within both the City-maintained areas and the assessment district maintained areas described in Section 2.16.1, 2.16.2 and 2.16.3 above. The park shall incorporate those facilities listed in the conditions of approval of the Blossom Trail Tentative Map. All planted areas within the City-maintained areas shall be maintained by the Developer for one year following the City acceptance of the subdivision improvements.

### **SECTION 3 AMENDMENT OF AGREEMENT AND SUBSEQUENT APPROVALS**

**3.1** Amendment of Project Approvals. The Project Approvals from time to time, may be modified in the following manner:

**3.1.1** Amendment to this Agreement Not Contemplated. Subsequent Project Approvals and (except as expressly provided below) modifications to Project Approvals shall not require an amendment to the terms of this Agreement, and the terms of this Agreement shall apply to all Subsequent Project Approvals and amendments to modifications to Project Approvals, without any further action of the Parties.

**3.1.2** Determination of Need for an Amendment. Upon the written request of the Developer, the City Attorney shall determine whether any requested modification of the Project Approvals requires an amendment to the terms of this Agreement. If the City Attorney finds that the proposed modification does not result in a material change to the terms of this Agreement, the modification may be approved without amendment of this Agreement.

**3.1.3** Processing of Amendments. Any request by the Developer for a

modification of the Project Approvals that is determined by the City Attorney to require an amendment to this Agreement shall be processed as an amendment to this Agreement in accordance with the Development Agreement Law, subject to Developer's right to initiate dispute resolution proceedings as set forth in Section 4.4.

**3.1.4 Administrative Approval of Project Modifications.** Minor modifications to Project Approvals may be recommended by the Community Development Director to the City Manager for approval as an administrative amendment to this Agreement, without notice, hearing, CEQA review, or formal action by a commission or board or the City Council, such as: lot line and parcel adjustments, changes in vehicle circulation or access not materially affecting capacity or service levels, changes in landscaping, location of utilities or other infrastructure not materially affecting design concepts; provided, however, prior to recommending any such minor modification administratively, the Community Development Director shall confirm with the City Manager or his or her designee, that such modifications are consistent with the Project Approvals, this Agreement, the City's General Plan and the Applicable City Regulations.

**3.1.5 CEQA Review.** The City has conducted extensive environmental review of the Project Approvals and has adopted a Negative Declaration pursuant to the requirements of CEQA. Additionally, all anticipated Subsequent Project Approvals and their impacts, if any, were addressed in the adopted Negative Declaration. Therefore, the City shall process Subsequent Project Approvals under the existing CEQA approvals (or as a supplement to the existing CEQA approvals) and shall not require further CEQA analysis. Specifically, the adopted Negative Declaration addresses: site plan review and build out all commercial lots, site plan review and build-out of multiple-family apartment lot, and PUD and Tract Map for "Outlot". Notwithstanding any other provision of this Agreement, nothing contained in this Agreement is intended to limit or restrict the discretion of the City to take any appropriate action as may be required by CEQA with respect to any such discretionary Subsequent Project Approvals.

**3.1.6 Amendment of This Agreement.** This Agreement may be amended from time to time in accordance with the Development Agreement Law, only upon the mutual written consent of the City and Developer.

**3.1.7 Administrative Amendments to this Agreement.** At the City Manager's discretion, this Agreement may be amended or clarified by an Administrative Amendment upon mutual consent of the City Manager upon the recommendation of the Community Development Director and Developer, without requirement of notice, hearing or adoption of an ordinance, for minor or clarifying changes or interpretations or to extend the Term of this Development Agreement pursuant to Section 1.2.2 hereof, provided, however, prior to recommending any such amendments to the City Manager, the Community Development Director has confirmed with the City Attorney that such amendments are consistent with the Project Approvals, the City's General Plan and the purposes and provisions of this Agreement.

## **SECTION 4 DEFAULT, REMEDIES, TERMINATION**

### **4.1 Defaults.**

**4.1.1** Except for Non-curable Defaults, any failure by the City or Developer to perform any term or provision of this Agreement, which failure continues uncured for a period of ninety (90) days following written notice of such failure from the other Party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure may be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 90-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, provided that if the cure is not diligently prosecuted to completion, the default shall continue and no additional cure period shall be provided. If the alleged failure is cured, then no default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under Section 4.3.

