Development Agreement
by and between
the City of Chowchilla and Rancho Calera, LLC,
relative to the Development known as
Rancho Calera

This Development Agreement (hereinafter "**Agreement**") is entered into as of the Effective Date (hereinafter defined) by and among the CITY OF CHOWCHILLA, a municipal corporation (the "**City**"), and RANCHO CALERA, LLC, a California limited liability company ("**RC**").

RECITALS

WHEREAS, to strengthen the public land use planning process, to encourage private participation in the process, to reduce the economic risk of development, and to reduce the waste of resources, the California Legislature adopted the Development Agreement Statutes (*California Government Code §65864, et seq*.), which authorizes the City to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property;

WHEREAS, the City adopted Ordinance No. 380-02 which added Chapter 17.64 to the Municipal Code, establishing procedures and requirements for consideration and approval of development agreements;

WHEREAS, this Agreement relates to the development known as Rancho Calera, a mixed-use residential, commercial, and public use community planned by RC for the Project Area (hereinafter defined);

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by the City staff, the Planning Commission (hereinafter defined), and the Council and have been found to be fair, just, and reasonable;

WHEREAS, the best interests of the citizens of the City of Chowchilla and the public health, safety and welfare will be served by entering into this Agreement;

WHEREAS, the previous actions of the City, set forth in Exhibit A attached hereto and incorporated herein by this reference, have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters, or will have been at the time the City executes this Agreement;

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Project Area, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project (hereinafter defined), and generally serve the purposes for which development agreements under *California Government Code §65864, et seq.*, and *Municipal Code Chapter 17.44* are intended; and

WHEREAS, in exchange for these benefits to the City, together with the public benefits to be served by the development of the Project Area, RC desires to receive the assurance that it may proceed with development of the Project Area in accordance with certain existing ordinances, resolutions, policies and regulations of the City pursuant to the terms and conditions contained in this Agreement, based on both Existing and Subsequent Development Approvals (hereinafter defined).

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS AND EXHIBITS**.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "**Agreement**" means this Development Agreement, as amended from time to time.

1.1.2 "**City**" means the City of Chowchilla, a municipal corporation.

1.1.3 "**City Attorney**" means the person holding the office of the same name or the equivalent in the City.

1.1.4 "**City Clerk**" means the person holding the office of the same name or the equivalent in the City.

1.1.5 "**City Administrator**" means the person holding the office of the same name or the equivalent in the City.

1.1.6 "**Council**" means the elected members of the public serving as the City Council of the City of Chowchilla.

1.1.7 "**2006 CFD**" means that certain Community Facilities District No. 2006-01, Improvement Area 1, adopted by the Council acting as the legislative body of the District, on April 23, 2007, pursuant to Resolution No. 44-07, as amended from time to time.

1.1.8 "**Development**" means (i) the division of a parcel of land into two (2) or more parcels; (ii) the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; (iii) any excavation, landfill, or land disturbance; and (iv) any use or extension of the use of land.

1.1.9 "**Development Approvals**" means all permits and other entitlements subject to approval or issuance by the City in connection with Development of the Project Area including, but not limited to all permits and other entitlements (i) approved or issued prior to or concurrent with the Effective Date which are listed in Exhibit A attached hereto and incorporated herein by this reference (the "**Existing Development Approvals**"), and (ii) obtained by Master Developer and/or an Owner, with the consent of Master Developer, in connection with Development of the Project Area subsequent to the Effective Date,

but prior to the expiration of the Term of this Agreement, which are consistent with the General Plan and the Specific Plan (the "**Subsequent Development Approvals**").

1.1.10 "**Development Exaction**" means any requirement of the City in connection with or pursuant to any Land Use Regulations or Ordinances or Development Approvals for the dedication of land, the construction or increase in size of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate, or compensate for the impacts of Development on the environment or other public interests and does not include processing fees.

1.1.11 "**Effective Date**" means the effective date of the Enacting Ordinance approving this Agreement in accordance with *Municipal Code of the City of Chowchilla Section 17.64*.

1.1.12 "**Enacting Ordinance**" means Ordinance No. _____ of the Council adopted by the Council on _____, 2021, as set forth in Resolution No. _____ authorizing the City to enter into this Agreement.

1.1.13 "**Environmental Impact Report**" means the Environmental Impact Report for the Rancho Calera Specific Plan certified by the Council on May 2, 2011, as set forth in Resolution No. 3-11, and on file with the City Clerk, as amended by that certain Mitigated Negative Declaration approved by the Council on _____, 2021, as set forth in Resolution No. _____, and on file with the City Clerk.

1.1.14 "**Existing Land Use Regulations and Ordinances**" means all Land Use Regulations and Ordinances in effect and a matter of public record as of the Effective Date.

1.1.15 "**General Plan**" means The City of Chowchilla General Plan adopted by the Council on May 2, 2011, as set forth in Resolution No. 45-11, and on file with the City Clerk.

1.1.16 "**Lender**" means any bank, savings and loan association, insurance company, private equity firm or other source of financing for the acquisition, development, construction, and/or operation of the Project Area.

1.1.17 "**LSDF**" means Land Secured Debt Financing, a financing mechanism whereby real property secures funds obtained by a public entity for the purpose of constructing and/or maintaining improvements.

1.1.18 "**Land Use Regulations and Ordinances**" means the City's rules, regulations, Ordinances, and official policies governing permitted use, density, design, improvement, and construction of the Project Area.

1.1.19 "**Master Developer**" means Rancho Calera, LLC, a California limited liability company, or any individual or entity which acquires all or a portion of the Project Area and which assumes the obligations of Master Developer set forth in this Agreement.

1.1.20 "**Ordinances**" means the ordinances, resolutions, and codes of the City governing the permitted uses of land, density, design, improvement, construction standards and specifications applicable to the Development and use of the Project Area. Specifically, but without limiting the generality of the foregoing, Ordinances shall include the City's

General Plan, the Specific Plan, and Zoning Titles of the Municipal Code of the City, and the City's Building, Electrical, Mechanical, Plumbing, and Fire Codes.

1.1.21 "**Owner**" means any entity that succeeds to the interest of Master Developer with respect to all or any portion of the Project Area with the intent of constructing commercial or dwelling units for use, sale, or lease to members of the public or other ultimate users, or any other successor in interest to Master Developer as to fee title to a portion of the Project Area.

1.1.22 "**Planning Commission**" means the appointed members of the public serving as the Planning Commission of the City of Chowchilla.

1.1.23 "**Project**" means the Development of the Project Area contemplated by the Specific Plan, as such Specific Plan may be further defined, enhanced, amended, or modified.

1.1.24 "**Project Area**" means the real property described on Exhibit B to this Agreement, attached hereto and incorporated herein by this reference.

1.1.25 "**2003 RD**" means that certain City of Chowchilla Reassessment District No. 2003-1, and that certain Resolution of Intention for the Levy of Reassessments adopted by the Council on July 28, 2003, pursuant to Resolution No. 53-03.

1.1.26 "**Specific Plan**" means the Rancho Calera Specific Plan, including all exhibits and appendices, adopted for the Project Area by the Council on May 2, 2011, and on filed with the City Clerk, as amended pursuant to Ordinance No. _____, adopted by the Council on _____, 2021, and on file with the City Clerk.

1.1.27 "**Subsequent Land Use Regulations and Ordinances**" means those Land Use Regulations and Ordinances adopted and effective after the Effective Date of this Agreement.

1.1.28 "**Vest**", "**Vesting**", "**Vested**" mean the conferring of the rights granted to Master Developer under this Agreement and subject to all the terms, conditions and requirements of this Agreement, to proceed with the Development of the Project Area based on the agreement of the City hereunder that certain regulations and requirements in the Development Approvals pertaining to the Development of the Project Area are fixed and, except as permitted by this Agreement, that they cannot be subsequently modified, changed or augmented so as to impose additional requirements or burdens on the Development of the Project Area without Master Developer's consent.

1.2 Undefined Terms. Terms not defined in Section 1.1 shall have the meanings set forth in this Agreement, the Specific Plan, the General Plan, or the Environmental Impact Report, in that order of priority.

1.3 Exhibits. The following documents are attached to this Agreement as exhibits hereto:

Exhibit A	Existing Development Approvals
Exhibit B	Legal Description of the Project Area

2. **GENERAL PROVISIONS**.

2.1 Binding Effect of Agreement. The Project Area is hereby made subject to this Agreement. Development of the Project Area is authorized and shall be carried out only in accordance with the terms of this Agreement and the Development Approvals.

2.2 Ownership of the Project Area. Master Developer represents and covenants that it holds the sole and absolute right in fee simple title to the Project Area.

2.3 Term. Notwithstanding any other provision of this Agreement, the term of this Agreement (the "**Term**") shall commence on the Effective Date and shall continue for a period of twenty (20) years thereafter, unless sooner terminated or extended as hereinafter provided.

2.3.1 Extensions. The City Administrator is authorized to and, upon written request of Master Developer, shall permit two (2) extensions of five (5) years each to the Term, not to exceed thirty (30) years in the aggregate for the Term hereof, if the City Administrator determines with respect to each five (5) year extension that Master Developer is not in default under this Agreement. In the event the City Administrator determines that the Master Developer is in default under this Agreement, the matter shall be referred to Council for review pursuant to Section 9.1 of this Agreement, which could result in termination of this Agreement.

2.3.2 Letter from City Administrator. An extension of the Term of this Agreement pursuant to the foregoing provisions shall not be deemed an amendment of this Agreement and may be evidenced by a letter from the City Administrator, it being the intent of the Enacting Ordinance to authorize a minimum twenty (20) year and a maximum thirty (30) year Term of this Agreement as herein provided and subject to the terms of this Agreement.

2.3.3 Tolling. If any litigation affecting the Project Area is filed challenging any of the Development Approvals or this Agreement (including but not limited to any environmental determinations relating to any of the foregoing), or otherwise raising issues of the validity of the Development Approvals or the valid or binding nature of this Agreement, the Term of this Agreement shall be extended for the period of time such litigation is pending, and upon the conclusion of such litigation by dismissal or final entry of judgment, Master Developer and the City shall record notice to such effect; provided, however, and subject to Section 11.3 below, if such litigation results in a final determination of invalidity of any such actions, the City may terminate this Agreement to the extent necessary to comply with any such final determination.

2.3.4 Reasonable Estimate. The Term has been established by the parties as a reasonable estimate of the time required to implement the necessary requirements of the Existing Development Approvals and to obtain the public benefits of this Agreement. The City finds that a term of such duration is reasonably necessary to assure the City of the realization of the public benefits from the Project, particularly, but not limited to Development of the public facilities and major infrastructure elements of the Project as set forth in the Specific Plan. In establishing and agreeing to such Term, the City has determined that the Existing Development Approvals and this Agreement incorporate

sufficient provisions to permit the City to monitor adequately and respond to changing circumstances and conditions in undertaking actions to carry out the Development Approvals, the Specific Plan, and this Agreement.

2.3.5 Effect of Expiration. Expiration of the Term shall not affect any rights of the Master Developer and Owners arising from the Development Approvals.

2.3.5.1 If any Tentative Map or Final Subdivision Map or Tentative Parcel Map or Final Parcel Map heretofore or hereafter approved in connection with Development of the Project Area is a vesting map under the Subdivision Map Act, and this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a Vested right to develop to an Owner, then and to the extent the rights and protections afforded such Owner under the laws and Ordinances applicable to vesting maps shall supersede the provisions of this Agreement.

2.3.5.2 Pursuant to *California Government Code §66452.6(a),* the term of the Tentative Maps and Final Subdivision Maps or any re-subdivision or amendment to the Tentative Maps or Final Subdivision Maps (including any lot line adjustment or merger of lots within the Tentative Maps or Final Subdivision Maps) for the Project Area, or any part thereof, or any other Tentative Maps filed subsequent to the Effective Date of this Agreement shall automatically be extended for the Term of this Agreement.

2.4 Assignment. No sale or transfer of the Project Area shall require an amendment to this Agreement when performed in accordance with the provisions of this Agreement.

2.4.1 Assignment. Neither Master Developer nor any Owner shall have an obligation to seek the consent of the City Administrator prior to assigning, transferring, or selling any portion of the Project Area. Within sixty (60) days of any such assignment, transfer, or sale of any portion of the Project Area, Master Developer or the Owner shall deliver to the City a written assignment and assumption agreement fully executed by Master Developer or the Owner, and the buyer, whereby buyer assumes all of those obligations of Master Developer or the Owner relating to that portion of the Project Area acquired by buyer. Upon delivery of the assignment and assumption agreement to the City Administrator, Master Developer or the Owner shall be relieved of the terms and conditions of this Agreement as they relate to that portion of the Project Area transferred to buyer by Master Developer or the Owner, except as otherwise set forth in the assignment and assumption agreement.

