CITY OF YUBA CITY
STAFF REPORT

Date: January 21, 2020

To: Honorable Mayor & Members of the City Council

From: Development Services Department

Presentation By: Ben Moody, Development Services Director

Summary:

Subject: Development Agreement 19-01 for the Newkom Ranch Subdivisions.

Recommendation: Adopt an Ordinance approving the Development Agreement 19-01 with Newkom Ranch, LLC (property owner and developer) for the development of the Newkom Ranch Subdivisions (TSM 14-06 and TSM 14-07), and waive the second reading.

Fiscal Impact: The cost of preparing the Development Agreement was paid for by the applicants of the Newkom Ranch Subdivisions.

Purpose:

This Development Agreement (DA) is proposed as part of the Newkom Ranch Large Lot Tentative Subdivision Map (TSM 14-06) and Small Lot Tentative Subdivision Map (TSM 14-07). This is a binding agreement between the City and the Developer spelling out terms of the project that go beyond the standard planning, zoning, and development and design standards that are required of the project.

Background:

The Newkom Ranch Subdivisions are located along the east side of State Route 99 between Bogue Road on the north and Stewart Road on the south. These subdivisions consist of Phase 1 of the Bogue-Stewart Master Plan.

In this case the DA was requested by the applicant, Newkom Ranch LLP, and is also required by the City Council's Growth Policies that require a DA for newly annexed areas. The primary deal point for this DA is to extend the life to construct the subdivision to 20 years. The life span to construct an approved subdivision without a DA does not typically extend more than ten years. This DA also provides for several five-year extensions.

While development agreements are provided for in state law (Govt. Code Sec 65864 through 65869.5), there are no established rules or policies regarding the deal points. As such, each proposal is unique and must be considered on its own terms.

The Development Agreement was introduced to City Council at the December 17, 2019 meeting.

Environmental Determination:

The Environmental Impact Report prepared for the Bogue Stewart Master Plan, the related entitlements and the Newkom Ranch Subdivisions also included the DA. With the certification of the EIR, no further environmental assessment is required.

Staff Comments:

This DA is in compliance with Yuba City growth policy that requires a DA for subdivisions in newly annexed areas.

The DA was also requested by the applicant due to the nature of residential development in Yuba City. The ten years or so (two years for initial approval with possible extensions granted by the Planning Commission) that may be available to construct the subdivision was not considered adequate time when considering the large investment in infrastructure required early in the subdivision's life. Yuba City's current rate of growth is about 40-50 new single-family residences constructed annually and no multiple-family residential construction in a number of years. At this growth rate 10 years may not be adequate time for the developers of this size of a subdivision to justify the expenditures needed to extend and expand the City's infrastructure to this area.

Recommended Action:

Adopt an ordinance approving the Development Agreement 19-01 with Newkom Ranch, LLC (property owner and developer) for the development of the Newkom Ranch Subdivisions (TSM 14-06 and TSM 14-07), and waive the second reading.

Alternatives:

1. Don't approve the Development Agreement as presented, directing staff to make revisions and return with the amended Development Agreement for action by the Council.

2. Deny the Development Agreement. This would result in the approved tentative subdivision maps without development agreements.

Attachments:

A. An Ordinance Of The City Council Of The City Of Yuba City Approving The Newkom Ranch Development Agreement Between The City Of Yuba City And Newkom Ranch LLC For The Newkom Ranch Subdivisions (TSM 14-06 And TSM 14-07), On Approximately 161 Acres Located Within The Bogue-Stewart Master Plan Area. (Assessor's Parcel Numbers 23-040-001, -004, -005, -062, and 064 and 23-380-007) (DA 19-01)

Prepared by:

/s/ Brian Millar
Brian Millar
Planning Consultant

Submitted by:

/s/ Michael Rock
Michael Rock
City Manager

Reviewed By:

Department Head	BM
Finance	SM
City Attorney	SLC by email

ATTACHMENT A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUBA CITY APPROVING THE NEWKOM RANCH DEVELOPMENT AGREEMENT BETWEEN THE CITY OF YUBA CITY AND NEWKOM RANCH LLC FOR THE NEWKOM RANCH SUBDIVISIONS (TSM 14-06 AND TSM 14-07), ON APPROXIMATELY 161 ACRES LOCATED WITHIN THE BOGUE-STEWART MASTER PLAN AREA. (ASSESSOR'S PARCEL NUMBERS 23-040-001, -004, -005, -062, and 064 and 23-380-007) (DA 19-01)

