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04/24/2024, Item No. 28

DEVELOPMENT AGREEMENT
BY AND BETWEEN

THE COUNTY OF SAN LUIS OBISPO

AND

NKT DEVELOPMENT, LLC

RELATING TO
THE DANA RESERVE PROJECT

(The "DANA RESERVE DEVELOPMENT AGREEMENT")

As Adopted by the San Luis Obispo County Board of Supervisors
on April 24, 2024 by Ordinance No. 3511

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**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE COUNTY OF SAN LUIS OBISPO AND
NKT DEVELOPMENT, LLC RELATING TO
THE DANA RESERVE**

THIS DEVELOPMENT AGREEMENT is entered into this 24th day of April, 2024 (“**Execution Date**”), by and between the COUNTY OF SAN LUIS OBISPO, a municipal corporation (“**County**”), and NKT Development, LLC, a California limited liability company (“**Land Owner**”), hereinafter referred to in this Development Agreement individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS AND DEFINITIONS

A. The “**Project**,” as referenced in this Development Agreement, consists of the development of housing, commercial, park, and open space uses located within the Dana Reserve Specific Plan Area, as further described in Section 2.01 below. The “**Property**,” as referenced in this Development Agreement, consists of approximately 288 acres of land designated for development under the Dana Reserve Specific Plan (“**DRSP**”). The Property is depicted on **Exhibit A** and legally described on **Exhibit B**, both attached hereto and incorporated herein by this reference.

B. Land Owner represents and warrants to County that as of the Execution Date, Land Owner owns or otherwise has legal interest in the Property.

C. County and Land Owner have engaged in a cooperative and successful relationship to establish a specific plan for the future of the DRSP Area. These efforts culminated in the County’s adoption and approval of the following entitlements:

- (1) The Final Environmental Impact Report and associated Mitigation Monitoring and Reporting Plan (including all mitigation measures therein) for the Project certified and adopted, respectively, by Resolution No. 2024-109, on April 24, 2024, as further identified in Recital D, below.
- (2) An amendment to the General Plan (Resolution No. 2024-108), adopted on April 24, 2024.
- (3) The DRSP adopted by Resolution No. 2024-108, adopted on April 24, 2024.
- (4) The County’s Zoning Ordinance, Title 22, as amended by Ordinance No. 3509, adopted April 24, 2024.
- (5) The Vesting Tentative Map # 3159 approved on April 24, 2024.
- (6) Conditional Use Permit (CUP) No. SUB2020-0047 for Oak Tree Removal and Grading/Impervious Surfaces.

- (7) Ordinance No. 3511 dated April 24, 2024 adopting this Development Agreement (the “**Adopting Ordinance**”).
- (8) The County’s Growth Management Ordinance, Title 26, as amended by Ordinance No. 3510, adopted on April 24, 2024.
- (9) The conditions of approval of each of the foregoing.

These approvals are collectively referred to herein as the Project Approvals (as further defined in Section 2.02).

D. Before approving the Project Approvals, the Board of Supervisors of the County of San Luis Obispo: (i) reviewed and considered the significant environmental impacts of the Project and several alternatives to the Project, as described in that certain Final Environmental Impact Report (the “**Project EIR**”) and (ii) adopted Resolution No. 2024-109 on April 24, 2024 to certify the Project EIR, making Findings Concerning Mitigation Measures and Alternatives (the “**Findings**”), adopting a Statement of Overriding Considerations, and adopting a Mitigation Monitoring and Reporting Plan (the “**MMRP**”), all in accordance with the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq. (“**CEQA**”).

E. A principal purpose of this Development Agreement is to further the cooperative relationship between County and Land Owner for the benefit of the County and the residents of the County during the implementation of the DRSP. The County and Land Owner join as Parties to this Development Agreement to ensure the requirements of the Development Agreement statute (California Government Code section 65864 et. seq.) are satisfied. As more fully set forth below, this Development Agreement contains covenants and/or servitudes that run with the title to the Property.

- F. The Parties intend this Development Agreement to achieve the following purposes:
- (1) that once this Development Agreement has taken legal effect, Land Owner shall have a full and vested right, throughout the term of this Development Agreement, to the Rights and Obligations, as further defined in Recital G, as to the Property;
 - (2) to reduce the uncertainty in planning and implementation of the Project and to secure the orderly development thereof, ensure a desirable and functional community environment, provide effective and efficient development of public facilities, infrastructure and services appropriate for the development of the Project, ensure maximum effective utilization of resources within the County, and provide other significant benefits to the County and its residents, which such Community Benefits are described in **Exhibit C**, attached hereto;
 - (3) to be consistent with and to implement the County’s General Plan, the DRSP and, more particularly, to achieve the community’s development objectives for the Property; and

- (4) to provide new residences to help satisfy the County’s housing obligations under State Law.

The Rights and Obligations of the Parties to this Development Agreement shall be construed and interpreted so as to give full effect to each and all of these purposes.

G. As used in this Development Agreement, “**Rights**” shall mean all of the vested and other rights and benefits of this Development Agreement, and the term “**Obligations**” shall mean all of the duties, obligations, responsibilities and other burdens of this Development Agreement.

H. References to lot numbers in this Development Agreement refer to lots as numbered in Vesting Tentative Tract Map. No. 3159 dated July 18, 2023.

I. As used in this Development Agreement, the terms, phrases and words shall have the meanings and be interpreted as set forth in this Development Agreement (the meaning given the term in the singular shall include the term in the plural and vice versa) unless the context clearly indicates the Parties intended another meaning. To the extent any capitalized terms contained in this Development Agreement are not defined within it, then such terms shall have the meaning ascribed to them in Applicable Law or, if no meaning is given a term in such sources, the most common understanding of the term, in light of the terms and conditions of this Development Agreement, shall control.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth in this Development Agreement, the Parties hereby agree as follows:

ARTICLE 1. GENERALLY Section 1.01. Land Owner. As used herein, “**Land Owner**” means NKT Development, LLC, a California limited liability company, any affiliated entity, or any permitted successor, assign, or transferee.

Section 1.02. Effective Vesting and Vesting Dates. This Development Agreement is entered into by and between the County and Land Owner and takes legal effect on the date that it is signed by the later of them to do so (the “**Effective Date**”), although the rights and obligations of this Agreement with respect to the development of the Site shall become effective on April 24, 2024, the date that Ordinance No. 3511 approving this Development Agreement takes legal effect (the “**Vesting Date**”). The terms and conditions of this Development Agreement shall be for the benefit of or a burden upon the Property, shall run with title to the Property, and shall be binding upon Land Owner and its successors, assigns and transferees during their respective ownerships of any portion of the Property from and after the later of those two dates.

Section 1.03. Term.

Section 1.03.1. In General.

(a) Although this Agreement shall legally bind the Parties upon the Effective Date, the term of this Development Agreement shall commence upon the Vesting Date defined in section

1.02 above and shall continue until, and terminate upon, the earliest of the following dates (“**Termination Date**”):

- (1) 12:01 a.m. on the 20th anniversary of the Vesting Date (the “**Initial Termination Date**”), unless Land Owner requests, and the County Board of Supervisors approves, an extension of the Term for an additional 10-year period, in which case the Termination Date shall be 12:01 on the 30th anniversary of the Vesting Date. Such request for an extension shall be submitted, in writing, to the County Administrator at least 60 days, but no earlier than 180 days, before the Initial Termination Date. The County may deny the request for an extension if Land Owner is not in substantial compliance with all of its Obligations under this Development Agreement. Any disputes regarding or relating to any extensions under this Section shall be resolved in accordance with Article 12 hereof.
- (2) This Development Agreement may be terminated with respect to property included in a recorded final subdivision map creating residential lots on any portion of the Property, provided that no further on-site or off-site infrastructure is required and no conditions or mitigation measures remain to be satisfied before building permits may issue for the development of those lots. Concurrently with or following recordation of such a subdivision map as to any portion of the Property, Land Owner may request in writing, and the Director of the Department of Planning and Building (the “**Planning Director**”) shall be authorized to execute and shall not unreasonably withhold, a certificate of termination of this Agreement in recordable form solely as to the property included in such a final recorded map; provided that no such certificate need issue if Obligations to the County under this Development Agreement remain unfulfilled which are not made conditions of approval of the subdivision map. Upon the Planning Director’s recordation of such a certificate, this Development Agreement shall terminate as to the land covered by such final map. If Land Owner does not request or the Planning Director does not issue such a certificate, this Development Agreement shall continue to apply to any lot depicted on such a subdivision map until this Development Agreement otherwise expires or terminates according to its terms. Notwithstanding the foregoing, this Development Agreement shall automatically terminate with respect to any lot intended for residential development upon final certificate of occupancy or sign-off of the building permit for a residential structure on such lot.

(b) This Development Agreement shall be of no further force, effect or operation upon the Termination Date. Subject to the provisions of Section 6.05 below, in no event shall the expiration or termination of this Development Agreement result in expiration or termination of any Project Approval without further action of County.

Section 1.04. Execution and Recordation of Agreement.

Section 1.04.1. Execution and Recordation. Land Owner shall execute this Development Agreement in conformance with Section 12.15 below within five business days following the adoption of the Adopting Ordinance referenced in Recital C above. Provided Land Owner has so executed this Agreement, County shall execute this Agreement, in conformance

with Section 12.15 of this Agreement, within five business days of Land Owner's execution of this Development Agreement.

Section 1.04.2. Recordation. County shall deliver this Agreement to the County Recorder for recordation within 10 days following its execution.

ARTICLE 2. DESCRIPTION OF THE PROJECT Section 2.01. In General. As used herein, "**Project**" means the development of the Property as described in the Project Approvals (defined in Section 2.02 below), including all on-site and off-site "Project Facilities and Infrastructure" (defined in Section 13.01.1 below). The Project contemplates the development of the approximately 288-acre Property with up to approximately 1,370 residential units, up to approximately 152 accessory dwelling units, up to approximately 203,000 square feet of commercial uses, including an up to approximately 60,000-sf hotel and an approximately 30,000-sf educational/training facility, as well as up to approximately 61.94 acres of active and passive open space areas.

Section 2.02. Project Approvals. As used herein, "**Project Approvals**" include, but are not limited to:

- (i) those provisions of County's General Plan that relate to or affect the Property, as the General Plan existed on the Vesting Date and as it may be amended from time to time consistent with this Development Agreement (the "**General Plan**");
- (ii) those provisions of the DRSP that relate to or affect the Property, as the DRSP existed on the Vesting Date and as it may be amended from time to time consistent with this Development Agreement;
- (iii) the zoning of the Property, as it existed on the Vesting Date and as it may be amended from time to time consistent with this Development Agreement thereafter (the "**Zoning**"); and
- (iv) the other entitlements listed in Recital C above;

provided, however, that "**Project Approvals**" shall not mean or include amendments to the General Plan, DRSP or Zoning of the Property that conflict with the Project Approvals as they existed on the Vesting Date, unless Land Owner consents in writing to such conflicting amendments.

Section 2.03. Subsequent Approvals. As used herein, "**Subsequent Approvals**" are those permits and approvals (other than the Project Approvals and amendments thereto) necessary or desirable for the development of the Project including, without limitation, those identified in Section 2.04 below.

Section 2.04. Subsequent Approval Documents. The Subsequent Approvals defined in Section 2.03 above include, but are not limited to:

- (i) subdivision maps (including phased final maps) and related or similar approvals issued under the California Subdivision Map Act;

- (ii) development permits (including Site Plan Reviews and Conditional Use Permits as described in the DRSP);
- (iii) design review approvals (as described in the DRSP);
- (iv) any other discretionary or ministerial permits or approvals of County necessary or appropriate for build-out of the Project and Property; and
- (v) any amendments to any of the foregoing necessary or appropriate for the development of the Project.

Section 2.05. Processing Subsequent Approvals.