2.4.2 Release of Purchaser or Transferee of a Residential or Commercial Lot. A purchaser or transferee of a parcel or lot which has been finally subdivided as provided for in the Specific Plan or any other plan applicable to the Project Area, and for which a certificate of occupancy has been granted by the City, shall be released from the obligations under this Agreement, provided that the parcel or lot cannot be further subdivided and has been individually sold or leased to a member of the public or other ultimate user, as opposed to having been sold or leased in bulk to another Master

Developer or builder or having been sold or leased individually to a builder or other investor prior to construction of improvements to be occupied by the ultimate user. City shall, upon written request made by Master Developer to the City, determine if the Agreement has been terminated with respect to any parcel or lot within the Property, and shall not unreasonably withhold, condition, or delay termination as to that lot or parcel. Upon termination of this Agreement as to any lot or parcel, City shall upon Master Developer's request record a notice of termination that the Agreement has been terminated as to that parcel or lot within the Property. The aforesaid notice may specify, and Master Developer agrees, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement. Termination of this Agreement as to any parcel or lot within the Property shall not affect Master Developer's rights or obligations under any of the Development Approvals, including but not limited to, the General Plan, Specific Plan, Existing Land Use Regulations and Ordinances, and all other City policies, regulations, and ordinances applicable to the Project Area or the Property. City may charge a reasonable fee for the preparation and recordation of any notices of termination requested by Master Developer.

3. AMENDMENT

3.1 Amendment of this Agreement. This Agreement may be amended or canceled in whole or in part from time to time by the mutual written agreement of the City and Master Developer.

3.1.1 Notice and Public Hearing Requirements. Prior to amending or cancelling this Agreement, in whole or in part, the City shall provide the notice and/or conduct a public hearing required pursuant to *California Government Code §65868.* Such amendment may be approved by City ordinance. Notwithstanding the foregoing, no public notice or hearing shall be required for any amendment which (a) does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Area, (iii) provisions for the reservation or dedication of land, (iv) the density or intensity of use of the Project Area or the maximum height or size of proposed structures, or (v) monetary contributions by Master Developer, or (b) is intended to create consistency with an Administrative Minor Deviation made to the Specific Plan as permitted by the Specific Plan ("**Ministerial Agreement Amendments**"). Ministerial Agreement Amendments shall be evidenced in writing and executed by Master Developer and the City Administrator.

3.1.2 Amendment to the Development Approvals. No amendment to this Agreement shall be required as the result of any amendment to the Development Approvals. All Subsequent Development Approvals shall be automatically incorporated into this Agreement, shall be deemed Vested upon approval, and shall be an integral part hereof.

3.1.3 Conditions of Approval. The City shall not impose as a condition to any amendment to this Agreement, any new Development Exaction or other imposition not otherwise permitted under this Agreement, except to the extent the amendment will directly result in new burdens or impacts requiring additional mitigation or insofar as the amendment results in new or additional unmitigated significant environmental impacts.

3.2 Interpretation. The parties acknowledge that this Agreement, like all agreements, may be subject to interpretation. This Agreement is the product of mutual negotiations and participation by both the City and Master Developer (each a "**Party**" and collectively, the "**Parties**"). For purposes of construing the meaning or effect of this Agreement, or any portion hereof, it shall be presumed this Agreement was drafted by both Parties and not as if it had been prepared by one Party or the other. Each Party to this Agreement specifically acknowledges that it had sufficient opportunity to review the Agreement, confer with its separate legal counsel regarding the meaning of this Agreement and any provision contained herein, and negotiate revisions to this Agreement. Notwithstanding the foregoing, the City Administrator (with the advice and consent of the City Attorney's office) may issue written interpretations of this Agreement. A copy of any such written interpretation shall be given to Master Developer and any Owners. If Master Developer or any Owners disagrees with any such interpretation, Master Developer and/or the Owners may appeal that interpretation to the Planning Commission by means of a notice in writing to the Planning Commission specifying the basis of the disagreement with the interpretation. The Planning Commission shall, within thirty (30) days after receipt of the written appeal of the interpretation, hold a hearing at which the City Administrator's interpretation will be reviewed. The Planning Commission shall then determine, within thirty (30) days after completion of the hearing, whether the Planning Commission agrees with the interpretation or if it deems it appropriate to modify or withdraw the interpretation of the City Administrator. Either Party may appeal the decision of the Planning Commission to the City Council, which shall follow the Planning Commission process set forth above in reviewing any appeal to a Planning Commission decision. The decision of the City Council as to an interpretation shall be considered a final determination of the issue and, therefore, an exhaustion of administrative remedies.

3.3 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

3.3.1 Expiration of the stated Term of this Agreement, including all extensions of the same permitted pursuant to Section 2.3 of this Agreement;

3.3.2 Entry of a final judgment by a court of competent jurisdiction setting aside, voiding, or annulling the adoption of the Enacting Ordinance approving this Agreement; provided, however, that so long as the judgment of any such court is on appeal to a higher court, this Agreement shall remain in full force and effect;

3.3.3 Except as provided in Section 4.7.2 below, the adoption of a referendum measure overriding or repealing the Enacting Ordinance approving this Agreement;

3.3.4 Completion of the Project in accordance with the terms of this Agreement including issuance of all required certificates of occupancy and acceptance by the City or applicable public agency of all required dedications; or

3.3.5 Cancellation pursuant to a Non-Compliance Finding, all as more particularly set forth in Section 8.4 and Section 8.5 below.

As allowed by law, termination of this Agreement shall not constitute termination of any Development Approvals effective as of the date of termination. Upon the termination of

this Agreement, no Party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to obligations which expressly survive termination of this Agreement.

3.4 Notices. All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered via email (followed by another method of delivery), in person, or dispatched by certified mail, postage prepaid. Notice required to be given to the City shall be addressed as follows:

Chowchilla Civic Center
130 S. Second Street
Civic Center Plaza
Chowchilla, CA 93610
Attn: City Administrator
Fax No. (559) 665-7419
rpruett@cityofchowchilla.org

With a copy to:

Lozano Smith
7404 N. Spalding Avenue
Fresno, CA 93720
Attn: City Attorney for the City of Chowchilla
Fax No. (559) 341-5600
mlerner@lozanosmith.com

Notices required or provided for under this Agreement to be given to Master Developer shall be addressed as follows:

Rancho Calera, LLC
175 East Main Ave., Suite 110
Morgan Hill, CA 95037
Attn: Manager
Fax No. (408) 782-1662
glenn@pembrookdevelopment.com

With a copy to:

Hardt Mason Law
175 East Main Ave., Suite 110
Morgan Hill, CA 95037
Attn: Katharine Hardt-Mason
Fax No. (408) 778-3031
katiehardtmason@outlook.com

A Party may change its address by giving notice in writing to the other Party. In the event the City or Master Developer retains different counsel, the Party retaining different counsel shall

provide notice thereof to the other Party. Thereafter, notices, demands, and other pertinent correspondence shall be addressed and transmitted to the new address.

3.5 Applicable Law: Except as otherwise provided herein, the rules, regulations, official policies, standards, and specifications applicable to the Project shall be the Existing Land Use Regulations and Ordinances, and those set forth in this Agreement and the Development Approvals. With respect to matters not addressed by this Agreement or the Development Approvals, those rules, regulations, official policies, standards and specifications (including Ordinances and resolutions) governing permitted uses, building locations, timing of construction, densities, design, heights, fees, exactions, and taxes in force and effect on the Effective Date of this Agreement, as long as such rules are consistent with this Agreement, the Development Approvals, and the Project, shall be applicable to the Project.

3.6 Conflict of City and State or Federal Laws: As provided in *California Government Code §65869.5*, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("**Changes in Law**"). In the event Changes in Law prevent or preclude compliance with one or more provisions of this Agreement and provided the terms and conditions set forth in Section 11.3 below can be met, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in Law, and City and Master Developer shall take such action as may be required pursuant to this Agreement. City shall cooperate with Master Developer and the Owners in the securing of any permits or approvals that may be required as a result of such modification or suspensions.

3.7 Hold Harmless Agreement. Throughout the Term of this Agreement, Master Developer and each successor Owner shall indemnify, defend, and hold the City and the City's elected and appointed officials, officers, agents, employees, contractors, consultants, and other third parties retained by the City (the "**City Parties**") harmless from any and all claims, actions, or proceedings against the City or City Parties to challenge, attack, set aside, void, or annul this Agreement and/or any approval by the City concerning the Project, including any challenges to associated environmental review, and for any and all costs, attorneys fees, and/or damages arising therefrom, and from any and all claims, liability, and damages of any kind, including but not limited to personal injury or property damage, which may arise from the performance, failure to perform, or operations of Master Developer and each successor Owner, and all contractors, subcontractors, agents, or employees of Master Developer and each successor Owner under this Agreement, specifically including the requirements of Section 11.20 below, whether such operations be by Master Developer, a successor Owner, or by any of the contractors, subcontractors, or any one or more persons directly or indirectly employed by, or acting as agent for Master Developer or a successor Owner, except to the extent of any liability for damage which may arise from the negligence or willful misconduct of the City or the City Parties. The City reserves the right to participate in the defense and may recover its own reasonable attorney fees, court costs, and staff costs from Master Developer or such successor Owners of all or any portion of the Project Area. However, Master Developer or any such successor Owners of all or any portion of the Project Area may at any time elect to abandon the benefits of this Agreement, or any part thereof that is the subject of a legal challenge, and upon such abandonment, the party

abandoning the benefits of this Agreement shall have no further obligation to defend or indemnify the City for its defense beyond costs incurred up to and including the date of abandonment should the City elect to continue to litigate the particular issue. The preceding sentence shall in no way limit Master Developer's and each successor Owner's indemnity obligations for liability or damages of any kind as otherwise provided in this Section 3.7.

4. **USE AND DEVELOPMENT OF THE PROPERTY**.

4.1 Use of the Project Area. Subject to the terms of this Agreement, including the Reservations of Authority set forth in Section 4.7 below, the Project Area shall be used and developed only for those uses set forth in the Development Approvals, and for such other uses that may be mutually agreed upon by the parties hereto, whether as a result of amendments to this Agreement or amendments to the Development Approvals.

4.2 Right to Develop. Subject to the terms of this Agreement, including the Reservations of Authority, Master Developer and the Owner(s) shall have the Vested right to develop the Project Area in accordance with the Development Plan set forth in the Specific Plan as it appeared on the Effective Date, which permits the construction of up to 2,042 residential dwelling units and up to 308,405 square feet of commercial space, all as more particularly set forth in the Specific Plan.

4.3 Maximum Height. The maximum height and size of structures to be constructed within the Project Area shall be governed by the Specific Plan.

4.4 Development of the Project Area. Subsequent Development Approvals necessary to develop the Project, including amendments to Development Approvals, shall be reviewed for approval by the City in accordance with **Section 5.2** through **Section 5.4** of the Specific Plan, the Existing Land Use Regulations and Ordinances, and any restrictions or other limitations set forth in this Agreement. City agrees that once the City has approved a tentative subdivision map and associated improvement plan for any part of the Property, prior to recordation of the final map for such subdivision or portion thereof, permits shall be issued for grading and installation of infrastructure for the relevant area at the subdivider's risk prior to recordation of the final map.

4.4.1 Master Developer shall have the right to review and approve all tentative subdivision maps, site development plans, improvement plans, and architectural plans related to development of any portion of the Project, excepting any subdivision maps, site development plans, improvement plans, and architectural plans prepared by or on behalf of the City in connection with development of any public facility or public park being constructed by or on behalf of the City. Each Owner shall have the option of submitting any such Subsequent Development Approvals to Master Developer prior to submission of the same to the City for review and approval, or submitting such Subsequent Development Approvals to the City, following which the City shall forward the same to Master Developer for review and approval. In the event the City receives a tentative map, site development plan, improvement plan, or architectural plan which is not accompanied by a written letter from Master Developer approving the same (each a "Master Developer Letter of Approval"), the City shall forward the same to Master Developer for review and approval. Master Developer shall have fifteen (15) business days to review any such Subsequent Development Approvals submitted to it by the City

(the "Master Developer Review Period"). Prior to termination of the Master Developer Review Period, Master Developer shall deliver to the City either a Master Developer Letter of Approval or notice of Master Developer's rejection of such submission. Master Developer shall work with the Owner of a submission which was rejected by Master Developer and the City in reaching an agreement for approval of the same. Failure by Master Developer to deliver a Master Developer Letter of Approval during the Master Developer Review Period shall be deemed approval of the submission delivered to Master Developer. Except for the situation in which Master Developer fails to deliver a Master Developer Letter of Approval within the Master Developer Review Period, the City shall proceed with processing any of the foregoing identified Subsequent Development Approvals only upon receipt of a Master Developer Letter of Approval.

4.5 Water Rights. Subject to the terms and conditions set forth in this Section 4.5, Master Developer has agreed and does hereby agree to release and relinquish to City all of its right, title and interest in all water located on or under the Project Area. Notwithstanding the foregoing, Master Developer shall retain all of its right, title, and interest in the water and/or water rights set forth in the agreements with the Chowchilla Water District ("**CWD**"), the Bureau of Reclamation ("**BuRec**"), and Pheasant Run, LLC, ("**PR**"), including all heirs, successors, and assigns of CWD, BuRec, and PR. Additionally, Master Developer shall have the right to apply for agricultural water well permits if Master Developer elects, at its sole and absolute discretion, to allow for agricultural use of the Project Area in the event the Project Area, or any portion thereof, cannot be developed due to reasons beyond Master Developer's control.

4.6 No Additional Reservations or Dedications of Land for Public Purposes. The terms and conditions set forth in **Section 5.1** of the Specific Plan shall control with regard to additional reservations and dedications of land.