WHEREAS, the Bogue-Stewart Master Plan (SPA 16-05) ("BSMP" or "Master Plan"), as well as the accompanying General Plan Amendment (GPA) 14-05 and Preannexation Zoning (RZ) 14-04, was prepared for a 741-acre area generally located between Bogue Road on the north, Stewart Road on the south, South Walton Avenue on the west, and the Feather River Levee on the east; and

WHEREAS, Newkom Ranch, LLC, ("Applicant" or "Developer") has submitted the Newkom Ranch Tentative Subdivision Maps, for private development within a 161.17 acre portion of the Master Plan area consisting of Tentative Subdivision Map (TSM) 14-06, which proposes to divide the 161.17 acres into 12 large lots ranging in size from 3.62 acres to 21.48 acres. Nine of the large lots are being further subdivided by TSM 14-07 into 423 single-family lots; and

WHEREAS, a Development Agreement between Newkom Ranch, LLC, and the City of Yuba City, is also proposed for the governing of land uses in that area of the Master Plan known as the "Newkom Ranch" area, including TSM 14-06 and TSM 14-07; and

WHEREAS, the EIR prepared for the Bogue-Stewart Master Plan (SCH #2017012009) also assessed development at the Newkom Ranch Subdivision, including Development Agreement 19-01 (DA 19-01), TSM 14-06, and TSM 14-07; and

WHEREAS, the Planning Commission held a duly noticed public hearing on November 13, 2019, to consider the BSMP (Specific Plan Amendment (SPA) 16-05) (including errata and Public Facilities Financing Plan), as well as the accompanying General Plan Amendment (GPA) 14-05, Preannexation Zoning (RZ) 14-04, and also considered the Environmental Impact Report (SCH #2017012009) (EIR) prepared for the BSMP project; and

WHEREAS, the Planning Commission reviewed and considered all of the information and testimony for the BSMP Environmental Impact Report, General Plan Amendment, Specific Plan Amendment, and Preannexation Zoning; and

WHEREAS, by a vote of 7-0 the Planning Commission adopted a Resolution recommending to the City Council approve GPA 14-05, SPA 16-05 (as clarified by the Errata), and RZ 14-04, as well as a Resolution recommending the City Council certify the EIR and take related action regarding the project; and

WHEREAS, on November 13, 2019, following the hearing on the Bogue Stewart Master Plan the Planning Commission conducted a duly noticed public hearing on the Newkom Ranch Subdivisions and Development Agreement 19-01, and following the hearing contingently approved the Newkom Ranch Subdivisions and recommended to the City Council approval of this Development Agreement 19-01; and

WHEREAS, Sections 65864-65869.5 of the California Government Code authorize the City to enter into development agreements and requires the planning agency of the City to find the proposed development agreement to be consistent with the policies and programs of the General Plan and any applicable specific plan, which the Planning Commission has done; and

WHEREAS, Government Code Section 65865 authorizes the City to enter into development agreements with any person having a legal or equitable interest in real property, which interest Developer has in the affected property; and

WHEREAS, pursuant to California Government Code Sections 65867 and 65090, the City published a legal notice of the public hearing regarding Development Agreement to be held by the City Council on December 17, 2019. In addition, a public hearing notice was mailed to each property owner within at least 300 feet of the project site, indicating the date and time of the public hearing regarding the Development Agreement; and

WHEREAS, the City Council considered the provisions of the Development Agreement at a public hearing on December 17, 2019, and all interested parties were given an opportunity to be heard regarding the Agreement, and thereafter the City Council introduced this Ordinance; and

WHEREAS, the City Council has certified the EIR in connection with GPA 14-05, SPA 16-05, and RZ 14-04, related to the Bogue-Stewart Master Plan; and

WHEREAS, Development Agreement 19-01 was assessed by the EIR, which identified that implementation of the proposed Project would require certain approvals, including approval of the Development Agreement by the City, and which Development Agreement was included within the scope of the project and was environmentally assessed in the EIR; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred, and the City Council desire to approve Development Agreement No. 19-01 between the City of Yuba City and Newkom Ranch, LLC, by adoption of this Ordinance.