**4.1.2** Any Assignment or other transfer in violation of Section 5 shall be considered a Non-curable Default.

**4.1.3** No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, provision of notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any Default.

**4.2** Actions During Cure Period. During any cure period specified under Section 4.1.1 and during any period prior to delivery of any notice of default, the Party charged shall not be considered in default for purposes of this 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 the Agreement as provided herein.

**4.3** Remedies for Non-Defaulting Party.

**4.3.1** In the event either Party is in default under the terms of this Agreement, subject to any applicable requirements of Section 4.4, the other Party may elect to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided in this Agreement; and (iii) pursue any judicial remedies available. In the event a default by the City delays or impairs development of the Project, then in addition to all other remedies at law, the Term of this Agreement (and the duration of any Vested Elements and/or Project Approvals) shall be extended to include the full period of such delay or impairment, in addition to the duration of any administrative or judicial proceedings in connection with such default (“Default Extension”).

**4.3.2** Unless otherwise provided in this Agreement, either Party, in addition to any other rights or remedies, may institute legal action, pursuant to Section 4.4.2, to cure, correct, or remedy any default by the other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific

performance. The Term of this Agreement shall be extended for the period of such legal action, including any appeals.

#### **4.4 Dispute Resolution; Legal Action.**

**4.4.1 Mediation.** Except as otherwise provided herein, no action or proceeding with respect to any dispute, claim or controversy arising out of or relating to this Agreement (“Dispute”) may be commenced until the matter has been submitted for mediation. Either Party may commence mediation by providing to the other Party a written request for mediation, setting forth the subject of the Dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediator, and in scheduling the mediation proceedings in Fresno County (unless otherwise agreed by the Parties). The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither Party may commence a civil action or proceeding with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action or proceeding, if the Parties so desire. The provisions of this Section 4.4.1 may be enforced by any court of competent jurisdiction, and the Party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys’ fees, to be paid by the Party against whom enforcement is ordered.

**4.4.2 Judicial Reference.** If the mediation required under the provisions of this Agreement has not resolved the Dispute and any Party to this Agreement commences an action or proceeding relating to a Dispute, all the issues in such action or proceeding, whether of fact or law, shall be resolved by judicial reference pursuant to the provisions of Code of Civil Procedure Sections 638.1 and 641 through 645.1. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The following shall apply to any such proceedings:

**4.4.2.1** The proceeding shall be brought and held in Fresno County, unless the Parties agree to an alternative venue.

**4.4.2.2** The referee shall be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

**4.4.2.3** The Parties shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon. Any dispute regarding the selection of the referee shall be resolved by the court in accordance with California Code of Civil

Procedure Sections 638 and 640.

**4.4.2.4** The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy, other than punitive damages.

**4.4.2.5** The referee may require one or more pre-hearing conferences.

**4.4.2.6** The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

**4.4.2.7** A stenographic record of the trial shall be made.

**4.4.2.8** The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

**4.4.2.9** The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

**4.4.2.10** The Parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.

**4.4.2.11** The costs of such proceeding, including the fees of a referee, shall be borne equally by the Parties to the Dispute.

**4.4.2.12** The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. The Parties acknowledge and agree that by providing for judicial reference of disputes, they are waiving their right to a jury trial.

#### **4.5** Annual Review.

**4.5.1** Each year during the Term of this Agreement beginning on or about the first anniversary date of the execution of this Agreement, the City shall review the extent of good faith compliance by Developer with the terms of this Agreement. This review shall be conducted by the City and shall be limited in scope to compliance with the terms of this Agreement pursuant to the Development Agreement Law. The Developer shall reimburse the City for its costs for such annual review, in an amount determined by the City. Until the Project is built and a Notice of Completion is recorded, the annual review cost shall be \$3,000. Thereafter, the annual cost shall be determined by the City by reference to the actual costs incurred by the City, and its consultants to perform the actual review.