Section 2.05.01. Processing of Subsequent Approvals. County will accept, make completeness determinations, and process, promptly and diligently to completion, all applications for Subsequent Approvals for the Project in accordance with the terms of this Development Agreement and Applicable Law.

Section 2.05.02. Scope of Review of Subsequent Approvals. By approving the Project Approvals, County has made a final policy decision that the Project will be beneficial to the County and its residents through the creation of needed housing and the construction of public improvements and facilities. Accordingly, County shall not use its authority in considering any application for a discretionary Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions. The scope of the review of applications for Subsequent Approvals shall be limited to a review of substantial conformity with the Applicable Law and Rights vested hereunder (the “**Vested Elements**”) (except as otherwise provided by Sections 4.02 through 4.04), and compliance with CEQA and other Applicable Law. Where such conformity/compliance exists, County shall not deny an application for a Subsequent Approval for the Project, except as necessary to comply with Applicable Law.

Section 2.05.03. Conditions of Subsequent Approvals. County shall have the right to impose reasonable conditions upon Subsequent Approvals including, without limitation, normal and customary dedications for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Project; provided, however, such conditions and dedications shall not be inconsistent with the Applicable Law or Project Approvals, nor inconsistent with the development of the Project as contemplated by this Agreement except to the extent required by Applicable Law. Land Owner may protest any conditions, dedications or fees while continuing to develop the Property. Such a protest by Land Owner shall not delay or stop the issuance of building permits or certificates of occupancy for any aspect of the Project not related to the condition protested. No conditions imposed on Subsequent Approvals shall require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those already included in the DRSP and the MMRP except to the extent required by CEQA.

Section 2.06. Approvals. Project Approvals, amendments to Project Approvals, and Subsequent Approvals are sometimes referred to in this Development Agreement collectively as the “**Approvals**” and each individually as an “**Approval**.”

ARTICLE 3. DEVELOPMENT OF PROJECT IN GENERAL Section 3.01. Consideration to Land Owner. The Parties acknowledge and agree that County's agreement to perform and abide by the Rights and Obligations of County set forth herein is material consideration for Land Owner's agreement to perform and abide by the Rights and Obligations of Land Owner set forth herein.

Section 3.02. Consideration to County. The Parties acknowledge and agree that Land Owner's agreement to perform and abide by the Rights and Obligations of Land Owner set forth herein is material consideration for County's agreement to perform and abide by the Rights and Obligations of County set forth herein.

Section 3.03. Rights of Land Owner Generally. Land Owner shall have a fully vested right to develop the Project and to use the Property consistently with this Development Agreement and Applicable Law.

Section 3.04. Rights of County Generally. County shall have a right to regulate development of the Project and use of the Property consistently with this Development Agreement and Applicable Law.

Section 3.05. Project Parameters. The permitted uses of the Property, the density and intensity of use of the Property, including the maximum height and approximate size of buildings included in the Project, shall be as set forth herein and in the Project Approvals.

Section 3.06. Mutual Cooperation for Other Governmental Permits. County and Land Owner, as appropriate, shall each be responsible to apply to the respective governmental or quasi-governmental agencies for necessary permits and approvals for development and use of the Property (e.g., agencies having jurisdiction over water supply; wastewater treatment, reuse and disposal; access to the Property; wetlands-related and other biological issues). County and Land Owner shall each take any and all actions as may be necessary or appropriate to process successfully such permits and approvals, provided such permits and approvals are consistent with the DRSP and agreed by the County and Land Owner to be reasonably necessary or desirable for the construction, maintenance or operation of the Project.

Section 3.07. Timing of Development.

Section 3.07.1. Timing Requirements.

- (a) Land Owner shall be obligated to comply with the terms and conditions of the Project Approvals, the DRSP, and this Development Agreement when specified in each. The Parties acknowledge that the rate at which the Project will develop depends upon numerous factors and market conditions that are not entirely within Land Owner's or the County's control. The Parties wish to avoid the result of *Pardee Construction Co. v. County of Camarillo*, 37 Cal.3d 465 (1984), where the failure of the parties there to expressly provide for the timing of development resulted in the court's determination that a later-adopted initiative restricting the timing of development prevailed over the parties' agreement. Accordingly, the Parties acknowledge that Land Owner shall have the right to develop the Project at

such time Land Owner deems appropriate in the exercise of its subjective business judgment except as provided in subsections (b), below.

- (b) Land Owner may proceed with the development of any portion of the Project consistent with the Project Approvals, or make any financial commitment associated with any such development when, in Land Owner's sole and absolute discretion, Land Owner determines it is in Land Owner's best financial or other interest to do so. The foregoing sentence shall not, however, limit any obligation of Land Owner under this Development Agreement with respect to any development activities that Land Owner chooses to undertake hereunder, nor shall anything herein be interpreted to relieve Land Owner from compliance with any condition of approval, environmental mitigation compliance measure or other applicable regulatory requirement under Applicable Law.
- (c) Annexation into NCS D Required. The Parties acknowledge and agree that approval by the San Luis Obispo County Local Agency Formation Commission ("LAFCO") of the annexation of the Property into the Nipomo Community Services District ("NCS D") is necessary for development of the Project. No building permits shall issue for any habitable structures within the Project until LAFCO has approved annexation of the Property into the NCS D.

Section 3.07.2. Timing of Collector A Improvements. The Parties acknowledge and agree that the County has planned for the installation of a frontage road west of Highway 101 as part of its Capital Improvement Program and as a component of County's Transportation Development Impact Fee. Collector A was located and designed to meet the County's frontage road requirements. Regardless of whether or when the Project is developed, it is anticipated that the frontage road will be constructed as and when determined appropriate by the County, in its sole discretion, in accordance with the County's Capital Improvement Program. In the event that Land Owner has commenced site preparation and grading work for the Project prior to County's commencement of construction of Collector A, then the Land Owner will deliver and dedicate in a graded condition the right of way for Collector A to the County. In conjunction with such grading activities, Land Owner may install future subterranean utilities and utility conduits in manner and locations reasonably approved by the County. Thereafter, the County may construct the Collector A improvements in accordance with its Capital Improvement Program. In the event that Land Owner has not commenced site preparation and grading work for the Project at the time that the County elects to commence construction of Collector A, then Land Owner shall dedicate sufficient land for County to construct Collector A. Following completion of the Collector A improvements, any future modifications to the Collector A improvements by Land Owner shall require issuance of an encroachment permit by the County in accordance County's normal practice.

Section 3.08. Miscellaneous.

Section 3.08.01. Covenants, Conditions, and Restrictions (CC&Rs). CC&Rs for each subdivision within the Property shall state substantially the following: "This project is within the boundaries of the DRSP and, as such, is subject to design guidelines and development standards incorporated into the DRSP and the DRSP Design Guidelines, both on file with the Department of Planning and Building of the County of San Luis Obispo." Before the County approves a Final

Subdivision Map or issues a building permit for a land use that does not require a map, the CC&R disclosure statement referenced above shall be provided to County Counsel for review and approval.

Section 3.08.03. Public Utilities Easements. All land subject to public utilities easements (PUEs); public water, sewer, or storm drain easements; and public access easements shall be open and accessible to the County at all times.

Section 3.08.03. Model Homes. Prior to recordation of any final map, County agrees to issue building permits and occupancy certificates for the construction of model homes (and related model home complex structures) that will be used by Land Owner for the purpose of promoting sales of single-family residential units within the Project; provided, however, in no event shall County be required to issue more than six (6) building permits for the construction of model homes in each of neighborhoods 1 through 9, and in no event shall Land Owner be permitted to sell or transfer any model home until a Final Map has been recorded on that portion of the Project where the model home is located.

ARTICLE 4. APPLICABLE LAW

Section 4.01. In General.

Section 4.01.1. Applicable Law Defined. Except as the Parties may otherwise agree in writing, the rules, regulations and official policies applicable to the Project and the Property during the Term of this Development Agreement shall be those set forth in this Development Agreement and, except as otherwise set forth herein, the rules, regulations and official policies of County (including the plans, municipal codes, ordinances, resolutions and other local laws, regulations, capital facilities fees and policies of County) in force and effect on the Vesting Date as well as state and federal law applicable to the Project (collectively, “**Applicable Law**”).

Section 4.01.2. Approvals as Applicable Law. Applicable Law shall include, without limitation, Approvals as they may be issued from time to time consistently with this Agreement.

Section 4.02. Application of Other County Laws.

Section 4.02.1. No Conflicting County Laws.

- (a) County may apply to the Project and the Property any rule, regulation or official policy of County (including any plan, municipal code, ordinance, resolution or other local law, regulation, capital facility fee or policy of County) (each a “**County Law**”) that does not conflict with Applicable Law or this Agreement. County shall not, however, without the written consent of Land Owner apply to the Project or the Property (whether by initiative, referendum, imposition of mitigation measures under CEQA or otherwise) any County Law that conflicts with Applicable Law or this Agreement.

- (b) Any changes by the County to the General Plan or any Specific Plan, Zoning Ordinance, or other rules, regulations, ordinances, or policies of the County (whether adopted by ordinance, initiative, referendum, resolution, policy, order, or other means) (collectively “**Future Rules**”) that are not in conflict with the Vested Elements shall apply to the Project. For purposes of this Section, “in conflict” means Future Rules would (i) alter the Vested Elements, or (ii) significantly frustrate the intent or purpose of the Vested Elements, or (iii) materially increase (e.g., by an amount more than 10%) the cost of performance of, or preclude compliance with, any provision of the Vested Elements, or (iv) significantly delay development of the Project, or (v) limit or restrict the availability of public utilities, services, infrastructure or facilities (for example, without limitation, water rights, water connection or sewage capacity rights, sewer connections, etc.) to the Project, or (vi) impose limits or controls in the rate, timing, phasing or sequencing of development of the Project beyond those existing on the Vesting Date, or (vii) increase or adopt new impact fees levied against the Project, except as provided in this Development Agreement, or (viii) limit or control the location of buildings, structures, grading, or other improvements of the Project inconsistently with or more restrictive than the Project Approvals; or (ix) apply to the Project any Future Rule otherwise allowed by this Agreement that is not uniformly applicable to all substantially similar development projects and project sites in the County; (x) require the issuance of additional permits or approvals by the County other than those required by Applicable Law; or (xi) establish, enact, increase, or impose against the Project or Property any fees, assessments, or other monetary obligations other than those specifically permitted by this Agreement; (xii) impose against the Project any condition, dedication or other exaction not specifically authorized by Applicable Law; or (xiii) limit the processing or procuring of applications and approvals of Subsequent Approvals. To the extent that Future Rules conflict with the Vested Elements, the Future Rules shall not apply to the Project, except as provided in this Section.

To the maximum extent permitted by law, County shall prevent any Future Rules from invalidating or prevailing over all or any part of this Agreement, and County shall cooperate with Land Owner and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. Land Owner reserves the right to challenge in court any Future Rule that would conflict with the Vested Elements or this Agreement or reduce the development rights provided by this Agreement.

A Future Rule that conflicts with the Vested Elements shall nonetheless apply to the Property if, and only if: (i) consented to in writing by Land Owner; (ii) it is determined by County and evidenced through findings adopted by the Board of Supervisors that the change or provision is reasonably required to prevent a condition dangerous to the public health or safety; (iii) it is required by changes in State or Federal law as set forth in Section 4.04 below; (iv) it consists of revisions to, or new Uniform Codes permitted by Section 4.03; or (v) it is otherwise permitted by this Development Agreement.

Prior to the Vesting Date, the Parties shall have prepared two sets of the Project Approvals and Applicable Law (exclusive of state and federal law), one for County and one for Land Owner. If it becomes necessary in the future to refer to any of the Project Approvals or Applicable Law, the contents of these sets are presumed for all purposes of this Development Agreement, absent clear clerical error or similar mistake, to constitute the Project Approvals and Applicable Law.