NOW, THEREFORE, the City Council of the City of Yuba City does ordain as follows:

1. Recitals: The City Council hereby finds that all of the facts set forth in the recitals above are true and correct and incorporated herein.

2. California Environmental Quality Act (CEQA) Findings: The City Council previously prepared and certified an EIR for the Bogue-Stewart Master Plan project. The EIR identified that implementation of the proposed Project would require certain approvals, and specifically contemplated the execution of development agreements to implement the BSMP, which includes the Newkom Ranch area. This development agreement was included within the scope of the project description, and was environmentally assessed in the EIR. The development agreement does not change the environmental assessment of the EIR. Further, the EIR was certified on December 17, 2019. The City Council further

finds that no subsequent review is required under CEQA Guidelines section 15162 as since that time no substantial changes have been proposed in the project which will require major revisions of the previously certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Likewise, no substantial changes have occurred since that time with respect to the circumstances under which the project is undertaken which will require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There is also no new information, which was not known and could not have been known at the time of the EIR that the project will have significant effect not discussed in the EIR. As such, the City Council finds the DA 19-01 has already been fully assessed in accordance with CEQA, no subsequent review is required under CEQA Guidelines section 15162, and no further action or review is required under CEQA.

3. Findings: Pursuant to the Government Section Code 65864 through 65869.5 and in light of the record before it including the staff report (and all attachments), and all evidence and testimony heard at the public hearing for this item, and in light of all evidence and testimony provided in connection with the entitlements for the Newkom Ranch, as well as the Master Plan entitlements, the City Council makes the following findings pertaining to the Development Agreement:

   a. Finding 1: The proposed Development Agreement is consistent with the goals and policies of the General Plan, its purposes and applicable Specific Plan(s).

      Evidence: Section 3.10 of the EIR, including Table 3.10-1 (entitled "City of Yuba City General Plan Consistency – Land Use and Planning), incorporated by reference, contains an analysis of the consistency of the Master Plan to the General Plan – which includes the Newkom Ranch and its Development Agreement. Additionally, the Bogue Stewart Master Plan implements the goals and policies of the City's General Plan. It establishes the land use designations, planning principles and project objectives and design guidelines for the BSMP area consistent with the General Plan as amended. The City Council has reviewed the analysis and determined that the proposed Development Agreement is consistent with Specific Plan Amendment 16-05 (adopting the Master Plan), has also found the Specific Plan Amendment is consistent with the General Plan as amended by General Plan Amendment 14-05, and as such, the Development Agreement is therefore consistent with the General Plan.

   b. Finding 2: The Development Agreement is consistent with and furthers a number of goals and objectives identified in the City's General Plan.

      Evidence: Overall, the project proposed by the Development Agreement represents a productive use of site that is compatible with surrounding uses, and offers Yuba City residents new opportunities for residential, retail, entertainment, and employment. Tentative Subdivision Map 14-06 proposes to divide the 161.17 acres into 12 large lots ranging in size from 3.62 acres to 21.48 acres. Nine of the large lots are being further subdivided by TSM 14-07 into 423 single-family lots. One 9.02-acre large lot will be utilized for multiple-family development, the 21.48-acre large lot will be for commercial development and one 8.58-acre large lot will be utilized for office type development. There are also four large lots that will be dedicated to the public for open space, drainage ponds and a community park. Among others, the City's General Plan envisions development that that promotes a variety of housing, the ability to live and work in the

City, and accessibility to parks, opens space, and shopping areas. The General Plan also contemplates use of specific plans or developer master plans for strategic new growth areas with complex land use programs such as the BSMP. Further detailed findings of consistency between the Project and the General Plan are found in Section 3.10 of the EIR, including Table 3.10-1 (entitled "City of Yuba City General Plan Consistency – Land Use and Planning), which is incorporated by reference.

c. Finding 3: A water supply assessment was completed for the Master Plan area, and the Development Agreement does not include a subdivision as defined in Section 66473.7 of the Government Code.

   Evidence: A water supply assessment was prepared for the entire Master Plan area, including the portion subject to the Development Agreement, and water supply and availability was assessed in the EIR. (See EIR, section 3.15-9 – 3.15-33.) The analysis concluded that there would be a sufficient water supply for all areas of the Master Plan area, which includes Newkom Ranch. Finally, the Development Agreement contains a provision that provides that any tentative map prepared for the subdivision will comply with Government Code Section 66473.7.

d. Finding 4: The project has adequate flood protection.