**4.5.2** A finding by the City of good faith compliance by Developer with the terms of this Agreement, or a lack of a finding to the contrary, shall conclusively determine such good faith compliance up to and including the date of such review.

**4.5.3** With respect to each year for which an annual review of compliance with this Agreement is conducted, upon request of Developer, the City shall provide Developer with a written "Notice of Compliance," or, based on substantial evidence of a material failure of Developer to comply in good faith with the terms of this Agreement after notice and a reasonable opportunity to Developer to cure such failure, "Notice of Non-compliance," as applicable, duly executed and acknowledged by the City. Either Party shall have the right to record any such notice.

**4.5.4** Failure by the Developer to request review under this Section 4.5 or failure of City to initiate review under this Section 4.5 shall not invalidate any provisions of this Agreement or constitute a default hereunder.

**4.5.5** The provision of this Section 4.5 shall be administered by the City's Community Development Director, subject to Section 4.4.

**4.6** Force Majeure Delay, Extension of Times of Performance.

**4.6.1** In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to a Force Majeure Event.

**4.6.2** Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay, the reason for the delay and an estimated length of delay. Upon the other Party's receipt of such notice, the period of time for performance of any obligation or duty shall be automatically extended for the period of the Force Majeure Event, unless the other Party objects in writing within thirty (30) 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 at the conclusion of the meet and confer session(s), either Party may initiate dispute resolution proceedings as set forth in Section 4.4 of this Agreement. During the period of any Force Majeure Event extension, the Parties shall use their best efforts to minimize potential adverse effects resulting from the Force Majeure Event.

**4.7** Legal Challenge by Third Party.

**4.7.1** In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (not a Party to this Agreement) challenging the validity or enforceability of this Agreement, the Parties shall cooperate with each other in the defense of any such challenge, provided such cooperation shall not extend to payment of funds or expenses in defending such challenge unless agreed by the cooperating Party.

**4.7.2** Developer shall indemnify and hold harmless the City, its officers, agents, employees, officers from any action brought by a third party (i) challenging the validity of this Agreement or (ii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Nothing in this Section shall be construed to mean that Developer shall hold the City harmless or defend it to the extent that such claims, costs or liability arise from, or are alleged to have arisen from, the sole negligence or willful misconduct of the City. The City shall cooperate with Developer in the defense of any matter in which Developer is defending or holding the City harmless and for such purpose Developer shall retain competent legal counsel approved by the City, which approval shall not be unreasonably withheld or delayed.

**4.8** Estoppel Certificate.

**4.8.1** 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:

**4.8.1.1** This Agreement is in full force and effect, and unless otherwise indicated has not been amended.

**4.8.1.2** To best of knowledge, the Party requesting such certificate is not in default of the performance of its obligations under this Agreement, or alternatively, if a default exists or notice of default has been given, the nature and amount of any such defaults.

**4.8.2** A Party receiving a request hereunder shall execute and return such certificate within twenty (20) business days following the receipt thereof. The Parties acknowledge that any certificate given hereunder may be relied upon by any governmental agency, any assignee, and other persons having an interest in the Project, including holders of any deed of trust. The City Manager shall be authorized to execute any such certificate for the City, unless otherwise directed by the City Council.

**4.9** Termination of Agreement. This Agreement is terminable by mutual written consent of the Parties, and shall not require or be contingent upon the approval or consent of any other person or entity. Any obligations of indemnification and defense relating to matters arising before termination of this Agreement shall survive termination of this Agreement.

**4.9.1** Except as otherwise set forth in this Agreement, if this Agreement is terminated by mutual written consent of the Parties, neither Party shall have any further rights or obligations under this Agreement except for the maintenance obligations set forth in Section 2.16, which shall survive termination. Subject to Section 4.9.3, each Party understands that it may have sustained damages that arise, or may arise out of, or relate to the termination of this Agreement that may not be apparent and that are presently unknown. Each Party waives, with respect to termination of this Agreement by mutual written consent of the Parties, any claims for all such damages. The waivers and releases in this Agreement include waivers and releases of any claims for unknown or unanticipated injuries, losses, or damages arising out of or relating to

termination of this Agreement by mutual written consent of the Parties.