4.7 Reservations of Authority.

4.7.1 Limitations, Reservations and Exceptions. Notwithstanding the intent of the parties to this Agreement to enable Master Developer and the Owners of the Project Area to develop the Project Area in accordance with the Development Approvals and the Existing Land Use Regulations and Ordinances, to the extent legally permissible, and notwithstanding any other provision of this Agreement, the City and Master Developer acknowledge and agree that the following Subsequent Land Use Regulations and Ordinances shall apply to the Development of the Project Area:

4.7.1.1 Processing, inspection and similar fees and charges imposed by the City to cover the estimated actual costs to the City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued;

4.7.1.2 Except as otherwise set forth in this Agreement, procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure;

4.7.1.3 Regulations governing construction standards and specifications, including without limitation, the City's adopted Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code; and

4.7.1.4 Regulations which may be in conflict with the Existing Land Use Regulations and Ordinances, but which are reasonably necessary to protect the public health, safety, and welfare. To the extent possible, any such regulations shall be applied and construed so as to provide Master Developer with the rights and assurances provided under this Agreement.

4.7.2 Development Control Limitations. To the extent allowed by law, no other land use regulations, rules or policies enacted or adopted subsequent to the Effective Date of this Agreement, whether enacted by action of the City or by initiative, referendum or otherwise, including, without limitation, those which limit or restrict the rate, timing or sequencing of development of the Project, or any inclusionary housing ordinance, affordable housing ordinance, or similar ordinance that would require Master Developer to provide a minimum number of below-market rate housing units at the Property or pay a fee in-lieu of providing below-market rate housing units at the property ("**development control limitations**") shall apply to the Project. The City agrees to cooperate with Master Developer and the Owners of the Project Area in a reasonable manner in order to keep this Agreement in full force and effect notwithstanding any such development control limitations.

4.7.3 Intent. The parties acknowledge and agree that the City is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to the City all of its police power which cannot be so limited in accordance with *California Government Code §65866* and *§65869.5*. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to the City all such power and authority which cannot be restricted by contract.

4.8 Provision of Real Property Area Interests by City. In any instance where Master Developer or an Owner is required to construct any public improvement on land not owned by Master Developer or such Owner, Master Developer or the Owner shall, at its sole cost and expense, use its best efforts to provide or cause to be provided, the real property interests necessary for the construction of such public improvements. In the event Master Developer or the Owner is unable after exercising reasonable efforts, including, but not limited to, the rights under *California Civil Code §§1001* and *1002*, to acquire the real property interests necessary for the construction of such public improvements, if requested by Master Developer or the Owner and upon Master Developer's or the Owner's provision of adequate security for costs the City may reasonably incur, the City may negotiate the purchase of the necessary real property interests to allow Master Developer or such Owner to construct the public improvements as required by this Agreement or the Development Approvals, and/or, in accordance with the procedures established by law, the City may use its power of eminent domain to acquire such required real property interests, in City's sole discretion and without any obligation to purchase or acquire by eminent domain any real property interest. Master Developer or the Owner shall pay all costs associated with such acquisition or condemnation proceedings. This Section 4.8 is not intended

by the parties to impose upon Master Developer or any Owner an enforceable duty to acquire land or construct any public improvements on land not owned by Master Developer or an Owner, except to the extent that Master Developer or such Owner elects to proceed with Development of the Project, and then only in accordance with valid conditions imposed by the City upon the Development of the Project under the Subdivision Map Act or other legal authority. The requirement for such non-owned or off-site improvements may be waived by the City at its sole discretion. However, in accordance with *California Government Code §66462.5*,

> *(a) A city, county, or city and county shall not postpone or refuse approval of a final map because the subdivider has failed to meet a tentative map condition which requires the subdivider to construct or install offsite improvements on land in which neither the subdivider nor the local agency has sufficient title or interest, including an easement or license, at the time the final map is filed with the local agency, to permit the improvements to be made. In such cases, unless the city, county, or city and county requires the subdivider to enter into an agreement pursuant to subdivision (c), the city, county or city and county shall, within 120 days of the filing of the final map, pursuant to Section 66457, acquire by negotiation or commence proceedings pursuant to Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property under Article 3 (commencing with Section 1255.410) of Chapter 6 of that title.*
>
> *(b) If a city, county, or city and county has not required the subdivider to enter into an agreement pursuant to subdivision (c) and if a city, county, or city and county fails to meet the 120-day time limitation, the condition for construction of offsite improvements shall be conclusively deemed to be waived. The waiver shall occur whether or not the city, county, or city and county has postponed or refused approval of the final map pursuant to subdivision (a).*
>
> *(c) Prior to approval of the final map the city, county, or city and county may require the subdivider to enter into an agreement to complete the improvements pursuant to Section 66462 at such time as the city, county, or city and county acquires an interest in the land that will permit the improvements to be made.*

The Parties agree that should Master Developer or any Owner seek approval of a final map prior to completion of any offsite improvements as described in Government Code section 66462.5, subdivision (a), this Agreement shall constitute an agreement to complete such improvements as contemplated in Government Code section 66462.5, subdivision (c), as described above.

4.9 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of the City possess authority to regulate aspects of the Development of the Project separately or jointly with the City and this Agreement does not limit the authority of such other public agencies. Notwithstanding the foregoing, the City agrees that

it shall assist Master Developer and all Owners in obtaining those approvals necessary to develop the Project Area.

5. **RC DEVELOPMENT IMPACT FEES**.

5.1 RC Development Impact Fees- Intent of the Parties. Master Developer and the Owners shall be responsible for the payment of the development impact fees set forth in Section 5.2 below, as amended from time to time and increased or decreased as set forth in Section 5.2.5 below (the "**RC Development Impact Fees**"). The parties hereby acknowledge and agree that the RC Development Impact Fees are (a) substantially similar to the citywide development impact fees in both purposes and amounts, and (b) intended to be a complete and absolute substitution for the payment of any citywide development impact fees or any additional development impact fees imposed by the City throughout the Term of this Agreement. Except for the obligation to pay the RC Development Impact Fees identified in Section 5.2, neither Master Developer nor any Owner shall be responsible for the payment of any additional development impact fees imposed by the City.

5.2 RC Development Impact Fees. The RC Development Impact Fees, which are applicable to the Project Area only and which remain subject to all citywide development impact fee increases and decreases throughout the Term of this Agreement, all as more particularly set forth in Section 5.2.5 below, are as follows:

RC Development Impact Fees	**Residential (per unit)**	**Commercial (per sq. ft)**
RC Citywide Traffic Impact Fee	$4,689.59[1]	$2.03
East Robertson Blvd Improvement Fee		
City East Robertson Blvd Impact Fee	$1,358.00	$0
RC East Robertson Blvd Beautification Impact Fee	$5,863.00	$0
RC Signalization Impact Fee	$238.42	$0.19
RC Sewer Treatment Impact Fee	$6,186.94	$1.33
RC Water Supply Impact Fee	$2,253.05	$0.51
RC General City Facilities Impact Fee	961.24	$0.42
RC Fire Facilities Impact Fee	$1,751.01	$0.74
RC Police Facilities Impact Fee	$945.48	$0.40
RC Storm Drain Impact Fee	$0	$0
RC Parks and Recreation Impact Fee	$662.89[2]	$0
Total RC Development Impact Fees:	**$24,909.62**	**$5.62**

[1] As of the Effective Date of this Agreement, the Citywide Traffic Impact Fee imposed on all new development is $6,047.59 per residential unit. $1,358.00 of the Citywide Traffic Impact Fee due for each residential unit has been moved to the City East Robertson Blvd Improvement Fee to cover the cost of the City East Robertson Blvd Improvements (see Section 5.2.2.1 below).

[2] The Parks and Recreation Impact Fee is comprised of the major community park fee, more particularly set forth in Section 5.2.4.1 ($425.76), and the adjusted minor community park, more particularly set forth in Section 5.2.4.2 below ($237.13), for a total RC Park and Recreation Impact Fee of $662.89. No neighborhood park fee is included in the Parks and Recreation Impact Fee for the reasons set forth in Section 5.2.4.3 below.

5.2.1 Payment of the RC Development Impact Fees. The RC Development Impact Fees shall be paid to the City concurrent with issuance by the City of a certificate of occupancy for each structure within that portion of the Project Area being developed by Master Developer or an Owner. The City may refuse to issue a certificate of occupancy for any structure within the Project Area for which the RC Development Impact Fees have not been paid.

5.2.2 East Robertson Blvd Improvement Fee. The East Robertson Blvd Improvement Fee, set forth in Section 5.2 above shall be placed in a segregated bank account and used solely for the purpose of constructing the East Robertson Blvd Improvements defined below, including without limitation those costs and fees related to the design, engineering, construction, and management of constructing the East Robertson Blvd Improvements, and for no other purposes, until such time as the East Robertson Blvd Improvements are complete. Upon completion and acceptance of the East Robertson Blvd Improvements by the City and provided any reimbursements due to Master Developer pursuant to Section 6.3.2.5 below have been delivered to Master Developer, any East Robertson Blvd Improvement Fees remaining or deposited in the segregated account or paid to the City shall be available to the City for those uses set forth in Section 6.3.2.7 below. The terms and conditions related to use of the East Robertson Blvd Improvement Fee and construction of the East Robertson Blvd Improvements are more particularly set forth in Section 6.3 below.

5.2.2.1 The East Robertson Blvd Improvement Fee consists of two components. The first component, the City East Robertson Blvd Impact Fee set forth in Section 5.2 above in the amount of $1,358.00 per residential dwelling unit, is intended to cover those costs for which the City is responsible, namely (i) the median (including irrigation and landscaping), and (ii) two travel lanes (the two travel lanes on the north side of the median to the northern curb) within the East Robertson Blvd- Phase 1 Improvements, and (iii) one travel lane (the travel lane on the north side of the median to the northern curb) within the East Robertson Blvd-Phase 2 & 3 improvements (the "**City East Robertson Blvd Improvements**"), all as more particularly shown in Schedule 5.2.2.1. The second component, the East Robertson Blvd Beautification Impact Fee set forth in Section 5.2 above in the amount of $5,863.00 per residential dwelling unit, is intended to cover those costs for which the Master Developer is responsible, namely (a) the bike/pedestrian path, curb and gutter, landscaped setback (including a sidewalk, bus shelter, irrigation and landscaping), from the edge of the northern East Robertson Blvd travel lane to the northern boundary of the East Robertson Blvd public right of way, and where applicable in East Robertson Blvd Phase 2 & 3, the hydroseeded interim landscaping from the edge of the northern East Robertson Blvd travel lane to the northern boundary of the East Robertson Blvd public right of way, (b) any underground wet and dry utilities and infrastructure within the East Robertson Blvd public right of way which are required for Development of the Project Area (including fire hydrants), and (c) undergrounding of the PG&E power line and all

related equipment and fixtures within the East Robertson Blvd right of way (the "**Master Developer East Robertson Blvd Improvements**", and together with the City East Robertson Blvd Improvements, collectively the "**East Robertson Blvd Improvements**").

5.2.3 RC Storm Drain Impact Fees. At no time during the term of this Agreement shall Master Developer, an Owner, or any portion of the Project Area be subject to the payment of storm drain impact fees, it being the agreement of the parties hereto that no such impact fees are due to the City as the result of infrastructure already constructed to serve a portion of the Project Area and the obligation of Master Developer or the Owners to construct all other storm drain improvements within the Project Area.

5.2.4 RC Park and Recreation Impact Fees. The RC Park and Recreation Impact Fee set forth in Section 5.2 above, which are lower than those set forth on the citywide development impact fee schedule as of the Effective Date, are intended to reflect the obligations of the City, the Master Developer, and Owners with regard to construction and dedication of all parks within the Project Area. The amount set forth in Section 5.2 is based on the information set forth in the City's nexus study[3] relating to the development of major community parks, minor community parks, and neighborhood parks, and the obligations of Master Developer and the Owners with regard to the same. The City's nexus study sets forth a development impact fee for each of these park categories, all of which are applicable only to residential development. Based on the following, the parties have agreed, and do hereby agree, that neither Master Developer nor any Owner shall be responsible for payment of the entire park and recreation citywide development impact fees charged to all residential developers as of the Effective Date. Rather, Master Developer and the Owners shall be responsible for the RC Park and Recreation Impact Fee set forth in Section 5.2 above which the parties acknowledge and agree is a fair amount in light of the following:

5.2.4.1 Because there is no major community park within the Project Area, Master Developer and the Owners shall be charged the full amount of the major community parks component of the parks and recreation citywide development impact fees ($425.76 per residential unit), which may be adjusted from time to time by the City as set forth in Section 5.2.5 below.

5.2.4.2 Master Developer shall dedicate the 12.9 acre minor community park land located within the Project Area to the City per the terms of **Section 5.5.6** of the Specific Plan[4]. In exchange for dedication of this land to the City, the City has

[3] The Adopted Update of Development Impact Fees for the City of Chowchilla, June 13, 2005.

[4] Per the City's nexus study, the value of this land is Seven Hundred Nine Thousand Five Hundred and no/100th Dollars ($709,500) (12.9 acres multiplied by $55,000 per acre = $709,500).

agreed to reduce the minor community park citywide development impact fees from $584.58 to $237.13 per residential unit (the "**Minor Community Park Fee**")[5].