   Evidence: The City requires that an Urban Level of Flood Protection (ULOP), or 200 year flood protection, be provided across portions of the City containing flood depths greater than three feet. Portions of the Master Plan area are located within such an area, or within the 100-year flood hazard zone. The Sutter Butte Flood Control Agency (SBFCA) is the "Local Flood Management Agency" for the Sutter-Butte Basin and as such, has the responsibility to prepare an annual report demonstrating adequate progress as defined in California Government Code Section 65007(a). SBFCA has prepared Adequate Progress Report Updates for ULOP and transmitted them to the Central Valley Flood Protection Board. Additionally, the City has imposed conditions on the Development Agreement that will protect property within the Master Plan area to the urban level of flood protection in urban areas and urbanizing areas. Such conditions may also be implemented as conditions of tentative maps or other entitlements. The Development Agreement also requires payments of certain impact fees, including those related to levee improvements. Finally, the Development Agreement is also required to be consistent with the Master Plan, which has a comprehensive plan providing for drainage and flood protection improvements. (See BSMP, pp. 5-21 – 5-28.) Among others, proposals to develop within either the 100-year or 200 year flood hazard zone require a site-specific hydrological study. With the infrastructure required by the stormwater drainage infrastructure, drainage facilities would be large enough to contain a 100-year storm with one foot of freeboard. All building pad elevations are required to be one foot above the 100-foot flood elevation. As such, the site has adequate flood protection.

4. Based upon the findings outlined in Section 2 and 3 above, the City Council adopts an ordinance to approving DA 19-01, a Development Agreement between the City of Yuba City and Newkom Ranch, LLC, a copy which is attached hereto as Attachment "A."

5. Severability: If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining

portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

6. Effective Date: This ordinance shall be in full force and effect thirty (30) days after its passage. However, the Agreement shall not become operative until the affected property is annexed into the City within the time specified by the Agreement.

7. Certification: The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

Introduced and read at a regular meeting of the City Council of the City of Yuba City on the 17th day of December, 2019 and passed and adopted at a regular meeting held on the 21st day of January, 2020.

AYES:

NOES:

ABSENT:

_____
Shon Harris, Mayor

ATTEST:

_____
Patricia Buckland, City Clerk

APPROVED AS TO FORM:

_____
Shannon Chaffin, City Attorney
Aleshire & Wynder, LLP

Attachment A: Newkom Ranch Development Agreement

ATTACHMENT A
NEWKOM RANCH DEVELOPMENT AGREEMENT

Recording Requested by:

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

When Recorded Mail To:

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

DOCUMENT WILL BE RETURNED TO NAME &. ADDRESS IDENTIFIED ABOVE

[Space Above for Recorder's Use]

DEVELOPMENT AGREEMENT

by and between

NEWKOM RANCH LLC
A California Limited Liability Company

and

CITY OF YUBA CITY
A General Law City

(Newkom Ranch Development Agreement)

DEVELOPMENT AGREEMENT
by and between

NEWKOM RANCH LLC
A California Limited Liability Company

and

CITY OF YUBA CITY,
A General Law City

(Newkom Ranch Development Agreement)

THIS DEVELOPMENT AGREEMENT dated _____, 2019 (Effective Date), at Yuba City, California (hereinafter referred to as "Agreement"), is entered into by and between Newkom Ranch, LLC, a California limited liability company (hereinafter referred to as "Newkom Ranch Landowner," "Landowner" or "Developer") and the City of Yuba City, a general law city, created and existing under the laws of the State of California (hereinafter referred to as "the City"), pursuant to the authority of Sections 65864-65869.5 of the Government Code of the State' of California.

RECITALS

A. State Authorization. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 *et seq*. of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a binding property development agreement with any person having a legal or equitable interest in real property for the development associated with such property in order to establish certain development rights in the property which is the subject of the development project application.

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

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

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

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

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

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

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

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

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

The entitlements are collectively referred to as “Development Approvals.”