**4.9.2** Subject to Section 4.9.3, each Party waives, with respect to termination of this Agreement by mutual written consent of the Parties, all rights or benefits that it has or may have under Section 1542 of the California Civil Code to the extent it would otherwise apply. Section 1542 reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

**4.9.3** Nothing herein contained shall release or excuse Developer in the performance of its obligations to indemnify and defend the City as provided in this Agreement.

## **SECTION 5 ASSIGNMENTS**

**5.1** Limitation As To Assignment. Except as permitted by Sections 5.2 of this Agreement, Developer shall not assign, or attempt to assign or otherwise transfer this Agreement or any right herein (each referred to as an “Assignment”) in whole or in part, without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The City may refuse to give its consent only if, in light of the proposed assignment and financial resources, such assignee would not in the City’s reasonable opinion be able to perform the obligations proposed to be assumed by such assignee. The Developer acknowledges that the identity, make-up and proposal of the Developer are of particular concern to the City and it is because of these matters that the City has entered into this Agreement.

**5.2** Permitted Assignment. The prior written approval of the City shall not be required for the following Assignments:

**5.2.1** The merger, consolidation, restructuring or sale of substantially all of the assets of Developer, provided that a third party Certified Public Accountant certifies that the resulting entity has a net worth, with assets calculated based on current market value (not book value), equal to or greater than twenty million dollars (\$20,000,000); or

**5.2.2** The assignment to any trustee by way of a deed of trust in favor of holder or beneficiary under such deed of trust, or the absolute or collateral assignment, pledge, grant or transfer to such holder, of the Developer’s right, title and interest in, to and under this Agreement for the purpose of creating an encumbrance on or security interest in such interest, or to or by any such holder or other purchaser in connection with its acquisition of the Project Site by foreclosure or deed in lieu of foreclosure; or

**5.2.3** The sale of individual parcels to third parties (provided, however, that such parcels shall be subject to the Project Approvals and the applicable obligations of this Agreement.

**5.3** Assumption of Assigned Obligations. As a condition to any Assignment under this Agreement, any person or entity accepting such Assignment (“Assignee”) shall assume all of the obligations of this Agreement as they pertain to the portion of the Property being transferred to the Assignee. The assumption shall be on a form acceptable to the City and following the Assignment shall be recorded on the portion of the Property transferred. This requirement shall apply whether or not the transfer requires approval of the City.

**5.4** Release of Developer. Upon the effectiveness of any Assignment and assumption of Developer’s obligations by any Assignee, the Developer shall be fully relieved and released of each of its duties and obligations with respect to the portion of the Property transferred to the transferee from and after the date of such transfer, except as to those obligations of Developer under this Agreement, Project Approvals or Applicable City Regulations that affect more than the portion of the Property being transferred.

**5.5** Successive Assignment. In the event of any Assignment under the provisions of this Section 5, the provisions of this Section 5 shall apply to each successive Assignment and Assignee. The Developer’s obligations under this Agreement with respect to the portion of the Property transferred which are to be assumed by the Assignee shall be set out in substantially the form of the Assignment and Assumption Agreement.

**5.6** Unapproved Transfers Void. Any Assignment, or attempted Assignment, that is not approved by the City as required under this Section 5, or that is inconsistent with the provisions of this Section 5, shall be unenforceable and void and shall not release Developer from any rights or obligations hereunder.

## **SECTION 6 GENERAL PROVISIONS**

**6.1** Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure. The Developer’s breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Project, or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder of any such mortgage or deed of trust or any owner of the Project, or any part thereof, whose title thereto is acquired by foreclosure, trustee’s sale or otherwise.

**6.2** Covenants Binding on Successors and Assigns. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns.

**6.3** Covenants Run With Land. The provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant

to applicable law, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property which is for the benefit of the Property or shall constitute a burden upon the Property, as applicable, shall run with the land, and is binding upon each Party and each successive owner during its ownership of the Property, or any portion thereof.

**6.4** Preamble, Recitals, Exhibits. References herein to “this Agreement” shall include the Preamble, Recitals and all of the exhibits of this Agreement.