- (c) Except as provided in the project phasing plan, which will be incorporated into the County's Growth Management Ordinance, no County-imposed moratorium or other limitation (whether relating to the rate, timing, or sequencing of the development or construction of all or any part of the Project, whether imposed by ordinance, initiative, resolution, policy, order, or otherwise, and whether enacted by the Board of Supervisors, an agency of County, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued, or granted within County, or portions of County, following the approval of the DRSP, shall apply to the Project to the extent such moratorium or other limitation is in conflict with this Development Agreement; provided, however, the provisions of this subsection shall not affect County's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations, including without limitation County action to impose a moratorium on water or sewer service connections required by Applicable Law and as necessary to protect the public health, safety, and welfare.
- (d) If County attempts to apply to the Project a County Law which Land Owner believes to conflict with Applicable Law or this Agreement, Land Owner shall give County written notice describing the legal and factual basis for Land Owner's position. The Parties shall meet and confer within 30 days of County's receipt of that notice to seek to resolve any disagreement. If no mutually acceptable solution can be reached, either Party may take such action as may be permitted under Article 9 below.

Section 4.03. Uniform Codes and Standard Specifications.

- (a) Nothing herein shall prevent County from applying to the Project standards contained in local modifications to the California Building Code, provided:
 - (1) That the provisions of any such local modifications to the California Building Code shall apply to the Project only to the extent that such code is in effect on a County-wide basis and required (i) to comply with State or Federal Law, or (ii) to avoid a specific, adverse impact upon the public health or safety. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the building permit for a specific improvement were submitted to the County for approval; and

- (2) With respect to those portions of any such uniform code that have been adopted by County without amendment, that the provisions of any such uniform code shall be interpreted and applied consistently with the generally prevailing interpretation and application of such code in California.

- (b) Notwithstanding anything to the contrary contained herein, public improvements shall be constructed in accordance with the applicable public works standard specifications from the agency for which the improvements are being installed (e.g., County or the NCSO in effect at the time that such improvements are constructed).

Section 4.04. State and Federal Law.

- (a) Nothing herein shall prevent County from applying to the Project or the Property any change in County Law required by: (a) state or federal law; or (b) any governmental agency that, due to the operation of state law (and not the act of County through a memorandum of understanding, joint exercise of powers or other agreement entered into after the Vesting Date), has binding legal authority over County.

- (b) If the application of such changes prevents or precludes performance of one or more provisions of this Agreement, County and Land Owner shall take any and all such actions as may be necessary or appropriate to ensure the provisions of this Development Agreement are implemented to the maximum extent practicable.

Section 4.05. Expansion of Development Rights. If any Future Rule or State or Federal law expands, extends, enlarges or broadens Land Owner's rights to develop the Project, then, (a) if such law is mandatory, the provisions of this Development Agreement shall be modified as may be necessary to comply or conform with such new law, and (b) if such law is permissive, the provisions of this Development Agreement shall be modified, upon the mutual agreement of Land Owner and County, as may be necessary to comply or conform with such new law. Immediately after enactment of any such new law, upon Land Owner's request, the Parties shall meet and confer in good faith for a period not exceeding 60 days (unless such period is extended by mutual written consent of the Parties) to prepare such modification. Land Owner shall have the right to challenge County's refusal to apply any new law mandating expansion of Land Owner's rights under this Development Agreement pursuant to Article 9 of this Development Agreement, and if such challenge is successful, this Development Agreement shall be modified to comply with, or conform to, the new law.

ARTICLE 5. CONSIDERATION OF PERMITS AND APPROVALS Section 5.01. Review and Action Generally. Upon Land Owner's submission of any complete application for an Approval together with any fees required by County in accordance with Applicable Law, County shall use its best efforts to commence and complete promptly and diligently all steps necessary to act on the application. Land Owner shall promptly provide to County all information reasonably requested by County for its consideration of any such application.

Section 5.02. Applicable Law. Except as otherwise specifically provided in this Article 5, all applications for Approvals submitted by Land Owner shall be considered by County in accordance with Applicable Law. To the extent Land Owner applies for an approval that would have the effect of amending a component of Applicable Law as defined in Section 4.01.1, the aspect of Applicable Law to be amended shall not apply to the County's consideration of the application for such request.

Section 5.03. General Plan and DRSP Amendments. The Parties anticipate that Land Owner may request amendments to the General Plan or the DRSP to respond to changing circumstances and conditions. County is not obligated to approve any such application and may, in the exercise of its legislative discretion, approve, deny or propose conditions or modifications thereto, including conditions or modifications that might otherwise be prohibited by the vested rights provided by this Development Agreement. Land Owner shall be afforded a reasonable opportunity to review any such proposed conditions and modifications and to withdraw its application for a General Plan amendment or Specific Plan amendment (in which case neither Land Owner's proposed amendments nor the County's proposed modifications shall become effective).

Section 5.04. MMRP Application. When conducting an environmental review of any application for an Approval, County shall review the MMRP to determine if any mitigation measure contained in the MMRP as to the portion of the Property subject to this Development Agreement should be incorporated into the design of, or made a condition of approval of, such Approval.

Section 5.05. Life of Approvals. Any Approval issued by County, including any Tentative Tract Maps, shall continue in effect without expiration until the later of: (i) the expiration or earlier termination of this Development Agreement, including any extensions granted in accordance with this Development Agreement, or (ii) the date upon which such Approval would otherwise expire under California law.

Section 5.06. Vesting Maps. The ordinances, standards and policies applicable to any vesting tentative map, vesting parcel map, vesting subdivision map or any other type of vesting map ("**Vesting Map**") under California Government Code section 66474.2, and the ordinances, policies and standards vested under any Vesting Map pursuant to California Government Code section 66498.1(b) shall be those established as Applicable Law under this Agreement. If this Development Agreement terminates before the expiration of any Vesting Map or the vested rights provided thereby, such termination of this Development Agreement shall not affect Land Owner's right to proceed with development under such Vesting Map in accordance with the ordinances, policies and standards so vested under the Vesting Map. In accordance with California

Government Code section 66456.1, Land Owner and the County have concurred that multiple final maps may be filed.

ARTICLE 6. AMENDMENTS Section 6.01. In General. This Development Agreement may be amended from time to time only upon the mutual written consent of County and Land Owner and in compliance with the County's zoning ordinance; provided, however, that in connection with the transfer of any portion of Land Owner's Rights and/or Obligations under this Development Agreement to another person, entity, or organization pursuant to Article 10 below, Land Owner, such transferee and County may agree that the signature of such transferee may thereafter only be required to amend this Development Agreement insofar as such amendment would materially alter the Rights and/or Obligations of such transferee. In no event shall the signature or consent of any "Non-Assuming Transferee" (as defined in Section 10.03 below) be required to amend this Development Agreement.

Section 6.02. Future Approvals Do Not Require Amendments to Agreement. Except as the Parties may otherwise agree, no amendment of this Development Agreement shall be required in connection with the issuance of any Approval or an amendment to the MMRP. Any Approval issued after the Vesting Date as to a portion of the Property shall be incorporated automatically into this Development Agreement and vested hereby. Unless otherwise permitted by this Development Agreement, however, County shall not amend or issue any Approval unless Land Owner requests such an amendment or Approval.

Section 6.03. Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation between County and Land Owner. The Parties acknowledge that clarifications may be necessary with respect to the details of performance of County and Land Owner. If and when, from time to time during the term of this Development Agreement, the Parties agree that such clarifications are necessary and appropriate, the Parties shall effectuate such clarifications through operating memoranda, approved in writing by each of them, which, after execution, shall be attached hereto as addenda and become a part hereof. No such operating memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The County Administrator, in consultation with the County Counsel, shall make the determination on behalf of County whether a requested clarification may be effectuated pursuant to this Section 6.03 or whether the requested clarification is of such a character as to constitute an amendment hereof pursuant to Section 6.01 above. The County Administrator shall be authorized to execute any operating memoranda hereunder on behalf of County.

Section 6.04. Administrative Amendments. Upon the request of Land Owner for an amendment or modification of any Project Approval, the Planning Director or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Development Agreement and the Applicable Law. If the Planning Director or his/her designee finds that the requested amendment or modification is both minor and substantially conforms to the material terms of this Development Agreement and the Applicable Law, the amendment or modification shall be determined to be an "**Administrative Amendment**," and the Planning Director or his/her designee may approve the Administrative Amendment without public notice or a public hearing.

ARTICLE 7. ANNUAL REVIEW Section 7.01. In General. The Planning Director shall annually and concurrently conduct: (i) the MMRP Evaluation as set forth in Section 8.01; and (ii) the Development Agreement Review as set forth in Section 8.04 (collectively, the “**Annual Review**”). With respect to the MMRP Evaluation, if the Planning Director determines that mitigation measures adopted by County in connection with its approval of the DRSP and the Zoning are not being implemented as set forth in the MMRP, he or she shall take any appropriate remedial action as described in Section 9 below. Further, the Planning Director shall incorporate the results of the MMRP Evaluation into the review of any applications for Approvals submitted thereafter.

Section 7.02. Other Investigations and Evaluations. County may from time to time, whether or not as a part of an Annual Review, investigate or evaluate any matter that is properly the subject of an Annual Review.

ARTICLE 8. MMRP EVALUATION AND DEVELOPMENT AGREEMENT REVIEW

Section 8.01. MMRP Evaluation. During its Annual Review, County shall conduct the MMRP Evaluation by evaluating whether the mitigation measures the County adopted upon its approval of the EIR are being implemented as to the Property as set forth in the MMRP.

Section 8.02. MMRP Implementation. As set forth in the MMRP, County shall consider in connection with any application for an Approval the extent to which mitigation measures described in the MMRP should be incorporated into the design of the project under consideration or made conditions of the approval of the project. During an MMRP Evaluation, the County shall evaluate its overall success over the previous year in implementing such mitigation measures and consider any additional steps that may be appropriate to ensure, as Approvals are considered over the following year, successful implementation of such mitigation measures (including, in particular, mitigation measures that are the responsibility of County or other agencies with regulatory authority over the Project).

Section 8.03. Enforcement. Land Owner shall be responsible only for those mitigation measures the County requires to be incorporated into the design of the Project, including those that are made conditions of any Approval. Failure to comply with any such design requirement or any condition of approval shall be enforced in any manner authorized by Applicable Law.

Section 8.04. Development Agreement Review. The Planning Director shall review this Development Agreement annually to ascertain Land Owner’s good faith compliance as to the Property (the “**Development Agreement Review**”). The Development Agreement Review shall be conducted concurrently with the MMRP Evaluation as part of the Annual Review pursuant to Article 9. In connection with the Development Agreement Review, Land Owner shall provide information reasonably requested by County.

Section 8.05. Director’s Findings of Compliance. If the Planning Director finds good faith compliance by Land Owner with this Agreement, the Planning Director shall issue a “Finding of Development Agreement Compliance,” which shall be in recordable form and may be recorded by Land Owner or any “Mortgagee” (as defined in Section 11.01 below). Issuance of a Finding of Development Agreement Compliance and expiration of the appeal period specified below without appeal, or confirmation by the Board of Supervisors of the issuance of the Finding of Development

Agreement Compliance upon such appeal, shall finally determine the Development Agreement Review for the applicable period.

Section 8.06. Finding of Development Agreement Noncompliance. If the Planning Director finds that Land Owner and/or a Transferee has not complied in good faith with this Agreement, the Planning Director shall proceed as specified in Article 9, below.

ARTICLE 9. DEFAULT, REMEDIES, TERMINATION OF DEVELOPMENT AGREEMENT Section 9.01. Notice and Cure.

- (a) Any failure by a Party to perform any term or provision of this Development Agreement, which failure continues uncured for 60 days following written notice of such failure from the other Party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Any such notice shall specify the nature of the alleged failure and, where appropriate, how such alleged failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within 60 days, then commencement of the cure within that time, and diligent prosecution to completion of the cure thereafter, shall be timely. If the alleged failure is cured, then no default shall exist and the noticing Party shall take no further remedial action and shall acknowledge the cure in writing to the other Party. If the alleged failure is not cured, then a default shall exist under this Development Agreement and the noticing Party may exercise any of the remedies available under sections 9.03 through 9.05 below.
- (b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of notice and opportunity to cure is a prerequisite to the enforcement or correction of any default.