5.2.4.3 According to the General Plan, it is the City's goal to have all neighborhood parks constructed by the builder developing the surrounding neighborhood and then dedicated to the City. As set forth in **Section 5.5.6** of the Specific Plan, Master Developer has agreed to the construction of all neighborhood parks within the Project Area by either Master Developer or the Owners. The City will therefore not have to spend any of the citywide development impact fees collected for neighborhood parks on the acquisition of land for or construction of any neighborhood parks within the Project Area. In consideration of this obligation being assumed by Master Developer on behalf of itself and the Owners, the City has agreed and does hereby agree to waive all neighborhood park citywide development impact fees.

5.2.5 Increases and Decreases to the RC Development Impact Fees. Subject to the terms and conditions set forth in Section 5.2.3 above and in this Section 5.2.5, any and all increases or decreases to the citywide development impact fees adopted by the City shall apply to the Project Area in the same percentage increase or decrease applied to all new development in the City with the exception of the East Robertson Blvd Improvement Fee, the RC Storm Drain Impact Fee, and the RC Parks and Recreation Impact Fee which can only be modified with the consent of Master Developer. Prior to consideration of any increases or decreases to the citywide development impact fees, the City shall provide written notice thereof to Master Developer and all Owners. Upon adoption by the City of any such increases or decreases to the citywide development impact fees, the RC Development Impact Fees set forth in Section 5.2 above shall be updated by the same percentage increase or decrease to the citywide development impact fees, evidence of which shall be provided via an amendment to this Agreement signed by both Parties, the sole purpose of which shall be to substitute the table set forth in Section 5.2 above with the updated RC Development Impact Fees. In the event the City changes the names or purposes of the citywide development impact fees or reorganizes the citywide development impact fees in effect as of the Effective Date, the same shall apply to the RC Development Impact Fees, subject to the following: (i) the Project Area shall not be subject to any new or modified storm drain impact fees, and (ii) the Project Area shall not be subject to any new or modified fees which would generally fall within the category of the storm drain impact fees. The Project Area shall not be subject to new development impact fees outside of the categories set forth in Section 5.2 which are adopted by the City during the Term of this Agreement.

5.2.5.1 On February 9, 2021, the Council adopted Resolution #12-21, which reduced all residential development impact fees from July 1, 2021, through June

[5] The Minor Community Park Fee was established by multiplying the total number of residential units that can be built within the project area (2,042) by the current minor community park fee ($584.58), then subtracting the value of the land being dedicated to the City ($709,500) and then dividing that sum by the total number of residential units that can be built within the Project Area (2,042 x 584.58 – 709,000) / 2,042 = $237.13.

30, 2023, subject to extension by Council. Pursuant to the terms of Resolution #12-21, the residential development impact fees for all residential development within Rancho Calera, which is in Zone 1, is $11,066.65 per residential unit. This sum does not reflect a reduction in the storm drain impact fee, required by Section 5.2.3 above, or the parks and recreation impact fee, required by Section 5.2.4 above. For the reasons set forth in this Agreement, the storm drain impact fee has been removed and the parks and recreation impact fee has been reduced, but the East Robertson Blvd Improvement Fee has not been reduced because the cost to construct the East Robertson Blvd Improvements is a set cost. In summary, from July 1, 2021, through June 30, 2023, the RC Development Impact Fees for all residential development with the Project Area shall be:

RC Development Impact Fees	**Residential (per unit)**
RC Citywide Traffic Impact Fee	$2,344.80[6]
East Robertson Blvd Improvement Fee	
City East Robertson Blvd. Impact Fee	$1,358.00
RC East Robertson Blvd. Beautification Impact Fee	$5,863.00
RC Signalization Impact Fee	$119.21
RC Sewer Treatment Impact Fee	$3,093.47
RC Water Supply Impact Fee	$1,126.53
RC General City Facilities Impact Fee	$480.62
RC Fire Facilities Impact Fee	$875.51
RC Police Facilities Impact Fee	$472.74
RC Storm Drain Impact Fee	$0
RC Parks and Recreation Impact Fee	$331.44
Total RC Development Impact Fees:	**$16,065.31**

The terms of this Section 5.2.5.1 shall supersede the residential RC Development Impact Fees set forth in Section 5.2 above for the term set forth in Resolution #12-21, payment of which remain subject to Section 5.2.1 above.

5.2.5.2 As of the Effective Date of this Agreement, the City is processing those studies and documents required to update the citywide development impact fees for both residential and commercial development. It is believed that through this process, the citywide development impact fees will be reduced as the result of changes to public work projects which were contemplated in the existing nexus study. In completing this process, the City shall take into account the terms set forth in Section 5.2.5 above relating to those development impact fees which are

[6] For the reasons set forth above, the temporary RC Citywide Traffic Impact Fee has been reduced to $2,344.80 per residential unit.

not applicable to or reduced for the Project. Upon completion of the process set forth in this Section 5.2.5.2, the Parties shall comply with the terms set forth in Section 5.2.5 above regarding amendment to this Agreement to insert a new RC Development Impact Fee table in Section 5.2 reflecting those citywide development impact fees which are applicable to the Project, including the East Robertson Blvd Improvement Fee.

5.2.6 Use and Availability of the RC Development Impact Fees. Except as set forth in this Agreement, the City shall have the right to use the RC Development Impact Fees for those purposes identified by the City in its nexus study, for those obligations set forth in the Development Approvals, capital facilities improvement plans, a specific plan or a general plan, or as otherwise permitted by law. The RC Development Impact Fees shall be available to the City for use upon payment thereof by Master Developer or an Owner in accordance with Section 5.2.1 above.

5.3 Right to Object. Notwithstanding anything to the contrary set forth herein, to the extent otherwise allowed by law, Master Developer and the Owners shall have the right to object to or comment on any new or revised citywide development impact fees which are proposed by Council during the Term of this Agreement.

5.4 Miscellaneous Fees.

5.4.1 Processing Fees. The City may charge processing fees for land use approvals, building permits, and other similar permits and entitlements which fees are in force and effect on a citywide basis at the time an application is submitted for those permits, except as provided to the contrary in this Agreement. Such fees shall not be increased after submission of the application unless justified by an increase in the estimated reasonable cost to the City for performing the work for which the particular fee is paid and limited to an amount which will compensate the City for the estimated reasonable cost and increases incurred, as permitted pursuant to *California Government Code §66104, et seq*.

5.4.2 Additional Fees. In addition to payment of the RC Development Impact Fees set forth above, the City may collect additional fees or exactions which meet one of the following definitions: (1) they are directly imposed by another governmental agency and the City is required to collect the additional fees; or (2) they are uniformly imposed on all comparable residential or commercial development projects within the City and are required solely to provide capital infrastructure facilities or improvements needed for health and safety reasons as a direct result of the Project and are otherwise consistent with *California Government Code §66000 et seq*., the General Plan, and the Specific Plan.

5.4.3 New Citywide Taxes, Liens, and Assessments. Except for any agreement for special taxes, liens and assessments between the City and Master Developer entered into prior to the Effective Date, or any agreement for special taxes, liens, and assessments contemplated by this Agreement (see Section 7) or the Development Approvals, the City shall not subject the Project Area, or any part thereof, to any special taxes, liens or assessments not applicable to the residents of the City as a whole unless approved in accordance with applicable State law by Master Developer and the affected Owners or

imposed by a vote of Master Developer and the Owners or electors in the area to be taxed or assessed. The City shall give Master Developer and the Owners not less than sixty (60) days' notice of any City proposal to impose such a special tax, lien or assessment, and an opportunity to be heard.

5.4.4 Construction of Public Improvements. Except as set forth in this Agreement, no fees shall be due in connection with the construction of any structure or improvements built on property to be donated or dedicated to the City or any other public or quasi-public entity regardless of who builds any such structure.

5.4.5 Administrative Fee. In consideration of the services being provided to Master Developer in connection with collection and disbursement of the East Robertson Blvd Improvement Fee, Master Developer shall pay the City a one percent (1%) administrative fee based on the total East Robertson Blvd Improvement Fees paid to the City during each calendar year (the "**Administrative Fee**") until such time as the Project is fully constructed. On or before January 15th of each year following which any East Robertson Blvd Improvement Fees are paid to the City, the City shall deliver to Master Developer notice of the total East Robertson Blvd Improvement Fees paid to the City during the prior calendar year. Within sixty (60) days of receipt of such notice, Master Developer shall deliver to the City funds equal to one percent (1%) of the total East Robertson Blvd Improvement Fees paid to the City during the prior calendar year.

6. PUBLIC IMPROVEMENTS AND DEDICATIONS.

6.1 Project Development and Construction of Public Improvements. Master Developer and the Owners shall construct and develop certain public infrastructure improvements within and adjacent to the Project Area in conjunction with the various phases of construction and Development activity on the Project Area, all as more particularly set forth in the Specific Plan.

6.2 Phasing. The Project has been designed generally for public infrastructure construction concurrent with residential neighborhood construction and commercial center construction. The phasing, timing, and rate of Development, however, depend on numerous factors that are not within the control of Master Developer or the City. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance notwithstanding that the construction company and the city had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property in accordance with the zoning. The California Supreme Court reached this result on the basis that the consent judgment failed to address the timing of development. It is the intent of the parties to this Agreement to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Master Developer shall have the Vested right to develop the Project Area in accordance with the terms of this Agreement and those set forth in the Specific Plan relating to construction of public improvements in such order and at such rate and at such time as Master Developer deems appropriate within the exercise of Master Developer's sole subjective business judgment, notwithstanding the adoption of an initiative after the Effective Date by the City's electorate to the contrary or any City moratorium or other similar limitation.

6.3 Construction of the East Robertson Blvd Improvements. In exchange for the terms and conditions set forth in this Agreement, Master Developer has agreed, and does hereby agree to construct the East Robertson Blvd Improvements, more particularly defined in Section 5.2.2.1 below, according to the phasing plan more particularly set forth in Section 6.3.1 below, using the East Robertson Blvd Improvement Fee for construction of the East Robertson Blvd Improvements, pursuant to the terms and conditions of this Section 6.3.

6.3.1 Phased Construction. The East Robertson Blvd Improvements shall be constructed, including undergrounding of the PG&E power line, by Master Developer in accordance with the Rancho Calera Specific Plan Amendment Transportation Impact Analysis, a copy of which is on file with the City Clerk, the East Robertson Blvd Phasing Plan, attached hereto as Schedule 6.3.1 and incorporated herein, and as further set forth herein. Master Developer shall be entitled to construct up to 215 dwelling units anywhere within the Project Area prior to constructing any East Robertson Blvd Improvements.

6.3.1.1 Prior to issuance of the 216th building permit anywhere in the Project Area, Master Developer shall construct the East Robertson Blvd Improvements shown on Schedule 5.2.2.1 within that area of East Robertson Blvd identified as East Robertson Blvd – Phase 1 on Schedule 6.3.1.

6.3.1.2 Prior to issuance of the 1,051st building permit anywhere in the Project Area, Master Developer shall construct the East Robertson Blvd Improvements shown on Schedule 5.2.2.1 within that area of East Robertson Blvd identified as East Robertson Blvd – Phase 2 on Schedule 6.3.1.

6.3.1.3 Prior to issuance of the 1,211th building permit anywhere within the Project Area, Master Developer shall construct the East Robertson Blvd Improvements shown on Schedule 5.2.2.1 within that area of East Robertson Blvd identified as East Robertson Blvd – Phase 3 on Schedule 6.3.1.

6.3.1.4 The City shall be entitled to withhold certificates of occupancy for any dwelling units in excess of those identified for each Phase of East Robertson Blvd Improvements until the applicable East Robertson Blvd Improvements are constructed and accepted by the City. For example, the City may withhold a building permit for the (a) 216th and each additional dwelling unit until the East Robertson Blvd Improvements are constructed within that area of East Robertson Blvd identified as East Robertson Blvd - Phase 1, (b) 1,051st and each additional dwelling unit until the East Robertson Blvd Improvements are constructed within that area of East Robertson Blvd identified as East Robertson Blvd - Phase 2, (c) 1,211th and each additional dwelling unit until the East Robertson Blvd Improvements are constructed within that area of East Robertson Blvd identified as East Robertson Blvd - Phase 3.

6.3.1.5 Notwithstanding anything to the contrary set forth in this Section 6.3 or elsewhere in this Agreement, Master Developer or the Owners may construct any of the East Robertson Blvd Improvements in advance of the obligation to do so.

6.3.2 Funding and Construction of the East Robertson Blvd Improvements. The East Robertson Blvd Improvement Fee shall be used for the sole purpose of constructing the East Robertson Blvd Improvements. Any shortfall in the cost to construct the East Robertson Blvd Improvements and the funds collected for the same through payment of the East Robertson Blvd Improvement Fee shall be the responsibility of Master Developer.

6.3.2.1 No less than once every ninety (90) days beginning on the Effective Date, the City and Master Developer shall discuss the status of development within the Project Area, including without limitation Master Developer's timeline with regard to construction of the East Robertson Blvd Improvements (the "**Project Status Updates**").

6.3.2.2 Design and Construction of the East Robertson Blvd Improvements shall be consistent with the design and construction identified on Schedule 5.2.2.1 and Schedule 6.3.1, and in the Preliminary Opinion of Probably Construction Cost, East Robertson Blvd, prepared by HMH Engineers, dated April 22, 2021 (the "**Engineer's Estimate**"). The Engineer's Estimate shall be updated annually on or before June 1st of each year by HMH Engineers, unless the parties agree otherwise, the cost of which shall be borne by Master Developer. If the costs identified in the Engineer's Estimate have changed by more than ten percent (10%), Master Developer may request that the East Robertson Blvd Improvement Fee be modified to reflect the same, the cost of doing so to be paid by Master Developer.