**6.5** Attorneys Fees. Should any legal action or proceeding be brought by either Party regarding any matter arising out of or relating to this Agreement, the prevailing Party in such action shall be entitled to recover reasonable attorneys’ fees incurred, court costs, and such other costs as may be determined by the court.

**6.6** Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a separately undertaken private development and Developer shall have full power over and exclusive control of the Project subject only to the limitations and obligations of Developer under this Agreement. No partnership, joint venture, agency or other association of any kind between Developer and the City is formed by this Agreement. The only relationship between the City and Developer is that of a governmental entity regulating development and the owner of the Project.

**6.7** Construction. As used in this 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.

**6.8** Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered, mailed by certified mail, return receipt requested, or delivered by reliable overnight courier, to the respective Party as follows:

If to City:  
City of Reedley  
1717 9th Street  
Reedley, CA 93654  
Attn: City Manager

With a Copy To:  
Reedley City Attorney  
Dale E. Bacigalupi, Esq.  
Lozano Smith  
7404 N. Spalding Avenue  
Fresno, CA 93720

AND

The Community Development Director  
City of Reedley  
1717 9th Street  
Reedley, CA 93654

If to Developer:

DW Land Development  
P.O. Box 1941  
Salinas, CA 93902  
Attn: Vince DiMaggio, Partner

If to Property Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A notice shall be effective on receipt. Any Party may change the address stated herein by giving written notice 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 Agreement shall also be given to any lender which provides written request to City for notice.

**6.9** Recordation. The Clerk of the City shall record, at Developer's expense, a copy of this Agreement in the Official Records of the Recorder's Office of Fresno County. Developer shall be responsible for all recordation fees, if any.

**6.10** Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other. In the event of such termination, the provisions of Section 4.9 relating to termination of the Agreement by mutual written consent of the Parties shall apply. Without limiting the generality of the forgoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release Developer from its obligations to indemnify the City under this Agreement.

**6.11** Applicable Law; Venue. The interpretation, validity, and enforcement of the 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 Agreement shall be filed and heard in a court of competent jurisdiction in Fresno County.

**6.12** Waivers. No waiver of any obligations under this Agreement shall be enforceable or admissible unless set forth in a writing signed by the Party against which enforcement or admission is sought. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver

granted shall apply solely to the specific instance expressly set forth in such writing. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

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

**6.14 Exhibits.** The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

A-1	Legal Description of the Property
A-2	Land Use Plan
A-3	Tentative Map
B	Applicable City Regulations
C	Exactions Applicable to the Project
Table 1 to C	Development Impact Fees
Table 2 to C	Traffic Improvements
D	Processing Fees

**6.15 Rules of Construction.** The singular includes the plural; “shall” is mandatory, and “may” is permissive. This Agreement has been drafted jointly, and reviewed by the Parties and their attorneys and, therefore, shall not be construed in favor of or against a Party that may have drafted any particular term or provision. Prior versions or drafts of this Agreement shall not be used to interpret the meaning or intent of this Agreement or any provision hereof.

**6.16 Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the Parties concerning the subject matter hereof. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiation or previous agreements between the Parties with respect to all or any part of the subject matter hereof. To the extent that there are conflicts or inconsistencies between this Agreement and any prior agreement, the provisions of this Agreement shall prevail.

**6.17 Further Assurances and Acts.** Each Party shall perform all acts and execute all documents and instruments that may be necessary or convenient to carry out its obligations under this Agreement.

**6.18 Time of the Essence.** Time is of the essence in the performance of each Party’s respective obligations under this Agreement.

**6.19 No Third Party Rights.** Nothing in this Agreement, whether express or implied, is intended to or shall do any of the following:

- (a) Confer any benefits, rights or remedies under or by reason of this

Agreement on any persons other than the express Parties to it;

- (b) Relieve or discharge the obligation or liability of any person not an express Party to this Agreement;
- (c) Give any person not an express party to this Agreement any right of subrogation or action against any Party to this Agreement.

IN WITNESS WHEREOF, the City, Property Owner, and Developer have executed this Agreement as of the date first hereinabove written.