Section 9.02. Actions during Cure Period.

- (a) During any cure period specified under Section 9.01 and before delivery of a notice of failure or default, the Party charged shall not be considered in default of this Development Agreement. If there is a dispute as to the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter, pending its resolution or termination of this Development Agreement.
- (b) County shall continue to process in good faith applications for Approvals during any cure period, but need not approve any such application if it relates to a project as to which there is an alleged default hereunder.

Section 9.03. Remedies of Non-Defaulting Party.

Section 9.03.1. In General. If any Party is in default under the terms of this Agreement, the non-defaulting Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) in County's case, pursue administrative remedies as provided in Section 9.04 below, (iii) pursue judicial remedies as provided for in Section 9.05 below; and/or (iii) terminate this Development Agreement as and to

the extent permitted by Section 9.06 below. In no event shall County modify this Development Agreement as a result of a default by a defaulting Party except in accordance with the provisions of Section 9.01 above.

Section 9.03.2. Severability of Default. County acknowledges that the development of the Project may be carried out by more than one person, entity or organization under this Development Agreement (e.g., portions of Land Owner's interest in the Property and this Development Agreement may be transferred to another person, entity or organization, a "**Transferee**" under Article 13 below). The Parties acknowledge and agree that, in accordance with Article 13 below, more than one Transferee may be responsible for certain actions required or forbidden by this Development Agreement and that more than one Transferee therefore may be in default with respect to that action. Accordingly, if County determines to terminate or exercise any remedy under this Development Agreement due to a default by Land Owner or by any Transferee (hereinafter "**Defaulting Land Owner**"), such termination or other remedy shall apply only with respect to the Rights and Obligations of such Defaulting Land Owner and any termination of this Development Agreement as to any Defaulting Land Owner shall be deemed to terminate only those Rights and Obligations arising hereunder between County and such Defaulting Land Owner. County shall, to the extent possible, refrain from seeking any termination of this Development Agreement or other remedy if such remedy would affect materially the ability of a non-defaulting Land Owner and/or a non-defaulting Transferee (hereinafter "**Non-Defaulting Land Owner**") to realize the Rights provided hereunder. The Parties further acknowledge and agree that in certain instances it may not be possible for County to exercise remedies against the Defaulting Land Owner of one portion of the Project without affecting in some way a Non-Defaulting Land Owner of the same or of some other portion of the Project.

Section 9.04. Administrative Remedies. Except as otherwise specifically stated in this Development Agreement, County may exercise any and all administrative remedies to the extent necessary or appropriate to secure compliance with this Agreement. Such administrative remedies may include, among others, withholding building permits, certificates of occupancy or other Approvals relating to that portion of the Project in default of this Agreement.

Section 9.05. Judicial Remedies. Except as otherwise specifically stated in this Development Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, enforce by specific performance the Obligations and Rights of the Parties hereto or obtain any other remedy consistent with this Agreement; provided, however, that in no event shall any person be entitled hereunder to monetary damages for any cause, including breach of contract by a Party to this Agreement. Notwithstanding the foregoing, County may enforce payment obligations under Applicable Law, including under this Agreement and Land Owner may enforce County's obligations under this Agreement to pay or transfer money to the Land Owner by a writ of mandate or action for specific performance. Nothing in this Section 9.05 shall be deemed to limit either Party's rights under the Government Claims Act, California Government Code section 810 et seq. For purposes of instituting a legal action under this Agreement, any Board of Supervisors determination under this Development Agreement shall be deemed final agency action unless expressly stated otherwise.

Section 9.06. Termination Due to Default.

Section 9.06.1. In General. Either Party may terminate this Development Agreement pursuant to Section 9.06.2 below in the event of a default by the other Party, provided: (i) such default is prejudicial to the interests of the non-defaulting Party and is neither minor nor technical and (ii) in the case of any termination by County, County first shall have exercised any and all administrative or other remedies short of filing suit available to secure Land Owner's compliance with this Agreement; provided, however, that County shall not be required, as a prerequisite to initiating the termination of this Agreement, to exercise its administrative and other non-judicial remedies for a period of more than 180 days or such longer period to which the Parties may have agreed. Termination of this Development Agreement by Land Owner or a Transferee as to any portion or portions of the Property shall not affect the Rights or Obligations of Land Owner or any other Transferee as to any other portion or portions of the Property.

Section 9.06.2. Procedures for Termination.

- (a) Before any proposed termination of this Development Agreement pursuant to this Section 9.06, and following the 180-day or longer period specified in Section 9.06.1 above, if applicable, a non-defaulting Party intending to seek termination of this Development Agreement shall deliver to the defaulting Party (or Parties) a written "**Preliminary Notice of Intent to Terminate**" this Agreement, and all Parties shall meet and confer in good faith effort to agree upon an alternative to termination that will afford the non-defaulting Party the benefit of its bargain under this Agreement. If those discussions are not successful in resolving the dispute, the non-defaulting Party desiring to terminate this Development Agreement shall deliver to the defaulting Party a written "**Final Notice of Intent to Terminate**".
- (b) Within 60 days after the County delivers a Final Notice of Intent to Terminate to a defaulting Party, the Board of Supervisors shall review the matter at a noticed public hearing as set forth in California Government Code sections 65865, 65867, and 65868. Termination shall be effective 30 days after such Board of Supervisors review, unless the default is sooner resolved to the mutual satisfaction of the Parties.
- (c) Within 60 days after Land Owner delivers a Final Notice of Intent to Terminate to County, the Board of Supervisors shall consider whether County should take any further curative action. Termination shall be effective 30 days following such Board of Supervisors consideration (or 90 days following delivery by Land Owner of a Final Notice of Intent to Terminate if the Board of Supervisors fails to complete its consideration by that date), unless the default is sooner resolved to the mutual satisfaction of the Parties.

Section 9.07. Judicial Reference. Pursuant to Code of Civil Procedure Section 638 et seq., all legal actions shall be heard by a referee who shall be a retired judge from either the San Luis Obispo County Superior Court, the California Court of Appeal, the United States District Court, or the United States Court of Appeals, provided that the selected referee shall have experience in resolving land use and real property disputes. Land Owner and County shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment thereon

and issue all legal and equitable relief appropriate under the circumstances. If Land Owner and County are unable to agree upon a referee within ten (10) days of either Party's written request to do so, either Party may seek to have a referee appointed pursuant to Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the Parties. Any referee selected pursuant to this Section 9.07 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. Notwithstanding the provisions of this Section 9.07, either Party shall be entitled to seek declaratory and injunctive relief in any court of competent jurisdiction to enforce the terms of this Agreement, or to seek to enjoin the other Party from an asserted breach thereof, pending the selection of a referee on a showing that the moving party would otherwise suffer irreparable harm. Upon the mutual agreement by both Parties, any legal action may be submitted to mediation in accordance with rules to be mutually agreed upon by the Parties.

ARTICLE 10. ASSIGNMENT, TRANSFER AND NOTICE Section 10.01. Assignment of Interests, Rights and Obligations. Land Owner may transfer or assign ("**Transfer**") all or any portion of its Rights and Obligations under this Development Agreement as to any portion of the Property (the "**Transferred Property**") to any person acquiring an interest in such Transferred Property, including, without limitation, purchasers or ground lessees of lots, parcels or facilities on such Transferred Property (a "**Transferee**"). Any such Transfer shall relieve the transferring party (a "**Transferor**") of any and all Rights and Obligations under this Development Agreement insofar as they pertain to the Transferred Property, as provided in this Article 10.

Section 10.02. Transfers In General.

Section 10.02.1. In General. In connection with any Transfer of all or any portion of the Project or the Property, other than a transfer or assignment to a "Non-Assuming Transferee" as described in Section 10.03 below or a "Mortgagee" as defined in Section 11.01 below, the Transferor and the Transferee may enter into a written agreement regarding their respective Rights and Obligations in and under this Development Agreement (a "**Transfer Agreement**"). Any such Transfer Agreement may contain provisions: (i) releasing the Transferor from any Rights and Obligations under this Development Agreement that relate to the Transferred Property, provided the Transferee expressly assumes all such Rights and Obligations, (ii) transferring to the Transferee rights to improve the Transferred Property and any other Rights and Obligations of the Transferor arising under this Agreement, and (iii) addressing any other matter deemed necessary or appropriate in connection with the Transfer.

Section 10.02.2. County Review of Release Provisions.

- (a) A Transferor shall have the right, but not the obligation, to seek County's consent to those provisions of any Transfer Agreement purporting to release such Transferor from any Rights and Obligations arising under this Development Agreement (the "**Release Provisions**"). If a Transferor fails to seek County's consent or County does not consent to any such Release Provisions, then such Transferor may nevertheless transfer to the Transferee any and all Rights and Obligations of such Transferor arising under this Development Agreement (as described in Sections 10.02.1(i) and (ii) above) but, with respect to County, shall not be released from those Rights and Obligations described in the Release

Provisions to which County has not consented. If County consents to any Release Provisions, then: (i) the Transferor shall be free from any and all Rights and Obligations accruing on or after the date of any Transfer with respect to those Rights and Obligations described in such Release Provisions and (ii) no default hereunder by Transferee with respect to any Rights and Obligations from which the Transferor has been released shall be attributed to the Transferor nor may such Transferor's Rights be canceled or diminished in any way by any such default. County may consent, or conditionally consent, to all, none, or some of the Release Provisions.

- (b) County shall review and consider promptly and in good faith any request by a Transferor for County's consent to any Release Provisions. County's consent to such Release Provisions may be withheld only if: (i) reliable evidence supports a conclusion that the Transferee will be unable to perform the Rights and Obligations proposed to be assumed by the Transferee pursuant to the Transfer Agreement, (ii) the Rights and Obligations may not reasonably be allocable among particular portions of the Project and Property, such as the Transferred Property, (iii) the Transferor or Transferee fails to provide acceptable security, as and if reasonably requested by County, to ensure the performance of the Rights and Obligations proposed to be assumed by the Transferee pursuant to the Release Provisions, or (iv) the Transferor or Transferee fails to provide information reasonably requested by the County to assist it in making the determinations described in this paragraph. In no event shall County unreasonably withhold consent to any Release Provisions. County shall respond within 30 days to any request by a Transferor for consent to any Release Provisions, and, if the County fails to respond during such 30-day period, the County shall be deemed to have consented to the Release Provisions.
- (c) Subject to the provisions of paragraph (b) above, because and to the extent certain Obligations arising under this Development Agreement may not reasonably be allocable among portions of the Project, County may refuse to consent to release the Transferor of one portion of the Project from such Rights and Obligations under this Development Agreement even though the Rights and Obligations are being or have been assumed by the Transferee of some other portion of the Project.

Section 10.03. Non-Assuming Transferees. Except as otherwise required by a Transferor, the Obligations of a Transferor shall not apply to any purchaser of any property that has been established as a single legal parcel for nonresidential use that does not require any further on-site or off-site infrastructure. The Transferee in such a transaction and the successors and assigns of such a Transferee ("**Non-Assuming Transferees**") shall be deemed to have no Obligations under this Agreement, but shall continue to benefit from the Rights provided by this Development Agreement for the duration of its term. Nothing in this section shall exempt any Transferred Property transferred to a Non-Assuming Transferee from payment of applicable fees, taxes and assessments or compliance with an Approval or Applicable Law.