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

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

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

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

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

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

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

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

AGREEMENT

1. General Provisions.

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

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

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

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

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

1.2.4 Director. The Director of the Development Services Department.

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

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

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

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

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

2. Effective Date: Term.

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

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

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

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

3. General Development of the Project.

3.1 Project: Vested Entitlements.

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

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

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

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

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

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

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

3.4.1 [Intentionally deleted]

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

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

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

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

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

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

3.4.7 Landowner shall pay the following fees:

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

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

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

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

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

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

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

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

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

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

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

3.6.1 Limiting the uses permitted on the Property;

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

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

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

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

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

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

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

4. Developer Obligations

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

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

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

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

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

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

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

4.2.5 Park and Open Space Improvements and Dedications.

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

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

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

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

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

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

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

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

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

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

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

5.1 Reimbursement to Developer for Oversizing

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

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

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

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

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

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

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

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

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

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

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

6. Annual Review.

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

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

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

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

6.4.1 The time and place of the hearing;

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

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

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

7. Permitted Delays.

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

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

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

8. Termination.

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

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

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

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

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

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

8.4 Effect of Termination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

therein or improvement thereon, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

15.2 Mortgagee Not Obligated; Mortgagee as Transferee. No Mortgagee shall have any obligation or duty under this Agreement whatsoever, except that nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee to undertake any new construction or improvement in the Newkom Ranch Project Area, or to otherwise have the benefit of any rights of Developer, or to enforce any obligation of the City, under this Agreement, unless and until such Mortgagee elects to become a Transferee in the manner specified in this Agreement. Any Mortgagee that affirmatively elects to become a Transferee shall be later released from all obligations and liabilities under this Agreement upon the subsequent Transfer by the Mortgagee of its interest as a transferee to another person.

15.3 Entitlement to Written Notice of Default. The Mortgagee of a Mortgage or beneficiary of a deed of trust encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to the City, be entitled to receive from the City written notification of any default by Landowner of the performance of Landowner's obligations under this Agreement which has not been cured within sixty (60) days following the date of default. Landowner shall reimburse the City for its actual costs, reasonably and necessarily incurred, to prepare this notice of default.

15.4 Priority of Mortgages and Subordination. Landowner shall ensure that all Mortgages subordinate to this Agreement. For purposes of exercising any remedy of a Mortgagee or for becoming a Transferee, the applicable laws of the State of California shall govern the rights, remedies and priorities of each Mortgagee, absent a written agreement between Mortgagees otherwise providing.

15.5 Collateral Assignment. As additional security to a Mortgagee under a Mortgage on the Property or any portion thereof, Developer shall have the right, without the consent of the City, to execute a collateral assignment of Developer's rights, benefits and remedies under this Agreement in favor of the Mortgagee (a "Collateral Assignment") on the standard form provided by the Mortgagee.

16. Covenants to Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors, assignees, devises, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assignees. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder: (i) is for the benefit of such properties and is a burden upon such properties; (ii) runs with such properties; and (iii) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and its property hereunder, and each other person succeeding to an interest in such properties; provided that no liability or obligation shall accrue to any person, if this Agreement terminates pursuant to Section 8 of this Agreement.

17. Amendment.

17.1 Amendment or Cancellation. Except as otherwise provided in this Agreement, this Agreement may be canceled, modified or amended only by mutual consent of the Parties in writing, and then only in the manner provided for in Government Code Section 65868. Minor amendments to this Agreement may be made without a public hearing upon approval of the Development Services Director. "Minor Amendments" shall mean amendments which are similar in significance to the type of minor amendments to land use entitlements that may be made without a full public hearing or approval of the Planning Commission or City Council pursuant to the Yuba City Municipal Code.

17.2 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation; however, a failure to record shall not affect the validity of the amendment, termination or cancellation.

18. Notices.

18.1 Procedure. Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the Party's mailing address.

18.2 Mailing Addresses. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City:	Development Services Director City of Yuba City 1201 Civic Center Blvd. Yuba City, CA 95993
With a copy to:	City Manager City of Yuba City 1201 Civic Center Blvd. Yuba City, CA 95993
Landowners:	Newkom Ranch LLC Attn: Dave Lanza P.O. Box 591 Marysville, CA 95901
With a copy to:	MHM Incorporated Attn: Sean Minard P.O. Box B Marysville, CA 95901

Either Party may change its mailing address at any time by giving ten (10) days notice of such change in the manner provided for in this section. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. Nothing in this provision shall be construed to prohibit communication by facsimile transmission, so long as an original is sent by first class mail, commercial carrier or is hand-delivered.