**“City”:**

**“Developer”:**

**CITY OF REEDLEY,  
a municipal corporation**

**DW LAND DEVELOPMENT, LLC**

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Its:

ATTEST:

\_\_\_\_\_  
City Clerk

**“Property Owner”:**

By: \_\_\_\_\_

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF THE PROPERTY**

**[SEE ATTACHED DESCRIPTION]**

**EXHIBIT A-2**

**LAND USE PLAN**

**[SEE ATTACHED MAP]**

**EXHIBIT A-3**  
**TENTATIVE MAP**

## **EXHIBIT B**

### **APPLICABLE CITY REGULATIONS**

To the extent not in conflict with or not inconsistent with the Reedley Specific Plan, the Tentative Map, and other Project Approvals, the following rules, regulations and official policies in effect as of the Effective Date shall apply to the Project and Property:

- A. City of Reedley General Plan, adopted \_\_\_\_\_, as amended.
- B. City of Reedley Subdivision Ordinance, Title 11 of the City of Reedley Municipal Code.
- C. City of Reedley Zoning Ordinance, Title 10 of the City of Reedley Municipal Code.
- D. All other rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the Property subject to a development agreement in force at the time of execution of the Agreement.
- E. Exactions (see Exhibit C).

## **EXHIBIT C**

### **EXACTIONS APPLICABLE TO THE PROJECT**

[Subject to conforming and clarifying changes prior to execution and recordation]

1. **Development Impact Fees.** City and Developer agree that the maximum development impact fees payable with respect to the specific land uses developed in the Project shall be the amounts set forth in Table 1 through 15 to this Exhibit C.

**Other Agency Fees.** The Developer is responsible for payment of all other developer fees, collected by other agencies, related to or resulting from proposed development, including but not limited to:

Fresno County Regional Traffic Mitigation Fee  
Fresno County Facility Impact Fee  
Kings Canyon Unified School District  
San Joaquin Valley Air Pollution Control District

2. **Park Dedication and Improvements.** Developer shall, in connection with the Project, dedicate to the City, the park area shown on the Land Use Plan for park purposes, which shall be maintained in accordance with Section 2.16 of the Agreement. Such dedication and park improvements shall be deemed to satisfy any and all requirements and obligations set forth in the Municipal Code Section and Government Code Section 66477 and no fees in-lieu of land dedication that would otherwise be required under Municipal Code Section or otherwise shall be imposed or required of Developer. Developer shall provide the specific improvements set forth in the conditions of approval of the tentative map and such improvements shall be credited against payment of park fees so that the combination of the park dedication and improvements shall be equivalent to the park fees required by the Project.
3. **Traffic Mitigation Measures.** City agrees not to impose on the Project any traffic mitigation measures other than those specifically set forth in the Mitigated Negative Declaration. DW Land Development will be reimbursed for all of the costs (including, without limitation, design, engineering, bidding, construction, inspection and approval) for the projects it builds where someone other than Blossom Trail is the party responsible to pay cost of improvement, provided however, if the other party responsible to pay cost of improvement is not the City, the City shall be responsible for collecting any such reimbursement and the Developer shall have not responsibility for collecting such reimbursement.
4. **Environmental Mitigation and Implementation Measures.** The Parties understand that the Mitigated Negative Declaration was intended to be used in connection with the Project Approvals and the Subsequent Project Approvals needed for the Project. Consistent with the CEQA streamlining of Section 15182 of the CEQA Guidelines, the City agrees to use the Mitigated Negative Declaration in connection with the processing

of any Subsequent Project Approval to the maximum extent allowed by law.

5. **Other conditions of Approval.** Developer shall, in connection with the Project, complete all other conditions approved by the City Council as part of the Project Approvals.