6.3.2.3 Concurrent with submitting the necessary applications, drawings, and plans and specifications for the construction of each phase of the East Robertson Blvd Improvements (each an "**East Robertson Blvd Plan Set**"), Master Developer (i) shall submit a copy of the construction contract for buildout of the phase identified on the applications which shall include the total costs and expenses related to design, engineering, construction, and construction management of that phase of the East Robertson Blvd Improvements, the total of which shall be substantially consistent with the Engineer's Estimate, as adjusted pursuant to Section 6.3.2.2 above (each an "**East Robertson Blvd Improvements Contract Sum**"), and (ii) may, at its option, submit the contact information for the entity which will serve as the construction manager for such phase of construction (the "**Construction Manager**"). Unless indicated otherwise in the notice to the City, the Construction Manager shall have the authority to act on behalf of Master Developer in regard to all matters related to construction of the phase of the East Robertson Blvd Improvements identified on the notice. Within twenty (20) days of receipt of the notice containing the East Robertson Blvd Improvements Contract Sum, the City shall notify Master Developer in writing whether it approves or disapproves of the East Robertson Blvd Improvements Contract Sum.

In the event the City disapproves of the East Robertson Blvd Improvements Contract Sum, the notice to Master Developer shall include detailed information regarding what precisely has been disapproved, a rationale for the same, and a recommended alternative. Within ten (10) days of the date Master Developer receives the City's notice, the City and Master Developer shall meet and reach an agreement regarding the disapproved East Robertson Blvd Improvements Contract Sum.

6.3.2.4 The City shall, to the extent possible, expedite review and approval of each East Robertson Blvd Plan Set. In the event the City determines that it is not able to expedite review and approval of the East Robertson Blvd Plan Set, Master Developer may request that the City retain the services of an outside planner/engineer to review and approve the East Robertson Blvd Plan Set, and the City shall use its best efforts to comply with Master Developer's request provided Master Developer agrees to pay all costs and expenses related to the City retaining the services of such person.

6.3.2.5 No less than once every sixty (60) days once construction of any phase of the East Robertson Blvd Improvements has commenced, Master Developer or the Construction Manager shall submit to the City copies of all invoices, bills, and other documents relating to construction of the applicable phase of the East Robertson Blvd Improvements received by Master Developer or the Construction Manager for the preceding sixty (60) day period (each an "**Accounting**"). Unless objected to in writing within ten (10) days of delivery of the Accounting to the City, the City shall process the Accounting for payment to Master Developer using those funds available in the East Robertson Blvd Improvement Fees. In the event the City objects to any item on an Accounting, the parties shall meet and reach an agreement regarding the item objected to by the City. Master Developer shall use all funds received from the City in connection with each Accounting for the sole purpose of paying those costs and expenses related to construction of the East Robertson Blvd Improvements. Subject to the terms set forth herein, in the event there are insufficient East Robertson Blvd Improvements Fees to cover the costs identified in any Accounting, Master Developer shall be responsible for payment of those amounts due for construction of the East Robertson Blvd Improvements identified in the Accounting. The City and Master Developer shall each keep an accounting of those amounts paid by Master Developer for the East Robertson Blvd Improvements which were not available to Master Developer when the East Robertson Blvd Improvements were constructed (the "**Master Developer Contribution**"), the total of which shall be due and delivered to Master Developer following conclusion of each phase of construction of the East Robertson Blvd Improvements from the East Robertson Blvd Improvement Fees as the same are collected by the City until the total Master Developer Contribution has been paid to Master Developer.

6.3.2.6 Upon completion of the East Robertson Blvd Improvements for each phase, the City shall accept the same and Master Developer shall obtain and

deliver to the City, Unconditional Lien Releases from each contractor, subcontractor, or other party involved with the construction of the East Robertson Blvd Improvements.

6.3.2.7 Upon completion of the East Robertson Blvd Improvements and provided Master Developer has been paid the total Master Developer Contribution, any funds remaining in the East Robertson Blvd Improvement Fee account shall be released to the City (the "**East Robertson Blvd Improvement Fee Remainder**"). The East Robertson Blvd Improvement Fee Remainder shall be allocated first to any public improvements within the Project Area which have not been constructed and for which the City is responsible per **Section 5.5** of the Specific Plan. After all public improvements within the Project Area for which the City is responsible have been constructed, the East Robertson Blvd Improvement Fee Remainder shall be available to the City for any public improvements.

6.4 Public Improvements to be Constructed by Master Developer or Owners and the City. Master Developer or the Owners shall be responsible for the construction of those public infrastructure improvements set forth in **Section 5.5** and **Table 5-1** of the Specific Plan which are identified as being the obligation of either Master Developer or the Owners (identified as the Builders in the Specific Plan) using those funding sources set forth in **Section 5.5** and **Table 5-1** of the Specific Plan, a copy of which is attached hereto as Schedule 6.4 and incorporated herein by this reference, and the City shall be responsible for the construction of those public infrastructure improvements set forth in **Section 5.5** and **Table 5-1** of the Specific Plan which are identified as being the obligation of the City using those funding sources set forth in **Section 5.5** and **Table 5-1** of the Specific Plan, a copy of which is attached hereto as Schedule 6.4 and incorporated herein by this reference. With regard to the timing of construction of public infrastructure improvements which are the responsibility of the City, the Master Developer and the Owners shall only be responsible for providing the road and utility infrastructure improvements to the edge of the property to be developed by the City when the adjacent residential neighborhood or commercial use is developed. In the event the City elects to develop one or more of the public improvements for which it is responsible per **Section 5.5** and **Table 5-1** of the Specific Plan prior to the road and utility infrastructure improvements being available at the edge of the property to be developed by the City, the City shall, at its sole cost and expense, be responsible for installing all infrastructure improvements necessary to proceed with development of the public improvement. At the election of Master Developer, the improvement plans for the road and utility infrastructure improvements the City elects to construct pursuant to this Section 6.4 may be prepared by Master Developer in accordance with the Specific Plan. If the City elects to install any infrastructure improvements in connection with development of those public improvements for which the City is responsible per **Section 5.5** and **Table 5-1** of the Specific Plan, as shown in Schedule 6.4, and the road and utility infrastructure improvements installed by the City serve the Project Area, Master Developer shall enter into a reimbursement agreement with the City whereby Master Developer shall reimburse the City for those road an infrastructure improvements installed by the City which serve the Project Area at that time that the residential or commercial uses adjacent to the road and utility infrastructure improvements are developed.

Master Developer shall not be responsible for any costs expended by the City which are associated with installing infrastructure improvements which do not benefit the Project Area. For example, if Master Developer grants the City an easement for a temporary access road to the Public Safety Facility and the City installs a temporary access road over such easement area for use until such time as Millerton Lane is constructed, the cost of installing the temporary access road will not be reimbursed by Master Developer.

6.4.1 Timing of Construction of Public Improvements. With the exception of the phased construction of the East Robertson Blvd Improvements set forth above, generally, construction of the public improvements by Master Developer or the Owners shall occur concurrent with development of the adjacent residential neighborhood or commercial use; nothing in this Agreement, the Specific Plan, or the Development Approvals, however, shall prevent Master Developer or the Owners from constructing one or more of the public improvements for which Master Developer or the Owners are responsible ahead of construction of other public improvements for which Master Developer or the Owners are responsible (for example, one or more roads or parks may be constructed ahead of development of the adjacent residential neighborhoods to provide access to another residential neighborhood). The City may elect to proceed with construction of the public improvements it is responsible for when the demand arises.

6.4.2 Construction Standards. All public improvements shall be designed and constructed in accordance with the Development Approvals, the Specific Plan, and this Agreement using the funding sources identified in **Table 5-1** of the Specific Plan. In no event shall **Section 5.5** or **Table 5-1** of the Specific Plan be amended without the express written consent of both Master Developer and the City.

6.4.3 Water Tank and Water Well. The Parties have agreed and do hereby agree that the Water Tank and Water Well identified in **Section 5.5** and **Table 5-1** of the Specific Plan, as well as Schedule 6.4 attached hereto, are needed for development of Rancho Calera and that the project area cannot be fully served without a new water tank and water well being completed. As of the Effective Date, however, it is unclear when the water tank and water well will be needed, where the facilities will be located (whether within or outside the boundaries of Rancho Calera, or both, or the precise location(s) required for the water tank and water well), the cost of said facilities, or how the facilities should be funded and constructed. The City is preparing a Water Master Plan that will be used, to the extent possible, to help resolve these outstanding issues for the water tank and water well. Upon completion of the Water Master Plan, the Parties shall meet and reach an agreement regarding construction and financing of the Water Tank and Water Well, the terms of which shall automatically be incorporated into this Agreement and the Specific Plan. Master Developer understands and agrees that the City may withhold approval of requests for Subsequent Development Approvals until such time as an agreement is reached regarding construction and financing of the Water Tank and Well. Completion of the water tank and water well will be the responsibility of the Developer, directly or indirectly, and Developer agrees and acknowledges that the City may withhold approval or deny development approvals and necessary entitlements if the then-current City water system cannot support the proposed development. Such determinations may be required

to be made on a proposal-by-proposal basis until the water tank and water well are completed and operational. Financing and construction of the water tank and water well, including location, site selection, site acquisition, funding, reimbursement, and physical construction, shall be negotiated by the Parties. The Parties agree to reasonably cooperate with one another in order to make effective the intent of this Development Agreement and the Specific Plan.

6.5 Construction of Public Improvements for the Benefit of Future Land Development. Neither Master Developer nor any Owners shall be required to install public improvements or increase the size of any public improvements that are intended to benefit the property to the north and/or east of the Project Area (the "**Future Land Development Area**") unless funding for the same from the City or another source is made available to Master Developer or the Owners prior to the work being completed.

6.6 Dedication/Donation. All public improvements constructed by Master Developer and/or the Owners shall be dedicated to the City as set forth in **Section 5.5** of the Specific Plan and this Section 6.6. Except as set forth elsewhere in this Agreement, no consideration shall be due to Master Developer and/or the Owners for any public improvements or land underlying such public improvements dedicated, donated, or conveyed to the City pursuant to **Section 5.5** of the Specific Plan and this Section 6.6. Upon completion of construction of each public utility improvement, the same shall be conveyed by Master Developer and/or the Owners to the respective public utility providers.

6.6.1 Extension of South Lake Tahoe Drive and N. Fig Tree Blvd. That portion of the future extension of South Lake Tahoe Drive which is north of North Lake Tahoe Drive (the "**South Lake Tahoe Drive Extension**") shall be dedicated to the City concurrent with dedication of the Outlot L Neighborhood Park to the City, the location of which is more particularly shown on Tentative Subdivision Map No. 16-0124, and that portion of the future extension of N. Fig Tree Blvd that is north of North Lake Tahoe Drive (the "**N. Fig Tree Blvd Extension**") shall be dedicated to the City concurrent with dedication of the Outlot K Neighborhood Park to the City, the location of which is more particularly shown on Tentative Subdivision Map No. 16-0124. Upon dedication, use of the South Lake Tahoe Drive Extension and the N. Fig Tree Blvd Extension shall be subject to the discretion of the City.

6.6.2 Half Construction of South Lake Tahoe Drive and N. Fig Tree Blvd. Master Developer shall only be responsible for construction of the outermost two (2) lanes and all adjacent curb, bike lanes, sidewalk, and landscape improvements within that portion of South Lake Tahoe Drive between Genoa Lake Way and North Lake Tahoe Drive and that portion of N. Fig Tree Blvd between South Lake Take Drive and North Lake Tahoe Drive. The land needed for the innermost two lanes and medians within that portion of South Lake Tahoe Drive between Genoa Lake Way and North Lake Tahoe Drive and that portion of N. Fig Tree Blvd between South Lake Take Drive and North Lake Tahoe Drive shall be donated to City for future build-out and construction.

6.6.3 Minor Community Park, Public Safety Facility, Well and Water Tank, and Stormwater Retention Areas. The land for the Minor Community Park, the Public Safety

Facility, and the Well and Water Tank shall be dedicated by Master Developer to the City upon written request from the City. The land underlying each of the Stormwater Retention Areas may be dedicated to the City by Master Developer in phases as each Stormwater Retention Area is improved by Master Developer.

6.7 Ownership and Maintenance of Private and Public Facilities and Infrastructure.

6.7.1 Private Property Improvements. Master Developer, an Owner, an Owners Association, or a group of individuals governed by contract shall own and maintain the private property and improvements, if any, located within the Project Area which the respective entity constructed or became responsible therefore by means of a separate written agreement. The agreement entered into by the parties shall require that the private property be maintained to no less than City standards. The City shall have the right, but not the obligation, to review any such agreements.

6.7.2 Public Property Improvements. Upon acceptance of property and each public improvement donated or dedicated to the City, all as more particularly set forth in **Section 5.5** of the Specific Plan, the Master Developer shall have no further obligation for the maintenance of such improvements. Until such time as the City accepts the dedicated or donated property and each public improvement, Master Developer or the Owner shall maintain and operate the same to no less than City standards.