ARTICLE 11. MORTGAGEE PROTECTION Section 11.01. In General. The provisions of this Development Agreement shall not limit Land Owner’s right to encumber the Property or any portion thereof, or any improvement thereon by any mortgage, deed of trust or other device securing financing with respect to such portion. County acknowledges that lenders providing such financing and other “Mortgagees” (defined below) may require certain interpretations and modifications of this Development Agreement and agrees upon request, from time to time, to meet with Land Owner and representatives of such lenders to negotiate in good faith any such request for an interpretation or modification. County shall not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any person holding a mortgage, deed of trust or other security instrument on all or any portion of the Property made in good faith and for value (each, a “**Mortgagee**”), shall be entitled to the rights and privileges of this Article 11.

Section 11.02. Impairment of Mortgage or Deed of Trust. Except as otherwise specifically stated in any security instrument held by a Mortgagee, no default under this Development Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made, or other interest in the Property acquired, by any Mortgagee in good faith and for value.

Section 11.03. Notice of Default to Mortgagee. If a Mortgagee has submitted to the County a written request for notice as specified herein, County shall exercise its best efforts to provide to such Mortgagee written notification of any failure or default by Land Owner in the performance of Land Owner’s Obligations concurrently with the written notice provided to Land Owner. If the County fails to deliver written notification to any Mortgagee that has submitted a written request to County as provided herein, then any period for such Mortgagee to remedy or cure any alleged failure or default shall not commence until the County’s actual delivery of such written notification to such Mortgagee.

Section 11.04. Right of Mortgagee to Cure. Any Mortgagee shall have the right, but not the obligation, to cure any failure or default by Land Owner during the cure period allowed Land Owner under this Agreement, plus an additional 60 days if, to cure such failure or default, the Mortgagee must obtain possession of the property as by seeking appointment of a receiver or other legal process. Any Mortgagee that undertakes to cure any such failure or default shall provide written notice to County of that fact; provided that no initiation of any such efforts by a Mortgagee shall obligate such Mortgagee to complete or succeed in any such curative efforts.

Section 11.05. Mortgagee Liability for Past Defaults or Obligations. Except as otherwise specifically provided in this Article 11, any Mortgagee, including a successful bidder at a foreclosure sale, who comes into possession of the Property or any part thereof, shall take such property subject to the Rights and Obligations of this Development Agreement and in no event shall any such property be released from any Obligations. Nothing in this Article 11 shall prevent County from exercising any remedy it may have for a default under this Development Agreement; provided, however, that in no event shall such Mortgagee be liable personally for any defaults or monetary obligations of Land Owner arising before such Mortgagee acquires or possesses such property.

Section 11.06. Technical Amendments to this Article 11. County agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Land Owner's negotiations with lenders. The Parties acknowledge and agree that such technical amendments shall be processed in accordance with Section 6.04 of this Development Agreement.

ARTICLE 12. GENERAL PROVISIONS Section 12.01. Incorporation of Recitals. The Recitals set forth above are incorporated herein as though set forth in full.

Section 12.02. Project is a Private Undertaking. The development Land Owner proposes to undertake is a private development, and Land Owner shall exercise full dominion and control over the Project subject only to Land Owner's Obligations contained in this Agreement, the Approvals and Applicable Law.

Section 12.03. Cooperation in the Event of Legal Challenge.

Section 12.03.1. In General. If any person not a Party to this Development Agreement institutes any administrative, legal or equitable action or other proceeding challenging the validity of any provision of this Agreement, any Approval or Subsequent Approval, or the sufficiency of any review of this Development Agreement or any Approval or Subsequent Approval under CEQA (each a "**Third Party Challenge**"), the Parties shall promptly meet and confer as to the most appropriate response to such Third Party Challenge; provided, however, that any such response shall be consistent with Sections 12.03.2 and 12.03.3 below.

Section 12.03.2. Tender to and Conduct of Defense by Land Owner. County shall tender the complete defense of any Third Party Challenge to Land Owner, and upon acceptance of such tender by Land Owner: (i) Land Owner shall indemnify County against any and all fees and costs arising out of the defense of such Third Party Challenge and (ii) Land Owner shall control the defense and/or settlement of such Third Party Challenge and may take any and all actions it deems necessary and appropriate in its sole discretion in connection therewith; provided, however, that Land Owner shall seek and secure County's consent to any settlement of such Third Party Challenge, which consent shall not unreasonably be withheld or delayed.

Section 12.03.3. Defense by County. If Land Owner should fail to accept County's tender of defense under Section 12.03.2 above, County shall defend such Third Party Challenge and control the defense and/or settlement of such Third Party Challenge as County decides (in its sole discretion), and County may take any and all actions it deems necessary and appropriate (in its sole discretion) in connection therewith; provided, however, that County shall seek and secure Land Owner's consent to any settlement of such Third Party Challenge, which consent shall not unreasonably be withheld or delayed. Land Owner shall indemnify County against any and all fees and costs arising out of the County's defense of such Third Party Challenge including the reasonable value of the services of its County Counsel and outside counsel, if any. Notwithstanding the foregoing, if Land Owner determines for any reason that it no longer intends to develop the Project, then it may deliver notice of such determination to County and shall not be liable for any defense costs incurred by County more than 90 days following the delivery of such notice.

Section 12.04. Defense and Indemnity. Land Owner shall defend, indemnify, and hold harmless the County, and its officers, agents, employees, and volunteers from and against all claims, demands, damages, liabilities, loss, costs and expenses (including attorney's fees and costs of litigation), of every nature arising out of the construction of the Project by Land Owner or by Land Owner's contractors, subcontractors, agents or employees, except to the extent caused by the negligence or willful misconduct of County, or any of County's officers, employees, contractors or agents. Nothing in this Section 12.04 shall be construed to mean that Land Owner shall defend or indemnify County from or against any damages, claims, costs or liabilities arising from, or alleged to arise from, activities associated with the maintenance or repair by County or any other public agency of improvements that have been offered for dedication and accepted by County or such other public agency. County and Land Owner may from time to time enter into subdivision improvement agreements, as authorized by the Subdivision Map Act, which agreements may include defense and indemnity provisions different from those contained in this Section 12.04. If any conflict appears between such provisions in any such subdivision improvement agreement and the provisions set forth above, the provisions of such subdivision improvement agreement shall prevail.

Section 12.05. Governing Law; Attorneys' Fees. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue for any dispute arising under this Development Agreement lies in the county of San Luis Obispo and Land Owner hereby consents to personal jurisdiction there for that purpose. The Parties will cooperate to facilitate venue for any Third-Party Challenge described in Section 12.03 above in San Luis Obispo County. Should any legal action be brought by either Party because of any default under this Development Agreement, to enforce any provision of this Agreement, or to obtain a declaration of rights hereunder, the prevailing Party shall be entitled to such reasonable and actual attorneys' fees, and costs as may be fixed by the Court. The standard of review for determining whether a default has occurred under this Development Agreement shall be the standard generally applicable to contractual obligations in California. The terms and provisions of this Section 12.05 shall survive any termination of this Agreement.

Section 12.06. Force Majeure. Performance by any Party of its Obligations hereunder shall be excused and the Term of and any dates under this Development Agreement shall be extended day for day during any period of "**Permitted Delay**" as hereinafter defined. For purposes hereof, Permitted Delay shall include delay beyond the reasonable control of the Party claiming the delay (and despite the good faith efforts of such Party) including, but not limited to: (i) acts of God; (ii) civil commotion; (iii) riots; (iv) strikes, picketing or other labor disputes; (v) shortages of materials or supplies; (vi) damage to work in progress by reason of fire, floods, earthquake or other casualties; (vii) failure, delay or inability of the other Party to act; (viii) as to Land Owner only, the failure, delay or inability of County to provide adequate levels of public services, facilities or infrastructure to the Property; (ix) as to County only, with respect to completion of the Annual Review or to processing applications for Approvals, the failure, delay or inability of Land Owner to provide adequate information or substantiation as reasonably required to complete the Annual Review or process applications for Approvals; (x) restrictions imposed or mandated by governmental entities other than the County, including without limitation, any development moratorium for any purpose; (xi) enactment of conflicting state or federal laws or regulations, (xii) judicial decisions or similar legal incapacity to perform, (xiii) litigation brought by a third party attacking the validity of this Agreement; (xiv) any period of a declared public health emergency

or pandemic; and (xv) a Severe Economic Recession. A “**Severe Economic Recession**” shall mean a significant decline in the residential real estate market, as measured by a decline of more than four percent (4%) in the Home Price Index during the preceding twelve (12) month period. A party’s inability to make a payment when due shall not be the basis of a Permitted Delay. Any Party claiming a Permitted Delay shall notify the other Party (or Parties) in writing of such delay within 30 days after the commencement of the delay, which notice (“**Permitted Delay Notice**”) shall include the estimated length of the Permitted Delay. The delay in giving a Permitted Delay Notice shall not preclude the finding of a Permitted Delay, but no such Permitted Delay shall commence more than 30 days prior to the giving of the Permitted Delay Notice. A Permitted Delay shall be deemed to occur for the time set forth in the Permitted Delay Notice unless a Party receiving the Permitted Delay Notice objects in writing within 10 days after receiving the Permitted Delay Notice. Upon such an objection, the Parties shall meet and confer within 30 days after the date of the objection in a good faith effort to resolve their disagreement as to the existence and length of the Permitted Delay. If no mutually acceptable solution can be reached, either Party may take action as may be permitted under Article 12 above.

Section 12.07. Waiver.

Section 12.07.1. Legal Rights. Land Owner acknowledges and agrees that the terms and provisions of this Development Agreement specifically permit County in some instances to impose requirements upon the Project that County would not otherwise be able to impose due to a lack of nexus, rough proportionality, or reasonable relationship between the Project and such requirement, or other reasons. To the extent any such requirement is imposed by County upon the Project consistently with the terms and provisions of this Agreement, Land Owner waives any right to challenge judicially the imposition of such requirement by County. Except as otherwise provided in this Section 12.07.1, County shall comply with Applicable Law.

Section 12.07.2. Other Rights. While Section 12.07.1 prohibits Land Owner from challenging judicially certain County requirements imposed consistently with this Agreement, nothing in this Development Agreement shall be deemed to abrogate or limit, nor be deemed to waive, any right of Land Owner (whether arising under the United States Constitution, the California Constitution or otherwise) to request County to refrain from imposing upon Land Owner, the Project or the Property any requirement that this Development Agreement permits County so to impose or otherwise petition County with respect to any matter related to the Project or the Property.

Section 12.08. Notices. Any notice or communication required hereunder between the Parties shall be in writing, and may be delivered either personally or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice or communication shall be deemed to be received when delivered to the Party to whom addressed. If delivered by Federal Express or similar courier, a notice or communication shall be deemed to be received when

delivered as shown on a receipt issued by the courier. Such notices or communications shall be delivered to the Parties at their addresses set forth below:

If to County to: County Administrator
County of San Luis Obispo
1055 Monterey Street
San Luis Obispo, CA 93408

With a courtesy copy to: County Counsel
County of San Luis Obispo
1055 Monterey Street
San Luis Obispo, CA 93408

If to Land Owner to: NKT Development, LLC
684 Higuera Street, Suite B
San Luis Obispo, CA 93408
Attn: Nick Tompkins

With courtesy copies to: Cox, Castle & Nicholson LLP
2029 Century Park East, Suite 2100
Los Angeles, CA 90067
Attn: Andrew K. Fogg, Esq.

Any Party may at any time, change its address or facsimile number for notice by giving 10 days' written notice to the other in accordance with this Section 12.08.

Section 12.09. No Joint Venture or Partnership. Nothing in this Development Agreement or in any document executed in connection with it shall be construed as creating a joint venture, partnership or any agency relationship between County and Land Owner. County shall have no responsibility for public improvements unless and until they are accepted by County in the manner required by law.

Section 12.10. Severability. If any provision of this Development Agreement is held invalid, void or unenforceable but the remainder of this Development Agreement can be enforced without failure of material consideration to any Party, then the remainder of this Development Agreement shall not be affected and shall remain in full force and effect, unless amended by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Development Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, Land Owner (in its sole and absolute discretion) may terminate this Development Agreement by providing written notice of such termination to County.