19. Indemnification.

19.1 Third Party Actions. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, attorneys, and volunteers from any and all loss, liability, fines, penalties, forfeitures, damages and costs (including attorney's fees, litigation expenses and administrative record preparation costs) arising from, resulting from, or in connection with any Third Party Action (as hereinafter defined). The term "Third Party Action" collectively means any legal action or other proceeding instituted by (i) a third party or parties or (ii) a governmental body, agency or official other than the City or a City Agency, that: (a) challenges or contests any or all of this Agreement, the Newkom Ranch Subdivision Map Applications and Approvals, or the Development Approvals; or (b) claims or alleges a violation of CEQA or another law in connection with the certification of the EIR by the City Council or the grant, issuance or approval by the City of any or all of this Agreement, the Newkom Ranch Subdivision Map Applications and Approvals, and the Development Approvals. Developer's obligations under this Section shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties forfeitures, costs or damages caused solely by the active negligence or willful misconduct of the City or any of its officers, officials, employees, agents or volunteers. The provisions of this Section shall survive the termination of this Agreement.

19.2 Damage Claims. The nature and extent of Developer's obligations to indemnify, defend and hold harmless the City with regard to events or circumstances not addressed in Section 19.1 shall be governed by this Section 19.2. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, attorneys, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement or the performance of any or all work to be done by Developer or its contractors, agents, successors and assigns pursuant to this Agreement (including, but not limited to design, construction and/or ongoing operation and maintenance of off-site improvements unless and until such off-site improvements are dedicated to and officially accepted by the City). Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, attorneys, or agents are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents, attorneys, or volunteers.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, attorneys, and volunteers in accordance with the terms of the preceding paragraph. The Developer further agrees that the

use for any purpose and by any person of any and all of the streets and improvements required under this Agreement, shall be at the sole and exclusive risk of the Developer, at all times prior to final acceptance by the City of the completed street and other improvements, unless any loss, liability, fines, penalties, forfeitures, costs or damages arising from said use were caused by the active or sole negligence, or the willful misconduct, of the City or any of its officers, officials, employees, agents or volunteers.

Notwithstanding the preceding paragraph, to the extent that Subcontractor is a "design professional" as defined in Section 2782.8 of the California Civil Code and performing work hereunder as a "design professional" shall, in lieu of the preceding paragraph, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers to the furthest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in Agreement, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

This Section shall survive termination or expiration of this Agreement.

20. Insurance. Prior to starting construction of any phase of the project through the date of City's final formal acceptance of off-site improvements constructed pursuant to the terms of this Agreement (the "Insurance Period"), Developer shall pay for and maintain in full force and effect all policies of insurance described in this Section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Public Work's Director. The following policies of insurance are required:

20.1 Commercial General Liability. Insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage and personal injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement),with limits of liability of not less than $5,000,000 per occurrence for bodily injury and property damage, $1,000,000 per occurrence for personal injury, $5,000,000 general aggregate and $5,000,000 aggregate for products and completed operations and $5,000,000 general aggregate.

20.2 Commercial Automobile Liability. insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 B Any Auto), with combined single limits of liability of not less than $5,000,000 per accident for bodily injury and property damage.

20.3 Workers Compensation. insurance as required under the California Labor Code.

20.4 Employers Liability. with minimum limits of liability of not less than $1,000,000 each accident, $1,000,000 policy limit and $1,000,000 for each employee.

In the event Developer purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a ten (10) calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing renewal of such policy not less than ten (10) calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Developer shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, attorneys, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Developer's insurance shall be primary, and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Developer shall have furnished City with the certificate(s) and applicable endorsements for all required insurance prior to start of construction of any phase of development. Developer shall furnish City with copies of the actual policies upon the request of City's Director of Public Works at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the Insurance Period, Developer fails to maintain the required insurance in full force and effect, the Director of Public Works, or designee, may order that the Developer, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected. All payments due or that become due to Developer shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. The insurance requirements set forth in this Section are material terms of this Agreement.

If Developer should hire a general contractor to provide all or any portion of the services or work to be performed under this Agreement, Developer shall require the general contractor to provide insurance protection in favor of City, its officers, officials, employees, attorneys, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the general contractor's certificates and endorsements shall be on file with Developer and City prior to the commencement of any work by the general contractor.