6.8 School District Obligations (Informational only). Pursuant to the terms of that certain Chowchilla School District Amended Supplemental Development Fee Agreement, as amended (the "**Elementary School Fee Agreement**"), entered into between Master Developer and Chowchilla School District (the "**Elementary School District**"), and that certain Chowchilla Union High School District Development Fee Agreement (the "**High School Fee Agreement**"), entered into between Master Developer and Chowchilla Union High School District (the "**High School District**"), a fifteen (15) acre parcel was donated to the Elementary School District upon which an elementary school was constructed by the Elementary School District (Ronald Reagan Elementary School), and a ten (10) acre parcel was acquired by Master Developer and subsequently transferred to the High School District. Subject to the terms and conditions set forth in the Elementary School Fee Agreement, a ten (10) acre parcel within the Project Area may be donated to the Elementary School District upon which a second elementary school may be constructed. Construction of the second elementary school, as well as any needed expansion of the middle school and high school, will be financed by either the Elementary School District or the High School District. The terms and conditions related to connecting the second elementary school to public utilities are addressed in the Elementary School Fee Agreement. Ongoing funding for the operation and maintenance of the elementary school located within the Project Area, as well as all other elementary, middle, and high schools will be provided by the Elementary School District and High School District through their normal financing sources, such as State payments and local bonds. In addition to the school site donated to the Elementary School District and the property transferred to the High School District, both the Elementary School Fee Agreement and the High School Fee Agreement provide for the payment of mitigation fees in excess of those required by state law to the Elementary School District and the High School District, the terms of which are more particularly set forth in the Elementary School Fee Agreement and the High School Fee

Agreement, copies of which are available from the Elementary School District and the High School District respectively.

7. **FINANCING AND PROVISION OF PUBLIC IMPROVEMENTS**.

7.1 2006 Community Facilities District. The Project Area is presently encumbered by the 2006 CFD which was formed to provide funding for certain public utility and infrastructure improvements, including among other things, a new wastewater treatment facility, public water system improvements, and interchange improvements (the "**2006 CFD Improvements**"). In 2007, the City authorized the issuance of a single bond series in the amount of Eight Million Six Hundred Fifteen Thousand and no/100th Dollars ($8,615,000.00) (the "**First Bond Series**"), the proceeds of which have been used to fund some of the identified improvements.

7.1.1 Refinancing/New Bond Issue. In the event the City elects to refinance the 2006 CFD or proceed with an additional bond issue under the 2006 CFD, the City and Master Developer do hereby agree to meet and work towards an agreement regarding the same.

7.1.2 Amendment to the Special Tax for Services. In addition to providing funding for the construction of the 2006 CFD Improvements, the 2006 CFD includes a Special Tax for Services that encumbers all of the residential property within the boundaries of the 2006 CFD and exists in perpetuity. The purpose of the Special Tax for Services is to provide ongoing funding for certain public services, including without limitation, the City Police Department, the City Fire Department, and stormwater system and park maintenance. Residents who own property outside of property encumbered by the 2006 CFD do not pay the Special Tax for Services. Master Developer has requested and the City has agreed to assess the Special Tax for Services required to meet the needs of the Project Area and those other properties encumbered by the Special Tax for Services, including consideration of without limitation (i) revising the trigger date for escalation of the Special Tax for Services, (ii) modifying the escalation factor, and/or (iii) capping the Special Tax for Services. Master Developer and the City shall work diligently towards a resolution of these issues, as well as determining whether additional funding may be necessary for maintenance of certain public improvements within the Project Area.

7.2 Formation of Financing District. City acknowledges that the Specific Plan contemplates the use of LSDF to finance the design and construction of certain public improvements. The City is not, however, obligated to form such LSDF districts as a result of its approval of the Specific Plan. In addition, the City may consider the formation of other public financing districts which will include the Project Area, or a portion thereof, for the purpose of funding other public facilities more particularly described in the Specific Plan, with the expectation that the public financing districts will issue, from time to time, bonds to provide sufficient funds to construct the public facilities so financed.

7.2.1 Consideration Limited by Policy. Upon the request of Master Developer or an Owner, with the consent of Master Developer, the parties shall cooperate in exploring the use of LSDF districts or other means for financing development within the Project Area, subject to then-existing City Debt Financing Policies.

7.2.2 City Not Required to Form District. Notwithstanding the foregoing, it is acknowledged by the parties that nothing contained in this Agreement shall be construed as requiring the City or the Council to form a LSDF district or cause a public financing district to issue bonds.

7.2.3 Master Developer/Owner Vote. Master Developer or an Owner, with the consent of Master Developer, shall cooperate with the City in the formation and establishment of one or more LSDF district(s), as contemplated in the Specific Plan, provided that nothing herein shall prevent Master Developer or an Owner, in its sole discretion, from voting against the formation of any public financing district.

7.2.4 Future Overlapping Indebtedness. In addition to the 2006 CFD, portions of the Project Area are encumbered by the 2003 RD and the entire Project Area is encumbered by that certain Chowchilla Water District Improvement District No. 1 (the "**CWD Assessment District**"). The 2003 RD was formed for the purpose of refinancing certain bonds originally issued in 1994 for the development of Greenhills Estates, a portion of which is included within the Project Area. The CWD Assessment District was formed pursuant to an agreement between Master Developer and Chowchilla Water District ("**CWD**") whereby CWD agreed to remove certain physical structures from the Project Area in exchange for Master Developer agreeing to build new structures and encumber the Project Area with an assessment in perpetuity intended to compensate CWD for the loss of approximately 3,000 acre feet of water per year, all of which is believed to now be supplying the aquifer located under and in the vicinity of the Project Area and benefitting the City. The parties hereby agree that the 2003 RD and CWD Assessment District shall be taken into consideration if and when any future financing districts which would encumber the Project Area are considered by Master Developer and the City.

8. REVIEW FOR COMPLIANCE.

8.1 Annual Review. Throughout the Term of this Agreement and at least every twelve (12) months (the "**Annual Review**"), the City Administrator shall review the extent of good faith compliance by Master Developer and the Owners with the terms of this Agreement, including without limitation construction of the RC Development Obligations set forth in Section 6.3 and Section 6.4 above. The review shall be limited in scope to compliance with the terms of this Agreement pursuant to *California Government Code §65865.1*.

8.1.1 Notice. At least twenty (20) days prior to the Annual Review, the City Administrator shall make available to Master Developer and the Owners a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related documents concerned Master Developer's and the Owners' compliance with this Agreement. Master Developer and the Owners shall be permitted an opportunity to respond to the City Administrator evaluation of compliance with this Agreement, either orally at a public hearing or in a written statement.

8.1.2 Burden of Proof. The burden of proof by substantial evidence of compliance is upon Master Developer and the Owners in accordance with *California Government Code §65865.1* and the applicable City ordinance.

8.1.3 No Additional Fees, Conditions, or Development Exactions. The City shall not impose any conditions, fees, or other Development Exactions as a condition to a finding of good faith compliance with the terms of this Agreement.

8.2 Special Review. The Council may, for cause, order a special review of compliance with this Agreement. The City Administrator shall conduct such special review. The special review may be used to replace the next Annual Review, in the sole discretion of the City Administrator.

8.2.1 Procedure Upon Special Review. Upon receipt of written notice from the City Administrator that the Council has ordered a special review of compliance with this Agreement, Master Developer and the Owners shall provide evidence as determined necessary by the City Administrator to demonstrate good faith compliance with the provisions of this Agreement. The burden of proof by substantial evidence of compliance is upon Master Developer and the Owners in accordance with *California Government Code §65865.1* and the applicable City ordinance. The City shall make available to Master Developer and the Owners a copy of all public staff reports, documents and related exhibits concerning the performance of Master Developer and the Owners under this Agreement at least twenty (20) days prior to such special review by the City Administrator.

8.3 Compliance Finding by City Administrator. If the City Administrator finds and determines on the basis of substantial evidence that Master Developer and the Owners have complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

8.4 Cancellation and Non-Compliance Finding by City Administrator. If the City Administrator finds and determines on the basis of substantial evidence that Master Developer and the Owners have not complied in good faith with the terms and conditions of this Agreement during the period under review, the City Administrator shall forward the Annual Review or special review to Council for further consideration. Prior to reaching such a decision and forwarding the decision to Council for further consideration, however, the City Administrator shall comply with the terms set forth in Article 9, including without limitation, delivery to Master Developer and the Owners of a Notice of Agreement Default. Master Developer and the Owners shall then be entitled to the cure periods set forth in Section 9.1 or such other cure period as is agreed upon between the parties. If Master Developer and the Owners fail to cure the alleged violation of this Agreement consistent with Section 9.1, and provided the applicable cure periods have expired, the City Administrator shall forward the notice of Non-Compliance to Council for further consideration.

8.5 Non-Compliance Finding by Council. If as a result of an Annual Review or special review which resulted in a Non-Compliance Finding by the City Administrator, the Council finds and determines on the basis of substantial evidence that Master Developer and the Owners have not complied in good faith with the terms and conditions of this Agreement, the City, by action of the Council, may terminate or modify this Agreement, written notice whereof shall be delivered to Master Developers and the Owners within three (3) days of the Non-Compliance Finding. The decision of the Council is final. Master Developer and the Owners shall not be required to appeal such decision in order to exhaust its (their) administrative remedies.

8.6 Deemed Approval. In the event the City fails to either (1) hold the annual review meeting or (2) notify Master Developer and the Owners in writing (following the scheduled date of the review meeting) of the City's determination as to compliance or noncompliance with the terms of this Agreement, and such failure remains uncured as of December 31st of the same year, such failure shall be deemed an approval by the City of the good faith compliance with the terms of this Agreement by Master Developer and the Owners.

8.7 Certificate of Agreement Compliance. At the conclusion of an Annual Review or special review, or as requested by Master Developer and the Owner(s) throughout the Term of this Agreement, and assuming that Master Developer and the Owner(s) are found to be in compliance with this Agreement, City shall issue a Certificate of Agreement Compliance ("**Certificate**") to Master Developer and the Owner(s) stating that after the most recent Annual Review or special review and based upon the information made known to the City Administrator and the Council (1) this Agreement remains in effect; and (2) Master Developer and the Owner(s) are not in default. The Certificate shall be in recordable form, shall contain information intended to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after an Annual Review or special review and shall state the anticipated date of commencement of the next Annual Review. Master Developer and the Owner(s) may record the Certificate with the County Recorder.

9. DEFAULT AND REMEDIES.

9.1 Default by Master Developer/Owner(s) or the City. Subject to extensions of time by mutual consent in writing or as provided herein, failure or delay by either party to perform any term or provision of this Agreement shall constitute a default. In the event of an alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured (the "**Notice of Agreement Default**"); provided, however, if the alleged default stated in the Notice of Agreement Default can be corrected, but not reasonably within such thirty (30) day period, the non-defaulting party shall not unreasonably withhold its consent to an extension of such time, not to exceed one hundred eighty (180) days, if corrective action is instituted by the defaulting party within the thirty (30) day period and diligently pursued until the failure is corrected. During any such thirty (30) day period, subject to extension up to one hundred eighty (180) days as provided herein, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings. Any extension of time beyond one hundred eighty (180) days for a default by Master Developer or the Owners of the Project Area requires the consent of the Council after a noticed public hearing. Default may be enforced against only the applicable defaulting party which, in the case of Master Developer or the Owners of the Project Area, may be less than all of the Owners of the Project Area.

9.1.1 Failure to Cure. After notice and expiration of the thirty (30) day period (which period is subject to extension as provided herein), the party alleging default may, at its option, institute legal proceedings pursuant to this Agreement, or give notice of intent to terminate the Agreement pursuant to *California Government Code §65868* and City regulations implementing said Government Code section. Following notice of intent to

terminate, the matter shall be scheduled for consideration and reviewed in the manner set forth in *California Government Code §65867* and City regulations implementing said section.

9.1.2 Council Hearing. Following consideration of the evidence presented in said review before the Council, either party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

9.2 Default by City. In the event the City materially defaults under the terms of this Agreement, the City agrees that Master Developer and the Owners shall not be obligated to proceed with or complete any phase of the Project materially and directly affected by the default, nor shall resulting delays in performance by Master Developer and the Owners constitute grounds for termination or cancellation of this Agreement.

9.3 Limitation on Remedies. Following expiration of the cure periods set forth in Section 9.1 above, in addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation; provided, however, that neither the City, Master Developer, nor the Owners shall be liable for money damages to the non-defaulting party for breach of contract, and Master Developer, on behalf of itself and all successor Owners, and the City each covenant not to sue in contract for money damages.

9.4 Enforced Delay – Extension of Times of Performance. 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, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine, restrictions, freight embargoes, unusually severe weather, inability (when either party is faultless) of any contractor, subcontractor or supplier, acts of the other party, acts or the failure to act, of any public or governmental agency or entity, except 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 of any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the cause. If, however, notice by the party claiming such extension 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 Master Developer and, to the extent applicable, the Owners. 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 Project Area pursuant to this Agreement shall be deemed to create an excusable delay under this Section 9.4 only as to Master Developer and the Owner and only for the period of such litigation. Nothing in this paragraph shall be construed to extend the term of this Agreement.

10. MORTGAGE PROTECTION.

10.1 Encumbrance of Master Developer's Interest. Master Developer and each successor Owner of all or any portion of the Project Area (hereinafter, "**Mortgagor**") shall have the right to encumber and/or collaterally assign or grant a security interest in such Mortgagor's right, title

and interest in, to and under this Agreement and the Project Area (or any portion thereof) pursuant to one or more mortgages (each a "**Permitted Mortgage**"), provided that (a) each such Permitted Mortgage shall be in favor of a Lender, and (b) the loan documents executed in connection with each such Permitted Mortgage shall provide that the City shall have the right to receive notices of default by the Mortgagor thereunder.