**TABLE 1 TO EXHIBIT C**

<b>Residential Development Impacts Fees – 2009 Dollars*</b>			
<b>Fund</b>		<b>Land Use (Per Unit)</b>	
		<b>Single-Family, Per Unit (includes all PUD lots)</b>	<b>Multiple-Family, Per Unit (includes apartments)</b>
100-3633	Streets & Thoroughfares	\$1,384.00	\$672.00
101-3630	Traffic Control Facilities	\$313.00	\$152.00
102-3630	Law Enforcement Facilities	\$333.00	\$294.00
103-3630	Fire Facilities	\$885.00	\$1,761.00
110-3630	General Facilities	\$1,115.00	\$1,113.00
104-3630	Storm Drain Facilities	\$1,403.00	\$616.00
105-3630	Wastewater Treatment Facilities	\$2,690.00	\$2,260.00
106-3630	Wastewater Collection Facilities	\$1,077.00	\$905.00
107-3630	Water Supply & Holding Facilities	\$1,291.00	\$1,085.00
111-3630	Water Distribution Facilities	\$1,046.00	\$879.00
108-3630	Parks & Recreation Facilities	\$3,721.00	\$1,025.00
109-3630	Open Space	\$1,070.00	\$329.00
<b>Total</b>		<b>\$16,328.00</b>	<b>\$11,091.00</b>

\* These Residential Development Impact Fees shall remain unchanged for 3 years from the Effective Date. Thereafter, the Residential Development Impact Fees which are applicable to the Project shall be those then in effect.

**TABLE 2 TO EXHIBIT C**

<b>Commercial Impacts Fees – 2009 Dollars*</b>		
<b>Fund</b>		<b>Commercial Per Square Feet</b>
100-3633	Streets & Thoroughfares	\$5.07
101-3630	Traffic Control Facilities	\$1.15
102-3630	Law Enforcement Facilities	\$0.56
103-3630	Fire Facilities	\$0.63
110-3630	General Facilities	\$0.66
104-3630	Storm Drain Facilities	\$1.74
105-3630	Wastewater Treatment Facilities	\$0.54
106-3630	Wastewater Collection Facilities	\$0.21
107-3630	Water Supply & Holding Facilities	\$0.39
111-3630	Water Distribution Facilities	\$0.29
108-3630	Parks & Recreation Facilities	\$0.00
109-3630	Open Space	\$0.52
<b>Total</b>		<b>\$11.76*</b>

\* These Commercial Impact Fees shall remain unchanged for 5 years from the Effective Date. Thereafter, these Commercial Impact Fees will be increased at the rate of 9% per year.

## **EXHIBIT D**

### **PROCESSING FEES**

1. **Building Plan Check, Permit and Inspection Fees.** Fees for building plan check, permits and inspections will be charged in accordance with the City's fee ordinance in effect at the time building permits are issued for both residential and commercial development. Timing for building plan check, permit and inspection to be performed by the City on an expedited basis as defined in the City's ordinances.
  
2. **Subdivision Map and Plan Check; Subdivision Improvement Inspection.** Fees for subdivision map and improvement plan checking and inspection of subdivision improvements will be charged in accordance with the applicable City's fee ordinance at the time said maps and plans are submitted for approval.
  - a. **Modification to Rates.** Rates to be modified annually by CCI for the Central Valley Area as published in the Engineering News Record. Parties to mutually agree upon modification to range structure based on notification of such changes prior to submission of final maps or improvement plans.
  
  - b. **Protocol.** The estimated budget for plan and map checking services is based on the City providing review and comments on up to three submittals of each set of plans, with the fourth submittal containing mylars for signature (provided, however, that nothing herein shall preclude approval of plans based on fewer submittals). If review and comment on more than three versions of the maps or plans are required due to Developer's failure to make required revisions, such services shall be performed on a time-and-materials basis. Developer and its engineer shall have the right to meet with the engineer performing the map or plan checking after each plan or map check to review and discuss any required changes in detail before making corrections and to meet again to go over any changes made prior to re-submittal. The mutual goal shall be to complete the plan or map check process with no more than two plan or map submittals. Any changes required by the City as a result of the plan or map check shall be in writing and shall be detailed, clear and specific. No additional changes will be required after the second plan or map check, except for those changes which result from Developer's failure to make previously required changes. All plans and maps shall be checked and returned to Developer's engineer within two weeks of each submittal and shall be corrected and resubmitted by Developer's engineer within two weeks of return, but nothing herein shall preclude earlier turn-around by the City or Developer.