Section 12.11. Estoppel Certificate. Any Party and any Mortgagee may, at any time, and from time to time, deliver written notice to the other Party or Parties requesting such Party or Parties to certify in writing that, to the knowledge of the certifying Party: (i) this Development Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Development Agreement has not been amended or modified either orally or in writing, but if so amended or modified, identifying those amendments and modifications; and (iii) as of the date of the most

recent Annual Review, the requesting Party (or any Party specified by a Mortgagee) is not in default in the performance of its Obligations under this Development Agreement, or if in default, describing the nature and amount or extent of any such defaults. A Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within 30 days of receipt of a request. Each Party acknowledges that such a certificate may be relied upon by third parties acting in good faith. A certificate provided by County establishing the status of this Development Agreement shall be in recordable form and may be recorded at the expense of the recording Party.

Section 12.12. Further Assurances. Each Party shall execute and deliver to the other Party or Parties all such other further instruments and documents and take all such further actions as may be reasonably necessary to carry out this Development Agreement and the Approvals and to provide and secure to the other Party or Parties the full and complete enjoyment of its Rights hereunder.

Section 12.13. Construction. All Parties have been represented by counsel in the preparation of this Development Agreement and no presumption or rule that ambiguity shall be construed against a drafting party shall apply to its interpretation or enforcement. Captions of sections and subsections are provided for convenience only and shall not be deemed to limit, amend, or affect the meaning of the provisions to which they pertain. If any conflict appears between this Development Agreement and the rules, regulations or official policies of County, the provisions of this Development Agreement shall prevail and be deemed to have amended any such conflicting rules, regulation or official policy as of the Vesting Date to the extent permitted by Applicable Law. In the event of a direct conflict between any provision of this Development Agreement and any of the Project Approvals, the provisions of this Development Agreement shall control.

Section 12.14. Other Miscellaneous Terms. In construing this Agreement, the singular includes the plural; the masculine gender includes the feminine and the neuter; “shall” is mandatory and “may” is permissive.

Section 12.15. Counterpart Execution. This Development Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the Parties has executed such a counterpart.

Section 12.16. Time. Time is of the essence of each and every provision of this Development Agreement.

Section 12.17. Good Faith/Fair Dealing. The Parties agree that a covenant of good faith and fair dealing shall apply to all actions of the Parties. As used herein, this covenant shall mean that the Parties shall act reasonably, and no Party shall do anything which shall have the effect of destroying or injuring the rights of any other Party to receive the benefit of its bargain in this Development Agreement. Nothing in this Section 12.17 shall detract from the principle of Section 9.05 that neither Party shall be entitled to monetary damages for breach of this Development Agreement.

Section 12.18. Non-Intended Prevailing Wage Requirements. Nothing in this Development Agreement shall in any way require, or be construed to require, Land Owner to pay prevailing wages with respect to any work of construction or improvement within the Project (a “**Non-Intended Prevailing Wage Requirement**”). But for the understanding of the parties as reflected in the immediately preceding sentence, the parties would not have entered into this Development Agreement based upon the terms and conditions set forth herein. Land Owner and County have made every effort in reaching this Development Agreement to ensure that its terms and conditions will not result in a Non-Intended Prevailing Wage Requirement. These efforts have been conducted in the absence of any applicable existing judicial interpretation of the recent amendments to the California prevailing wage law. If, despite such efforts, any provision of this Development Agreement shall be determined by any court of competent jurisdiction to result in a Non Intended Prevailing Wage Requirement, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the parties hereby agree that, in such event, at the election of Land Owner in its sole and absolute discretion, this Development Agreement shall be reformed such that each provision of this Development Agreement that results in the Non Intended Prevailing Wage Requirement will be removed from this Development Agreement as though such provisions were never a part of the Development Agreement, and, in lieu of such provision(s), replacement provisions shall be added as a part of this Development Agreement as similar in terms to such removed provision(s) as may be possible and legal, valid and enforceable but without resulting in the Non Intended Prevailing Wage Requirement.

Section 12.19. List of Exhibits:

- A – DRSP Site Plan/Depiction of Property
- B – Legal Description of Property
- C – Community Benefits
- D – Affordable/Workforce Housing Plan
- E. – Down Payment Assistance Program
- F. – Local Preference Programs
- G – Relocation of Nipomo Community Dog Park

ARTICLE 13. FINANCIAL COMMITMENTS OF COUNTY AND LAND OWNER

Section 13.01. In General. This Article 13 establishes a framework for the imposition and allocation to the extent permitted by law of fees, assessments and other revenues to be generated and/or paid by the Project and/or the Property. The provisions of this Article 13 are intended to facilitate the construction, operation and maintenance of infrastructure and facilities to avoid or limit the physical impacts of development; and to assist in the development of the Project so as to provide long-term benefits to County, including increased residential and employment opportunities, an increased County tax base, and an enhanced quality of life for the County’s residents. In consideration of, and in reliance upon County agreeing to this Development Agreement, Land Owner will provide the community benefits (“**Community Benefits**”) described in **Exhibit C** attached hereto, which are over and above those dedications, conditions and exactions required by Applicable Law other than this Agreement.

Section 13.01.1. Basic Principles.

- (a) This Article 13 is intended to implement the following conceptual framework: that the County shall not incur costs for construction of new public facilities and infrastructure needed to serve the Project or the Property or for the provision of municipal services to the Project or the Property including the operation and maintenance of facilities and infrastructure to serve the Project (collectively, the “**Project Facilities and Infrastructure**”), except to the extent necessary to address existing infrastructure deficits or as otherwise provided for expressly in this Development Agreement. Any costs of any Project Facilities and Infrastructure beyond the Project’s fair share of such Project Facilities and Infrastructure shall be borne by other property owners and/or developers served by such Project Facilities and Infrastructure or the County if needed to address an existing operational deficit to be addressed by such Project Facilities and Infrastructure. Nothing herein shall either require or prevent the County from contributing to the cost to develop such Project Facilities and Infrastructure from any lawfully available funds, in the County’s sole discretion.
- (b) The cost of providing Project Facilities and Infrastructure shall be consistent with the following principles, except as otherwise specifically permitted by this Development Agreement:

- (i) there shall be a reasonable relationship between any municipal cost required to be borne by the Project and the type of development within the Project to which such cost is attributable;
 - (ii) there shall be a reasonable relationship between the need to incur any such municipal cost and the type of development within the Project to which such cost is attributable;
 - (iii) no municipal cost required to be borne by the Project shall exceed the estimated reasonable cost of providing the service or facility to which such municipal cost relates; and
 - (iv) with respect to any fee required to finance Project Facilities and Infrastructure, there shall be a reasonable relationship between the amount of the fee and the cost of the Project Facilities and Infrastructure funded by such fee.
- (c) Whenever this Development Agreement requires a “reasonable relationship” between the Project and any requirement imposed thereon, there shall be required an essential nexus between the Project and such requirement and rough proportionality in the allocation of a municipal cost or fee both internally to various portions of the Property and as between the Project and other projects within the County.
- (d) As used herein, the term “**Project Facilities and Infrastructure**” shall include public facilities and infrastructure only to the extent they serve the Project or the Property, and shall not include public facilities or infrastructure to the extent such facilities or infrastructure serve projects or areas other than the Project or the Property, unless the public facilities and infrastructure serving the Project or Property are required to be oversized to serve other projects or areas in accordance with the provisions of Section 13.02.2 below.

Section 13.01.2. Financing of Infrastructure: Operation and Maintenance. County shall exhaust all reasonable efforts and diligently pursue and utilize all mechanisms which may be appropriate to finance Project Facilities and Infrastructure and Project-related municipal services or the operation and maintenance of the Project Facilities and Infrastructure, such as Mello-Roos Districts, Enhanced Infrastructure Financing Districts, Landscaping and Lighting Districts, and other Maintenance Assessment Districts, in accordance with the following principles:

- (a) The level of municipal services provided to the Project, including the level of operation and maintenance of Project Facilities and Infrastructure, shall be equal or superior to the level of service provided elsewhere in the County.
- (b) Any costs associated with such mechanism shall be borne by the financing mechanism or the Project.

Section 13.02. Establishment of Financing Mechanisms.

Section 13.02.1. Procedures for Establishment. The establishment of any mechanism to finance the construction, operation or maintenance of Project Facilities and Infrastructure (each a “**Financing Mechanism**”) and the issuance of any debt in connection therewith (“**Project Debt**”) shall be initiated upon Land Owner’s written request to the County’s Finance Director. Such request shall include the purposes for which the Financing Mechanism is to be established and/or the Project Debt issued, and the general terms and conditions upon which the establishment of the Financing Mechanism and/or the issuance of the Public Debt will be based. County’s consideration of Land Owner’s request shall be consistent with the principles set forth in Section 13.01.2 above. If Land Owner requests the County to form a Mello-Roos Community Facilities District or an Enhanced Infrastructure Financing District to finance Project Facilities and Infrastructure, County shall use its best efforts to cause such district to be formed and bonds to be issued and, in the case of a Mello-Roos Community Facilities District, special taxes to be levied to the extent permitted by Applicable Law.

Section 13.02.2. Nature of County Participation. County’s participation in the formation of any Financing Mechanism, its operation thereafter, and in the issuance of any Project Debt, shall include all of the usual and customary municipal functions associated with such tasks, including, without limitation, the formation and administration of special districts; the issuance of Project Debt; the monitoring and collection of fees, taxes, assessments and charges such as utility charges; the creation and administration of enterprise funds; the enforcement of debt obligations and other functions or duties authorized or mandated by Applicable Law.

Section 13.03. Imposition of and Increases in Fees, Taxes, Assessments and Other Charges.

Section 13.03.1. Fees, Taxes and Assessments.

- (a) During the Term of this Development Agreement, Land Owner shall be bound to and shall not protest, challenge or cause to be protested or challenged, any County tax in effect on the Vesting Date.
- (b) County may apply to the Project or the Property any assessment or fee not in effect on the Vesting Date only if such assessment or fee is:
 - (1) An assessment or fee levied in connection with the establishment or implementation of a Financing Mechanism in accordance with Sections 13.01 and/or 13.02 above; or
 - (2) An assessment or fee to which Land Owner agrees.
- (c) No assessment shall be imposed on the Project or the Property other than through a Financing Mechanism as set forth above unless lawfully applied on a County-wide basis.
- (d) No new debt shall be issued that affects the Project or the Property without Land Owner’s approval, unless the approvals otherwise conform with the requirements

of Articles XIII A, C and D of the California Constitution and any requisite voter approval is achieved, in which case the County may issue debt even if Land Owner votes against the matter.

- (e) Following the establishment of the initial Financing Mechanism for the Project, nothing herein obligates Land Owner to approve any particular future funding source (e.g., a CFD) or to assist the County, including financial assistance, in establishing a new financial mechanism that requires a vote of the public without Land Owner's prior written consent, in Land Owner's sole discretion.

Section 13.03.2. Other Fees and Charges; Credits and Reimbursements.

- (a) Except as otherwise specifically stated below, any financial obligation imposed against or applied to the Project under this Section 13.03.2 shall be consistent with the provisions of controlling California law, including California Constitution article XIII A and Government Code sections 66000 to 66025.
- (b) Land Owner has obtained vested rights pursuant to the VTTM as to the rate of all County-wide and Project-specific development impact fees ("**Impact Fee**" or "**Impact Fees**") in effect as of the date that the VTTM was deemed complete. Land Owner shall pay all such Impact Fee fees in effect as of the date that the VTTM was deemed complete (the "**Vested Impact Fee**"), subject to the automatic adjustment provision in County ordinance section 18.03.010. All Impact Fees shall be calculated at the time of issuance of a building permit for the applicable structure and be due and payable at the time of the issuance of the certificate of occupancy of the applicable structure or, if no certificate of occupancy is issued, upon the final sign-off of the building permit.