10.2 Mortgagee Protections. Provided that a mortgagee of any Permitted Mortgage (each a "**Mortgagee**"), provides the City with a conformed copy of each Permitted Mortgage which contains the name and address of such Mortgagee, the City hereby covenants and agrees to faithfully perform and comply with the following provisions with respect to such Permitted Mortgage:

10.2.1 No Termination. No action by Mortgagor, or the City to cancel, surrender, or materially modify the terms of this Agreement or the provisions of this Article 10 shall be binding upon a Mortgagee without written notice.

10.2.2 Notices. If the City shall give a Notice of Agreement Default to any Mortgagor hereunder, the City shall simultaneously give a copy of such Notice of Agreement Default to the Mortgagee at the address theretofore designated by it. No Notice of Agreement Default given by the City or Mortgagor shall be binding upon or affect said Mortgagee unless a copy of said Notice of Agreement Default shall be given to Mortgagee pursuant to Section 10.2.7 hereof. In the case of an assignment of such Permitted Mortgage or change of such Mortgagee, said assignee or Mortgagee, by written notice to City, may change the address to which such copies of Notices are to be sent.

10.2.3 Performance of Covenants. The Mortgagee shall have the right to perform any term, covenant, or condition and to remedy any default by Mortgagor hereunder, within the time periods specified herein, and the City shall accept such performance with the same force and effect as if furnished by Mortgagor; provided, however, that said Mortgagee shall not thereby or hereby be subrogated to the rights of the City.

10.2.4 Default by Mortgagor. In the event of a default by Mortgagor which has not been cured by Mortgagor, or as to which there is no cure period hereunder, the City agrees not to terminate this Agreement (1) unless and until the City provides written notice of such default to any Mortgagee and such Mortgagee shall have failed to cure such Default within sixty (60) days after the later of delivery of such notice or expiration of any applicable Mortgagor cure period, and (2) in the case of a default which cannot practicably be cured by the Mortgagee without taking possession of the Project Area, if the Mortgagee has delivered to the City, prior to the date on which the City shall be entitled to give notice of termination, a written instrument wherein the Mortgagee unconditionally agrees that (subject to such delays as may be incident to obtaining a relief from stay in the case of a bankruptcy/dissolution event) it will commence and diligently pursue cure of such default promptly following its obtaining possession of the Project Area (including possession by receiver) (subject to such delays as may be incident to obtaining a relief from stay in the case of a bankruptcy/dissolution event) and, upon obtaining such possession, the Mortgagee shall proceed diligently to cure such default.

10.2.4.1 The Mortgagee shall not be required to obtain possession or to continue in possession as Mortgagee of the Project Area, if and when such default shall be cured. Nothing herein shall preclude the City from exercising any of its rights or remedies with respect to any other default by Mortgagor during any period of such forbearance, but in such event the Mortgagee shall have all of its rights provided for herein.

10.2.5 Foreclosure. Foreclosure of any Permitted Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in a Permitted Mortgage, or any conveyance from the Mortgagor to a Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of the City or constitute a breach of any provision of or a default under this Agreement, and upon such foreclosure, sale or conveyance the City shall recognize the purchaser or other transferee in connection therewith as Master Developer or such successor Owner of the Project Area (or any portion thereof) hereunder provided that such purchaser or transferee assumes, subject to the terms of Section 10.2.4 above, each and all of the obligations of Master Developer or such successor Owner of the Project Area (or any portion thereof) hereunder pursuant to an assumption agreement satisfactory to the City. If any Mortgagee or its nominee or assignee shall acquire its Mortgagor's right, title and interest hereunder as a result of a judicial or non-judicial foreclosure under any Permitted Mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Mortgagee shall thereafter have the right to assign or transfer such Mortgagor's right, title and interest hereunder to an assignee in accordance with Section 2.4 hereof. Upon execution and delivery of an Assumption in accordance with Section 2.4 hereof, the City shall cooperate with the new Master Developer or the new successor Owner of the Project Area (or any portion thereof), at the sole expense of said new Master Developer or said new successor Owner of the Project Area (or any portion thereof), in taking such action as may be necessary to remove Master Developer or such other Owner of the Project Area (or any portion thereof) named herein from the Project Area.

10.2.6 No Obligation to Cure. Any Mortgagee who comes into possession of the Project Area, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Project Area or portion thereof, subject to the terms of this Agreement. Notwithstanding any provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of the obligations or other affirmative covenants of Master Developer or any successor Owner of all or any portion of the Project Area hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Master Developer or any such successor Owner of the Project Area or any portion thereof is a condition precedent to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

10.2.7 Form of Notice. Any Mortgagee under a Permitted Mortgage shall be entitled to receive the notices required to be delivered to it hereunder provided that such Mortgagee shall have delivered to each party a notice substantially in the following form:

> The undersigned, whose address is _____ does hereby certify that it is the Mortgagee (as such term is defined in that certain Development Agreement dated as of _____, 2021, between Rancho Calera, LLC, and the City of Chowchilla), of the parcel of land described on "Exhibit A" attached hereto, which parcel is owned by ____, a party to the Development Agreement (the "**Party**"). In the event that any notice shall be given of a default to the Party under the Development Agreement, a copy thereof shall be delivered to the undersigned that shall have the rights of a Mortgagee to cure the same, as specified in the Development Agreement. Failure to deliver a copy of such notice shall in no way affect the validity of the notice to the Party, but no such notice shall be effective as it relates to the rights of the undersigned under the Development Agreement with respect to the Permitted Mortgage, including the commencement of any cure periods applicable to the undersigned, until actually received by the undersigned.

10.2.8 Estoppel Certificate. The City shall execute an estoppel certificate in form and substance reasonably satisfactory to either an actual or a prospective Mortgagee at appropriate times (by way of example, but not limitation, prior to issuance of a commitment letter, prior to execution of loan documents, and/or prior to loan funding) in connection with the construction financing and from time to time thereafter, upon the reasonable request of the Mortgagee.

10.2.9 Limitation of Liability. Upon acquiring title to the Project Area or any portion thereof, Mortgagee shall have no obligations or liability to the City beyond the Mortgagee's interest if any, in the Project Area or such portion thereof, and the City shall look exclusively to such interest in the Project Area or such portion thereof for payment and discharge of any obligations imposed upon the Mortgagee under this Agreement or any other document entered into in connection therewith. Mortgagee shall be released and relieved of any liability under this Agreement and under any other document entered into in connection therewith upon the assignment of Mortgagee's rights upon or subsequent to foreclosure of its collateral or acquisition in lieu of foreclosure.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. Within ten (10) days of the Effective Date, the City Clerk shall record with the Madera County Recorder a fully executed copy of this Agreement and the ordinance approving its adoption. The Agreement shall be binding upon, and the benefits of the Agreement shall inure to, the parties and all successors in interest to the parties to the Agreement. The City shall execute the Agreement within a reasonable time after the Effective Date.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties as to the subject matter hereof, and there are no oral or written

representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceedings of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant, or condition of this Agreement shall be determined invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the public benefits set forth in Section 4, Section 5, and Section 6 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and the City would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void, or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted, in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural and the plural of any word includes the singular.

11.7 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.8 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.9 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.10 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.11 Successors in Interest. 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, including, without limitation, assignees (directly or by merger), heirs, or transferees by operation of law.

11.12 Counterparts. This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all the Parties had executed the same instrument.

11.13 Jurisdiction, Venue and Statute of Limitations. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Madera, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court. The use of the term "substantial evidence" in this ordinance with respect to the quantum of proof necessary in connection with a finding of non-compliance is not intended to limit, nor impose a standard of review upon, any court pursuant to a proceeding initiated for that purpose.

11.14 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 private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Master Developer and any successor Owner(s) of all or any portion of the Project Area is that of a government entity regulating the development of private property and the owner of such property, which development separately may require the construction of public improvements as fair consideration hereunder or as conditions of approval of the development as required by City ordinances and policies. City and Master Developer agree and acknowledge that the construction of such public improvements is subject to Section 11.20 below.

11.15 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of the Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

11.16 Authority to Execute. The person or persons executing this Agreement on behalf of Master Developer warrants and represents that he/they have the authority to execute this Agreement on behalf of his/their corporation, partnership or business entity and warrants and represents that he/they has/have the authority to bind Master Developer to the performance of its obligations hereunder.

11.17 Covenants Running With Land. Subject to the terms and conditions set forth in this Agreement, it is intended and determined that the provisions of this Agreement shall constitute covenants that shall run with the Project Area and the benefits and burdens thereof shall bind and inure to all successors in interest as to the parties hereto.

11.18 Findings of Support. The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety, and general welfare and that the provisions of this Agreement are consistent with the General Plan and the Specific Plan.

11.19 Incorporation of Recitals. The recitals are specifically incorporated into this Agreement.

11.20 Compliance with Laws. Master Developer shall carry out the design, construction and operation of the Project and the public improvements identified in this Agreement in substantial conformity with all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Madera, the City or any other political subdivision in which the Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Master Developer, or the Property, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards; applicable state and labor standards, including prevailing wage requirements as they apply to the public improvements; the Existing Land Use Regulations and Ordinances as they apply to the Project and the public improvements; building, plumbing, mechanical and electrical codes, as they apply to the Project and the public improvements; all other provisions of the City of Chowchilla and its Municipal Code as they apply to the Project and the public improvements; and all applicable disabled and handicapped access requirements, including, without the limitation, the *Americans With Disability Act, 42 U.S.C. §12101 et seq., California Government Code §4450 et seq.,* and the *Unruh Civil Rights Act, Civil Code §51 et seq.*. Notwithstanding the foregoing, Master Developer shall be solely responsible for determining and effectuating compliance with such laws, and the City make no representation as to the applicability or non-applicability of any of such laws and Master Developer shall bear the risk of any compliance or non-compliance with such laws. Notwithstanding, Master Developer shall not be in default under the provisions of this Section 11.20 unless Master Developer's non-compliance with such provisions results in a material and adverse effect on Master Developer's ability to comply with the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year set forth below, as authorized by Ordinance No. ___ of the Council.

Date: _____, 2021

CITY:

CITY OF CHOWCHILLA,
a Municipal Corporation

By: _____
_____, Mayor of the City of Chowchilla

ATTEST:

_____

_____, City Clerk

APPROVED AS TO CONTENT:

Community and Economic Development Department

By: _____

_____, Director of Community and Economic Development

APPROVED AS TO FORM:

By: _____

_____, City Attorney

MASTER DEVELOPER:

RANCHO CALERA, LLC,
a California limited liability company

By: _____

Glenn M. Pace, its Manager

ACKNOWLEDGEMENTS

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)
Please remove or update jurat form.

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me (*or proved to me on the basis of satisfactory evidence*) to be the person(s) whose name(s) (*is/are*) subscribed to the within instrument and acknowledged to me that (*he/she/they*) executed the same in (*his/her/their*) authorized capacity(ies), and that by (*his/her/their*) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL

_____
Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me (*or proved to me on the basis of satisfactory evidence*) to be the person(s) whose name(s) (*is/are*) subscribed to the within instrument and acknowledged to me that (*he/she/they*) executed the same in (*his/her/their*) authorized capacity(ies), and that by (*his/her/their*) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL

_____
Notary Public

Exhibit A

Existing Development Approvals and Vested Elements

The City of Chowchilla General Plan adopted by the Council on May 2, 2011, a copy of which is on file with the City Clerk.

The Rancho Calera Specific Plan adopted by the Council on May 2, 2011, as set forth in Resolution No. 41-11, a copy of which is on file with the City Clerk, as amended by the revised Rancho Calera Specific Plan adopted by the Council on _____, 2021, as set forth in Resolution No. , a copy of which is on file with the City Clerk.

The Rancho Calera Annexation to the City of Chowchilla by Madera County Local Agency Formation Commission (LAFCO), pursuant to Resolution No. 2011-007, which was adopted on December 28, 2011.

The Chowchilla 2040 General Plan and Rancho Calera Specific Plan Environmental Impact Report certified by the Council on May 2, 2011, as set forth in Resolution No. 3-11, as amended by the Mitigated Negative Declaration adopted by the Council on _____, 2021, as set forth in Resolution No._____, a copy of which is on file with the City Clerk.

The Mitigation Monitoring Plan for the Project adopted by the Council on May 2, 2011, as set forth in Resolution No. 44-11, a copy of which is on file with the City Clerk.

Tentative Map No. _____, including the Conditions of Approval attached thereto, adopted by the Council on _____, 2021, pursuant to Resolution No. _____, a copy of which is on file with the City Clerk.

Tentative Map No. _____, including the Conditions of Approval attached thereto, adopted by the Council on _____, 2021, pursuant to Resolution No. _____, a copy of which is on file with the City Clerk.

The Existing Development Approvals, as defined in the Development Agreement and listed above, are each Vested Elements under and in accordance with the Development Agreement to which this Exhibit A is attached.