In addition to the Impact Fees generally applicable to the Project, any residential units in Neighborhoods 1 through 9 of the Project shall pay a supplemental public facility fee (the "**Supplemental Public Facility Fee**") in the following amounts. Residential units in Neighborhoods 1 and 2 shall pay a Supplemental Public Facility Fee in the amount of One Thousand Two Hundred Seventy Four Dollars (\$1,274) per unit. Residential units in Neighborhoods 3 through 9 shall pay a Supplemental Public Facility Fee in the amount of One Thousand Eight Hundred Twenty Dollars (\$1,820) per unit. The Supplemental Public Facility Fee shall be collected prior to issuance of a building permit for each residential unit in Neighborhoods 1 through 9. The County shall use the Supplemental Public Facility Fee collected under this section to support the development of sheriff and fire facilities that serve the Project area and for no other purposes.

- (c) Costs of service fees imposed by County, such as planning, engineering, building permit, and fire plan check fees shall be in accordance with the fees in effect as of the date the fee is due.
- (d) The Land Owner shall pay all then-current processing fees for any subsequent planning applications and permits as adopted by the Board of Supervisors.

- (e) Land Owner shall pay County reasonable staff and consultant time and other reasonable costs (including reasonable consultant costs) associated with Land Owner's fair share of the establishment of any Financing Mechanism (to the extent such costs are not recovered from the Financing Mechanism), including any necessary election costs. The parties acknowledge that Land Owner's fair share of the establishment of any Financing Mechanism may be 100% if the Financing Mechanism is limited to land owned or controlled by the Land Owner and used to fund public facilities and infrastructure to the extent necessary to serve development of that land.
- (f) Land Owner shall pay all required fees of the California Department of Fish and Wildlife ("CDFW") related to posting of the Notice of Determination under CEQA for the Project EIR as well as the fee required by the County Clerk/Recorder. To the extent that any additional fees are due to the County Clerk/Recorder in the future related to Subsequent Approvals, the County may require proof of payment of such fees before issuing building permits or accepting the filing a Final Subdivision Map.

Section 13.03.3. Reimbursement.

- (a) County shall reimburse the costs associated with Land Owner's funding or construction of that portion of any oversized or accelerated improvement or facility that is attributable to a project or area other than the Project or Property. Costs eligible for reimbursement shall include value of land being dedicated to the County; hard costs, such as the reasonable direct costs of construction and materials; and soft costs, such as bond, architecture, engineering, and professional fees, the reasonableness of which shall be determined by the County, in its reasonable discretion. Such reimbursement shall be based on a fair share allocation of costs determined by calculating the pro rata share of the capacity in such oversized or accelerated improvements that is attributable to other projects or properties. The total reimbursable costs shall be based on Land Owner's actual costs as set forth in this Section 13.03.3. Reimbursement shall be provided timely, in accordance with Applicable Law, following County's collection of funds from the following sources:
 - (1) Development Impact Fees paid by the Project for the improvements specified with respect to the DRSP impact fees or the County-wide transportation impact fees, as applicable;
 - (2) Development Impact Fees paid to the County for other developments proximate to the Property that are not committed to repayment obligations under other Reimbursement Agreements;
 - (3) Development Impact Fees paid to County from developers who contribute, or have contributed, to the impact associated with the improvements installed by Land Owner;

- (4) Capital Facilities taxes or assessments in a Community Facilities District; and
 - (5) Property tax increment revenue in an Enhanced Infrastructure Financing District.
- (b) Backbone infrastructure that is larger than the minimum size or standard as identified in the Standard Specifications and Engineering Design Standards may be considered to be oversized and shall be subject to review and approval by the County prior to being included in a separate reimbursement agreement. The Land Owner may be reimbursed by other private development(s) for that developments' Fair Share of the cost to construct sewer and water infrastructure. The Land Owner will provide a study identifying the benefit area for each such reimbursement agreement for review and approval of the County Utilities Department, and may provide for reimbursement for segments of infrastructure which meet a utility's minimum size standard if the study shows those minimally sized facilities to benefit identified additional developments.
- (c) To the extent permitted by law, County shall impose as a condition of approval on any project that benefits from the oversized or accelerated improvements or facilities described in this Section 13.03.3(a) such project's proportionate fair share of the cost of the improvements eligible for reimbursement.
- (d) Under no circumstances shall the County be obligated to fund reimbursement from its General Fund or other discretionary resources or from funds which may not be lawfully used for that purpose or to advance funds to Land Owner as reimbursement before those funds are collected from others.
- (e) Failure by the County to collect funds, or error by the County in calculating the amount to collect, from the sources identified in subsection 13.03.3(a) above shall not subject the County to any liability, obligation, or debt to Land Owner. Notwithstanding the foregoing, the County shall reimburse Land Owner pursuant to the terms of this Development Agreement with respect to all such funds actually collected by the County. Failure by the County to reimburse Land Owner after the County collects such funds shall entitle Land Owner to exercise its remedies under Article 9. For any improvement subject to reimbursement under this section, Land Owner shall provide County with evidence of the actual hard and soft costs of each of the improvements in the form of receipted bills, canceled checks, and contracts. Approval of reimbursement may occur in phases as projects are accepted by County. Regardless of Land Owner's claimed costs incurred in constructing the reimbursable improvements, County has the authority, through its Planning Director or designee, in the exercise of his or her reasonable discretion, to determine the amount subject to possible reimbursement for each improvement.
- (f) In the event any owner or developer pays all or a portion of the fees or assessments identified in subsection 13.03.3(a)(1)–(5) above under protest, the County need not make reimbursements under this Development Agreement until the limitation

period for suit for a refund of such funds paid under protest has passed, and no court action (“**Action**”) has been instituted. If an Action is instituted seeking refund of funds paid under protest, or to prevent the County from collecting such funds, or challenging any provision of this Development Agreement, the County shall not pay over such funds to Land Owner until the Action has been concluded and the authority of the County to collect such funds and reimburse the Land Owner has been sustained. The County shall promptly notify Land Owner in writing of any Action. The County shall reasonably support Land Owner’s efforts to participate as a party to an Action, to defend an Action or settle an Action. Furthermore, the County may tender defense of an Action to Land Owner. If, within 15 days of the County’s mailing a notice in compliance with Section 12.08 below requesting that Land Owner defend the Action, should Land Owner thereafter fail to undertake the defense of the Action at Land Owner’s sole cost and expense, the County may stipulate to return of the funds collected under protest, to cease collecting such funds, or enter into any other settlement of the Action acceptable to the County, and Land Owner shall lose any right to reimbursement under this Development Agreement of the amount contested in the Action. Land Owner shall further reimburse the County for its costs and attorneys’ fees incurred in defense of the Action, including reasonable payment for legal services performed by the County Counsel or County’s outside counsel, and for any liability the County incurred in the Action. In addition, if the County fails to impose a requirement upon development projects to pay their respective prorated share of the improvements or fails to collect such funds, Land Owner may exercise all of its legal rights to attempt to collect such funds from the owners or developers of the benefitted properties, which legal rights shall not be interpreted to include an action against the County. If Land Owner attempts to collect such funds from such owners or developers, the County shall assign to Land Owner all of its rights to collect such funds under this Development Agreement.

- (g) The County reserves the right to offset any funds it collects from the sources identified in this Section 13.03.3 against any unpaid fees, debts or obligations of Land Owner to the County. The County shall provide Land Owner with notice, in accordance with Section 12.08 and Article 9, of its intent to offset any collected funds against unpaid fees, debts or obligations described in the notice, and provide Land Owner with a reasonable opportunity to pay such fees, debts, or obligations.
- (h) Land Owner’s right to reimbursement under this Section 13.03.3 shall survive termination of this Development Agreement until the earlier of (i) Land Owner having been fully reimbursed or (ii) 35 years following the Effective Date. Such obligations shall survive the termination of this Development Agreement.

ARTICLE 14. PUBLIC IMPROVEMENTS Section 14.01. Backbone Infrastructure Improvement Plan. The DRSP Backbone Infrastructure (“**Backbone Infrastructure**”) is planned to be designed and constructed in accordance with the DRSP and EIR. The Backbone Infrastructure will include systems operated by the County as well as, in the case of water and sewer systems, the NCSO. The County shall work cooperatively with NCSO where County review or approval is required of any future NCSO facilities; provided, however, that nothing in the Development Agreement shall grant County any review or permitting authority over any future NCSO facilities that are not otherwise provided by Applicable Law. The Parties acknowledge that further analysis may result in a more cost-effective approach to the provision of the planned infrastructure to adequately serve development of the DRSP Area. In that case, necessary changes to the provision of planned infrastructure may be made without the need for amendment of this Development Agreement.

Section 14.01.1. Specific Plan Improvements. The improvements described in the DRSP and Resolution No. 2024-109 certifying the EIR, constitute the DRSP “Improvement Plan.”

Section 14.01.2. The Improvement Plan may be amended by agreement of the Parties to take advantage of new technologies, to respond to changes in the underlying land use assumptions upon which the plan is based, or for such other reasons as the Parties may agree, consistent with the Project EIR or a subsequent environmental review, if required.

Section 14.02. Construction and Dedication of Project Facilities and Infrastructure.

Section 14.02.1. Construction and Funding by Land Owner. The County may, in any manner consistent with the terms and provisions of this Development Agreement and the Project phasing, require Land Owner to construct or to fund the construction of any Project Facilities and Infrastructure when needed to satisfy the Backbone Infrastructure Improvements Plan and the EIR.

Section 14.02.2. Oversizing of Project Facilities and Infrastructure.

- (a) In addition to requiring Land Owner to construct or to fund the construction of Project Facilities and Infrastructure, County may require any Project Facilities and Infrastructure constructed or funded by Land Owner under Section 13.02.1 above to be oversized to serve projects or areas other than the Project or the Property, provided that:
- (1) County shall cooperate with Land Owner and shall exhaust all reasonable efforts and diligently pursue all necessary or appropriate actions related to the establishment of a Financing Mechanism to provide such additional funding;
 - (2) County shall grant a fee credit, enter into private reimbursement agreements, or reimburse the costs associated with Land Owner’s funding or construction of that portion of any such oversized improvements that is attributable to projects or areas other than the Project or the Property, pursuant to subsection 13.03.2(e) above.

- (b) If the incremental construction of facilities required by the DRSP would involve significant inefficiencies for a component of the Project that the County reasonably finds unacceptable, it may require Land Owner to construct or provide advance funding for the construction of oversized improvements required by the DRSP. For example, and for illustration purpose only, if the Project generates a need for an 18-inch sanitary sewer line, but other projects reasonably may be expected to use that sewer line and thereby increase the required capacity of such line to 24 inches, County may require Land Owner to construct or fund the construction of a 24-inch sewer line (but shall provide reimbursement as described in subsection 13.04.2(b) above and as otherwise required under the Subdivision Map Act).

Section 14.02.3. Dedications.

- (a) To the extent rights-of-way or other interests in real property owned by Land Owner within the Property are needed for the construction, operation or maintenance of Project Facilities and Infrastructure, Land Owner shall dedicate or otherwise convey such rights-of-way or other interests in real property to County by the earlier of (i) when such rights are actually needed for Project Facilities and Infrastructure or (ii) before approval of a final subdivision map for the Project that includes such rights-of-way or other interests in real property. Such rights-of-way or interests shall be dedicated or otherwise conveyed in the widths set forth in the DRSP or as depicted on the tentative map.
- (b) Any public improvements constructed by Land Owner and conveyed to County, and any rights-of-way or other real property interests conveyed to County, shall be dedicated or otherwise conveyed: (i) free and clear of any liens unacceptable to the County and (ii) except as otherwise agreed to by County, in a condition free of any toxic materials; provided, however, that, County shall be responsible for the condition of any real property acquired by eminent domain. Nothing herein shall affect or prevent County's right to pursue claims against third parties under applicable law.

Section 14.03. Cooperation as to Project Facilities and Infrastructure.

Section 14.03.1. In General. County shall cooperate with Land Owner and take all actions necessary or appropriate to facilitate the development of Project Facilities and Infrastructure. Such cooperation shall include, without limitation: (i) the diligent, timely and lawful exercise by County of its power of eminent domain to acquire any rights-of-way or other real property interests County and Land Owner agree are needed for Project Facilities and Infrastructure (provided that the costs of any such acquisition shall be borne by the Project); and (ii) County's diligent efforts to work with other landowners and governmental and quasi-governmental agencies to allow timely approval and construction of such Project Facilities and Infrastructure.

- (a) Land Owner shall exhaust all reasonable efforts and diligently pursue acquisition of all necessary easements and/or rights of way not currently owned or controlled by County or Land Owner which are required to construct the Off-Site

Improvements. For purposes of this Section 14.03.1, the term “reasonable efforts” shall mean that the Land Owner has made a commercially reasonable written offer to purchase the property interest at fair market value, in accordance with an appraisal conducted by an MAI appraiser.

- (b) If after exercising reasonable efforts Land Owner is unable to acquire the necessary easements and/or rights of way, County, upon written request of Land Owner, shall, in County’s sole discretion: (1) require Land Owner to construct functionally equivalent alternative improvements to those previously approved, provided that such alternative improvements are equally or more effective in addressing the impact; (2) pursue acquisition of the real property interests by means of eminent domain; or (3) if the County declines to exercise powers of eminent domain, abandon or defer the Obligation in accordance with Section 66462.5 of the Subdivision Map Act. County and Land Owner acknowledge that eminent domain is a discretionary process and that County cannot commit to its use unless and until all appropriate notifications, hearings and proceedings have been undertaken. If County chooses to pursue acquisition of the real property interests by means of eminent domain, County shall take all reasonable steps necessary towards that endeavor, including undertaking appraisals, noticing property owners, noticing and holding required public hearings and meetings, and following any other procedures required for pre-judgment possession and Land Owner shall pay all costs reasonably incurred by County related to, arising from, or associated with such acquisition or condemnation proceedings, including but not limited to, attorneys’ fees, expert witness fees, and jury awards of any kind. In addition, Land Owner shall indemnify, defend and hold County harmless from and against any and all claims, liabilities or causes of action of any kind associated with County’s acquisition of such real property interests, excluding therefrom any claims, liabilities or causes of action arising from County’s gross negligence or willful misconduct.
- (c) County shall not unreasonably delay the recordation of the Final Map or the issuance of any grading and building permits for private improvements on the Property during the pendency of any activities under this Section except as necessary to protect public health and safety. In addition, and not by way of limitation, County shall not delay the processing, approval, or recordation of any Final Map for the Project due to Land Owner’s inability to obtain any off-site land acquisitions or easements; provided, however, that (i) County shall not require any engineering other than conceptual plans until the areas of such acquisitions or easements are obtained or the improvements are waived or alternative improvements are identified, as described above, and (ii) Land Owner and County shall include such land acquisitions or easements within the scope of any subdivision improvement agreement and related bonds.
- (d) Upon acquisition of the necessary interest in land, or upon obtaining right of entry, either by agreement or court order, Land Owner shall commence and complete the public improvements. This requirement shall be included, and, if necessary,

detailed, in any subdivision improvement agreement entered between the Land Owner and the County pursuant to Government Code section 66462.

- (e) If and to the extent this Section 14.03.1 demands more of Land Owner than does Section 66462.5 of the Subdivision Map Act, this Section shall apply in addition to the Land Owner's obligations under that statute.

Section 14.03.02. Cooperation Related to Off-Site Improvements. To the extent that Land Owner is required to construct any Off-Site Improvements that require work on land outside of the control of Land Owner, Land Owner may apply for approval from the County Public Works Director to extend the timeline for completion of such improvements upon posting of appropriate security, such as bonding, for the completion of such improvements, which approval shall not be unreasonably withheld.

ARTICLE 15. OTHER COMMITMENTS OF COUNTY AND LAND OWNER Section 15.01. Dedication of Park Lands. Land Owner shall dedicate land to satisfy its obligations under the Quimby Act and Applicable Law. Land Owner shall construct all park and recreation improvements as required by the conditions of approval subject to the County's review and approval. Ongoing maintenance and operation of the park facilities shall be funded by the Project residents pursuant to one or more of the Funding Mechanisms described in Section 13.02 above and/or assessments under homeowner CC&Rs, and shall not be payable from the County's General Fund or other community-wide resources. Should the land the Land Owner offers for dedication be insufficient to meet Land Owner's obligation under Applicable Law, Land Owner shall dedicate sufficient additional land off-site or pay an lieu fee to meet its requirement after applicable credits for additional park lands provided. Any in lieu fee assessments shall be based upon the amount of the fees in place as of the date of the approval of this Development Agreement.

Section 15.02. Affordable Housing. Land Owner has proposed and will provide the affordable housing units, affordable-by-design units, and funding for a down payment assistance program as described in **Exhibits D and E**.

Section 15.03. Water.

- (a) Land Owner shall install water improvements necessary to serve the Project as shown in the DRSP.
- (b) Notwithstanding anything herein to the contrary, Land Owner shall comply with the California Water Code and the regulations imposed by the County in its capacity as the Groundwater Sustainability Agency pursuant to the Sustainable Groundwater Management Act ("SGMA") in all matters related to the Project. Land Owner acknowledges that SGMA regulations will be implemented after the Vesting Date of this Development Agreement and likely throughout its term and nevertheless agrees to comply with them as to the Project.
- (c) Unless and until otherwise required by NCSD following commencement of service of water to the Project by NCSD, Land Owner reserves all groundwater or other water rights with respect to the Property and shall be entitled to irrigate open space

land with ground or well water, to the extent that such reservation and action does not violate Applicable Law and so long as such water meets or exceeds all applicable water quality standards.

- (d) Any and all tentative subdivision maps approved for the Project shall comply with Government Code Section 66473.7 if, and to the extent, required by Government Code Section 65867.5(c).

Section 15.04. Wastewater. The Project's wastewater system to be served by the NCSD.

Section 15.05. Recycled Water Facilities. Recycled water, if provided in the future, shall be provided by the NCSD. Project shall be "recycled water ready" – i.e., purple pipes installed for irrigation facilities for future connection to NCSD's future recycled water system if NCSD provides such services to the Project area in the future.

Section 15.06. Storm Drain Facilities. Before approval of a Final Subdivision Map or building permit for a use that does not require a map, Land Owner shall provide storm drain facilities as set forth in the DRSP adequate to accommodate the storm water runoff from the area subject to such Map or building permit.

Section 15.07. Traffic and Circulation Improvements. Land Owner shall construct improvements to satisfy the traffic mitigation measures as set forth in Resolution No. 2024-108, conditions of approval and for backbone infrastructure for the Project. For any improvements required prior to initial occupancy, such improvements may be secured through the posting of a bond, which will allow building permits to be issued concurrent with construction of such improvements; provided, however, that final occupancy shall be permitted only upon full completion of all such improvements.

Section 15.08. Pedestrian and Bicycle Connectivity. Developer shall construct intersection crossing improvements at Pomeroy Road and Juniper Street in accordance with applicable County of San Luis Obispo Public Improvement Standards and to satisfaction of Public Works. Such improvements will consist of removal of existing mid-block crossing, in its entirety, at Nipomo Regional Park entrance driveway along Pomeroy Road, including restoration of roadway, roadway shoulder, and curb, gutter, sidewalk on easterly side of Pomeroy Road.

- (a) Developer shall engage a licensed Civil Engineer or Traffic Engineer to perform a warrant analysis for type of pedestrian control (High Intensity Activated crossWalk (HAWK) or Rapid Flash Beacons (RFB)) at Pomeroy Road and Juniper Street. Developer shall construct warranted pedestrian control for pedestrian/bicycle connectivity to Nipomo Regional Park entrance and construct curb, gutter, and sidewalk from new crossing location along westerly side of Pomeroy Road to existing driveway entrance in accordance with Public Improvement Standards. Furthermore, for identification within a Community Plan update, Developer shall engage a Licensed Civil Engineer to perform a feasibility study including preliminary project plans with an engineer's estimate of probable costs to:
 - (1) Realign Nipomo Regional Park roadway to be in alignment with Juniper Street in accordance with Parks Department Master Plan and perform

warrant analysis for signalization/pedestrian control. Remove existing Nipomo Regional Parks driveway entrance along Pomeroy Road in its entirety, consisting of revegetation, fenced (or otherwise blocked) to prohibit access, and with roadway shoulder restored to Public Improvement Standards.

- (2) Construct curb, gutter, and sidewalk and/or trail along both sides of Pomeroy Road between Collector B to Camino Caballo, including associated crossings for Collector B at Pomeroy Road, Sandydale Drive at Pomeroy Road, Inga Road at Pomeroy Road, and Camino Caballo at Pomeroy Road..
- (b) Developer shall coordinate directly with Public Works for this work activity, and Developer will be required to obtain an Encroachment Permit for any work in the County right-of-way. Developer shall be obligated to complete aforementioned tasks prior to completion of Phase 2 or Phase 3, whichever occurs first.

Section 15.09. Ownership of Public Improvements. Unless the Parties otherwise mutually agree, the County shall own and maintain, or cause to be maintained, the following public improvements unless otherwise noted:

- (a) Potable water system and water tank, within public properties or public easements, to be owned by NCSD;
- (b) Sanitary sewer system, within public properties or public easements, to be owned by NCSD;
- (c) Recycled water system, within public properties or public easements, to be owned by NCSD;
- (d) Storm drain system, including continuous deflective separation (CDS) vaults or other best management practices (BMP) facilities, within public properties or public easements;
- (e) Public roadways consisting of Collectors A, B, and C;
- (f) Public parks and trails not owned and maintained by the Homeowners' Association (Homeowners' Association owned and maintained areas include trails, open space and pocket parks, and emergency access points); and
- (g) Public access and utility easements.

Section 15.10. Local Preference Programs. Land Owner has proposed and will comply with the Local Preference Programs as described in **Exhibit F**.

Section 15.11. Relocation of Nipomo Community Dog Park. In accordance with Exhibit G, Land Owner will make a one-time payment to help fund the relocation of the Nipomo Community Dog Park.

IN WITNESS WHEREOF, the Parties have executed this Development Agreement as of the Execution Date above.

COUNTY:

COUNTY OF SAN LUIS OBISPO,
a municipal corporation

By: _____
Chair of the Board of Supervisors


APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: _____
Deputy County Counsel

Dated: _____

LAND OWNER
NKT Development, LLC,
a California limited liability company

By:  _____
Nicholas Tompkins
Manager

IN WITNESS WHEREOF, the Parties have executed this Development Agreement as of the Execution Date above.

COUNTY:

COUNTY OF SAN LUIS OBISPO,
a municipal corporation

By: Debbie Arnold
Chair of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: [Signature]
Deputy County Counsel

Dated: 5.10.24

ATTEST: Rebecca Campbell, Acting CAO
and [Signature]; County Clerk of the Board and
Ex-Officio Clerk of the Board of Supervisors

By, [Signature]
Deputy Clerk



LAND OWNER
NKT Development, LLC,
a California limited liability company

By: [Signature]
Nich Tompkins AKA Nicholas Tompkins
Managing Member

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF San Luis Obispo) ss:

On May 15, 2024 before me, Lisa Campbell Notary Public
Notary Public (insert name and title of the officer),

personally appeared Nicholas Tompkins, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Lisa Campbell



CALIFORNIA NOTARY ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

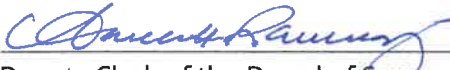
State of California
County of San Luis Obispo

On April 24, 2024 before me, Annette Ramirez, Deputy Clerk of the Board of Supervisors,
(Insert the name and title of the officer)

personally appeared Debbie Arnold who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 
Deputy Clerk of the Board of Supervisors