Exhibit B

Legal Description of Project Area

For APN/Parcel ID(s): 014-010-006, 007, 010, 011 & 012, 014-030-029 thru 032 & 034 thru 038 & 056 and
014-270-002, 003 & 004

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CHOWCHILLA, COUNTY OF MADERA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: APN 014-030-056
Parcel 1 of Parcel Map No. 03-14, Greenhills Estates & Golf Club, in the City of Chowchilla, County of Madera, State of California, according to the map thereof recorded December 18, 2003 in Book 52 Pages 37 through 42, inclusive, of Maps, Madera County Records.

PARCEL 2: APN 014-030-029 thru 032 & 034 thru 039
Parcels A, B, C and D; Outlots F, G, H, I and J; and designated Remainder Parcel of Parcel Map No. 00-29, in the City of Chowchilla, County of Madera, State of California, according to the map thereof recorded July 12, 2001 in Book 49 Pages 113 and 114 of Maps, Madera County Records.

PARCEL 3: APN 014-010-010
A portion of Outlot "A", in the City of Chowchilla, County of Madera, State of California, as shown on that certain Parcel Map 93-01, filed for record on June 15, 1994 in Book 42 of Maps, pages 94 through 100, Madera County Records, described as follows:

Beginning at the Southeast corner of Section 21, Township 9 South, Range 16 East, Mount Diablo Base and Meridian;

Thence along the Easterly line of said Section 21, North 0° 41' 42" West, 75.00 feet, to the general Northerly line of said Outlot "A";

Thence Westerly along said Northerly line, along a non-tangent curve to the right, having a radius of 1757.35 feet, whose center bears North 0° 44' 19" West, through a central angle of 6° 42' 13" for an arc length of 205.61 feet, to a line parallel with and 87.00 feet Northerly of the Southerly line of said Section 21, being the True Point of Beginning;

Thence along said parallel line, South 89° 15' 55" West, 426.76 feet;

Thence North 85° 01' 27" West, 4.76 feet, to the general Southerly line of said Outlot "A";

Thence along said general Southerly line, the following seven courses:

1. Thence Westerly along a non-tangent curve to the right, having a radius of 1857.35 feet, whose center bears North 19Â° 18' 25" East, through a central angle of 11Â° 13' 07" for an arc length of 363.67 feet;
2. Thence North 59Â° 28' 29" West, 311.05 feet;
3. Thence along a tangent curve to the left, having a radius of 3323.00 feet, through a central angle of 30Â° 30' 52" for an arc length of 1769.76 feet;
4. Thence North 89Â° 59' 21" West, 200.00 feet;
5. Thence along a tangent curve to the left, having a radius of 3323.00 feet, through a central angle of 31Â° 59' 29"
for an arc length of 1855.42 feet;
6. Thence South 58° 01' 10" West, 389.33 feet;
7. Thence along a tangent curve to the right, having a radius of 1600.00 feet, through a central angle of 9° 29' 29" for an arc length of 265.05 feet, to a line parallel with and 89.00 feet Northerly of the Southerly line of Section 20, Township 9 South, Range 16 East, Mount Diablo Base and Meridian;

Thence along said parallel line, South 89° 16' 12" West, 124.86 feet;

Thence along a tangent curve to the right, having a radius of 20.00 feet, through a central angle of 89° 59' 43" for an arc length of 31.41 feet, to the Southerly prolongation of the Easterly line of Fig Tree Road (104 feet wide) as shown on that certain Parcel Map 04-03, filed for record October 11, 2005, in Book 54 of Maps, pages 147 through 150, Madera County Records;

Thence along said prolongation, North 0° 44' 05" West, 34.55 feet to the general Northerly line of said Outlot "A";

Thence along said general Northerly line, the following seven courses:
1. Thence Easterly along a non-tangent curve to the left, having a radius of 1500.00 feet, whose center bears North 18Â° 07' 05" West, through a central angle of 13Â° 51' 45" for an arc length of 362.92 feet;
2. Thence North 58Â° 01' 10" East, 389.33 feet;
3. Thence along a tangent curve to the right, having a radius of 3423.00 feet, through a central angle of 31Â° 59' 29" for an arc length of 1911.25 feet;
4. Thence South 89Â° 59' 21" East, 200.00 feet;
5. Thence along a tangent curve to the right, having a radius of 3423.00 feet, through a central angle of 30Â° 30' 52" for an arc length of 1823.01 feet;
6. Thence South 59Â° 28' 29" East, 311.05 feet;
7. Thence along a tangent curve to the left, having a radius of 1757.35 feet, through a central angle of 24Â° 33' 38" for an arc length of 753.31 feet, to the True Point of Beginning.

PARCEL 4: APN 014-010-011
A portion of Outlot "A", in the City of Chowchilla, County of Madera, State of California, as shown on that certain Parcel Map 93-01, filed for record on June 15, 1994 in Book 42 of Maps, pages 94 through 100, Madera County Records, described as follows:

BEGINNING at the intersection of the general Northerly line of said Outlot "A" with the Westerly line of Fig Tree Road (104 feet wide) as shown on that certain Parcel Map 04-03, filed for record October 11, 2005 in Book 54 of Maps, pages 147 through 150, Madera County Records;

Thence along the Southerly prolongation of said Westerly line, South 0° 44' 05" East, 6.04 feet;

Thence along a tangent curve to the right, having a radius of 20.00 feet, through a central angle of 90° 00' 17" for an arc length of 31.42 feet;

Thence Westerly along a reverse curve to the left, having a radius of 2098.00 feet, through a central angle of 4°28' 54" for an arc length of 164.11 feet;
Thence along a reverse curve to the right, having a radius of 1990.00 feet, through a central angle of 1° 07' 41" for an arc length of 39.18 feet, to the general Northerly line of said Outlot "A";

Thence Easterly along said general Northerly line, along a non-tangent curve to the left, having a radius of 1500.00 feet, whose center bears North 5° 21' 58" West, through a central angle of 8° 37' 56" for an arc length of 225.00 feet, to the Point of Beginning.

PARCEL 5: APN 014-010-007
Outlot A of Parcel Map No. 04-03, in the City of Chowchilla, County of Madera, State of California, according to the map thereof recorded October 11, 2005 in Book 54, Pages 147 to 150, inclusive of Maps, Madera County Records.

Certificates of Correction were recorded January 25, 2007, as Document No. 2007003624 and June 15, 2007, as Document No. 2007022970, of Official Records.

PARCEL 6: APN 014-010-006
Parcel 2 of Parcel Map No. 04-03, in the City of Chowchilla, County of Madera, State of California, according to the map thereof recorded October 11, 2005 in Book 54, Pages 147 to 150, inclusive of Maps, Madera County Records.

Certificates of Correction were recorded January 25, 2007, as Document No. 2007003624 and June 15, 2007, as Document No. 2007022970, of Official Records.

PARCEL 7: APN 014-010-012
Remainder 1 of Parcel Map No. 93-01, in the City of Chowchilla, County of Madera, State of California, according to the map thereof recorded June 15, 1994 in Book 42, Pages 94 to 100 of Maps, Madera County Records.

Excepting therefrom, that portion thereof lying within Parcels 1, 2 and Outlots A and B of Parcel Map No. 04-03, according to the map thereof recorded October 11, 2005 in Book 54, Pages 147 to 150, inclusive of Maps, Madera County Records.

Also excepting therefrom, that portion thereof conveyed to Chowchilla Water District, by Deed recorded April 4, 2004, as Document No. 2007013052, of Official Records.

PARCEL 8: APN 014-270-003
Parcel 1 of Parcel Map No. 2004, in the City of Chowchilla, County of Madera, State of California, according to the map thereof recorded February 26, 1981 in Book 27 of maps, pages 94 and 95, Madera County Records.

Excepting therefrom, an undivided 1/2 interest in all oil, gas and other hydrocarbons and all other minerals of whatsoever nature presently owned by Grantor, provided however, that the Grantor, its successors and assign shall not have and do expressly waive the right of way for any purpose whatsoever to enter upon, into or through the surface of the property granted herein or any part of said property, lying between said surface and five hundred feet below the surface, it being understood that grantor, its successors and/or assigns, reserve an as to an undivided one-half interest in all oil, gas and other hydrocarbons, and all other minerals of whatsoever nature located within such five hundred feet depth, as reserved in the Deed from Reginald O. Upton, etal, recorded March 5, 1980, as Document No. 4835, in the office of the County Recorder of Madera County, State of California.

PARCEL 9: APN 014-270-004
Parcel 2 of Parcel Map No. 2004, in the City of Chowchilla, County of Madera, State of California, according to the map thereof recorded February 26, 1981 in Book 27 of maps, pages 94 and 95, Madera County Records.

Excepting therefrom, an undivided 1/2 interest in all oil, gas and other hydrocarbons and all other minerals of whatsoever nature presently owned by Grantor, provided however, that the Grantor, its successors and assign shall not have and do expressly waive the right of way for any purpose whatsoever to enter upon, into or through the surface of the property granted herein or any part of said property, lying between said surface and five hundred feet below the surface, it being understood that grantor, its successors and/or assigns, reserve an as to an undivided one-half interest in all oil, gas and other hydrocarbons, and all other minerals of whatsoever nature located within such five hundred feet depth, as reserved in the Deed from Reginald O. Upton, etal, recorded March 5, 1980, as Document No. 4835, in the office of the County Recorder of Madera County, State of California.

PARCEL 10: APN 014-270-002
A Parcel of land lying all in Section 20, Township 9 South, Range 16 East, Mount Diablo Base and Meridian, in the City of Chowchilla, County of Madera, State of California, according to the Official Plat thereof, described as follows:

Beginning at a point on the South line of said Section 20, which bears the following courses and distances from the Southwest corner of said Section 20, North 89° 18' East 483.65 feet; South 0° 11' 15" West 223.75 feet; North 75° 19' 45" East 926.45 feet and North 89° 18' East 149.52 feet from the Southwest corner of said Section 20; thence from said point of beginning, North 89° 18' East 178.36 feet along the South line of said Section 20; thence North 0 ° 42' West 253.8 feet; South 89° 18' West 199.0 feet and South 5° 21' 30" East 254.64 feet to said point of beginning.

The above described land includes a portion of Lot 29 of Dairyland Acres.

Excepting therefrom, that portion lying within that certain parcel of land granted to the State of California for freeway purposes, by Deed recorded June 4, 1956 in Book 671 Page 491, Official Records, Madera County Records.

Schedule 5.2.2.1

The East Robertson Blvd Improvements

Schedule 6.3.1

The East Robertson Blvd Phasing Plan

Schedule 6.4

Table 5-1 Infrastructure and Public Facilities Construction

Service, Facility, Open Space	Construction Responsibility	Funding
TRANSPORTATION/CIRCULATION SYSTEM		
East Robertson Boulevard/Hwy 99 Interchange	City & Caltrans	LSDF, CFD, Caltrans, Madera County Measure T Funds, Impact Fees
East Robertson Boulevard (along the project frontage)	MD or B	LSDF, Impact Fees, MD, B
Internal Local Streets & Lanes (public)	MD or B	LSDF, MD, B
Internal Local Streets & Lanes (private)	MD or B	LSDF, MD, B
Internal Street Lighting & Landscaping	MD or B	LSDF, MD, B
Transit Pullouts and Shelters & Park and Ride Lot	MD or B	LSDF, Impact Fees, MD, B
WATER SUPPLY SYSTEM		
East Robertson Boulevard Water Supply Mains	MD or B	LSDF, Impact Fees, MD, B
Well and/or Water Tank	MD or B	CFD, Impact Fees, City, MD, B
Internal Street Water Supply Mains	MD or B	LSDF, MD, B
SANITARY SEWER SYSTEM		
New Wastewater Plant or Upgrade of Wastewater Plant (including master mains for delivery to Plan)	City	LSDF, CFD, Impact Fees
East Robertson Boulevard Sanitary Sewer Mains	MD or B	LSDF, Impact Fees, MD, B
Internal Street Sanitary Sewer Mains	MD or B	LSDF, MD, B
STORM DRAINAGE SYSTEM		
Existing Storm Drainage Main and Existing Basin	MD or B	LSDF, MD, B
Internal Street Storm Drainage Mains and Basins	MD or B	LSDF, MD, B
BMPs and Drainage Swales	MD or B	LSDF, MD, B
UTILITIES		
Natural Gas	PG&E, MD, B	PG&E, MD, B
Electricity	PG&E, MD, B	PG&E, MD, B
Phone/Fiber Optics	AT&T	AT&T
Cable Services	Comcast	Comcast
PUBLIC/COMMUNITY FACILITIES		
Public Facility Station	City	LSDF, CFD, Impact Fees
Elementary School	CESD	MD Land Donation, School Agreement Fees, Negotiated School Fees, State Funding
High School	CHSD	MD Land Donation, School Agreement Fees, Negotiated School Fees, State Funding
Minor Community Park	City	Impact Fees, City
Public Neighborhood Parks, Riverwalk, Promenades, and other Open Spaces	MD or B	LSDF, Impact Fees, MD, B
Private Open Spaces	MD or B	LSDF, MD, B

LEGEND:
MD - The Master Developer
B - A Builder is a homebuilder or a commercial builder (identified as an Owner in the Development Agreement).
CFD - The 2006 Community Facilities District includes funds to construct certain public improvements.
LSDF - Future CFDs, LMLDs, CSDs, LIDs, and IFDs, all as more particularly defined in the Specific Plan.
Impact Fees = fees established and collected by the City for impacts resulting from new development as established in the Development Agreement.
Transportation includes parkways, medians, and roundabouts.