If the general contractor should subcontract all or a portion of the services or work to be performed under this Agreement to one or more subcontractors, Developer shall require the general contractor to require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees, attorneys, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that each subcontractor shall be required to pay for and maintain Commercial General Liability insurance with limits of liability of not less than

$1,000,000 per occurrence for bodily injury and property damage, $1,000,000 per occurrence for personal injury, $2,000,000 aggregate for products and completed operations and $2,000,000 general aggregate and Commercial Automobile Liability insurance with limits of liability of not less than less than $1,000,000 per accident for bodily injury and property damage. Subcontractors' certificates and endorsements shall be on file with the general contractor, Developer and City prior to the commencement of any work by the subcontractor. Developer's failure to comply with these requirements shall constitute a default of this Agreement.

21. Miscellaneous.

21.1 Approvals. Unless otherwise provided herein, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of a Party pursuant to this Agreement, such approval shall not be unreasonably withheld. If a Party shall disapprove, the reasons therefor shall be stated in reasonable detail in writing. Approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests. The Parties acknowledge and agree that the intent of the Parties is that this Agreement be construed in a manner that protects the rights granted to Landowner herein to the as allowed by law. Except for the limitations on the exercise by the City of its police power which are provided in this Agreement or which are construed in accordance with the immediately preceding sentence, the Parties further acknowledge and agree that: (a) the City reserves all of its police power and/or statutory or other legal powers or responsibilities; and (b) this Agreement shall not be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit the discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws, and entitlement of use which require the exercise of discretion by the City or any of its officers or officials. This Agreement shall not be construed to limit the obligations of the City to comply with CEQA or any other federal or state law.

21.2 Project Approvals Independent. All approvals that may be granted pursuant to this Agreement, and all approvals or other land use approvals which have been or may be issued or granted by the City with respect to the Property, constitute independent actions and approvals by the City. If any provisions of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any approvals or other land use approvals. In such cases, such approvals will remain in effect pursuant to their own terms, provisions and conditions.

21.3 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Property, or of the Project, or any portion thereof, to the general public, for the general public, or for any-public use or purpose whatsoever. This proscription does not extend to any portion of the Property that may be dedicated in compliance with any conditions of approval. The Landowner shall have the right to prevent or prohibit the use of the Property, or any portion thereof, including common areas and buildings and improvements located thereon; by any person for any purposes inimical to the operation of a private, integrated Project as contemplated by this Agreement.

21.4 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

21.5 Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each Article, Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities.

21.6 Other Necessary Acts. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all further instruments, documents and writings as may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement and to secure the other party the full and complete enjoyment of its rights and privileges hereunder.

21.7 Applicable Law. This Agreement, and the rights and obligations of the Parties, shall be construed by and enforced in accordance with the laws of the State of California.

21.8 Equal Authorship. This Agreement has been reviewed by legal counsel for both the Landowner and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

21.9 Time. Time is of the essence of this Agreement and of each and every term and condition hereof. In particular, the City agrees to act in a timely fashion in accepting, processing, checking and approving all maps, documents, plans, permit applications and any other matters requiring the City's review or approval relating to the Project or Property. Subject to extensions of time by mutual consent in writing, unreasonable delay by either party to perform any term or provision of this Agreement shall constitute a default.

21.10 Subsequent Projects. After the effective date of this Agreement, the City may approve other projects that place a burden on the City's infrastructure; however, it is the intent and agreement of the Parties that Landowner's right to build and occupy the Project, as described in this Agreement, shall not be diminished despite the increased burden of future approved development on public facilities.

21.11 Entire Agreement. This written Agreement and the Exhibits contain all the representations and the entire agreement between the Parties with

respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

21.12 Form of Agreement: Exhibits. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the parties. Said exhibits are identified as follows:

Exhibit A-1: Property legal description
Exhibit A-2: Newkom Ranch Subdivisions

All attachments to this Agreement, including all exhibits referenced herein, and all subparts thereto, are incorporated herein by this reference.

21.13 Attorneys' Fees. If either Party commences any action for the interpretation, enforcement, termination, cancellation or rescission hereof, or for specific performance of the breach hereof, the prevailing party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof. Attorneys' fees under this Section shall include attorneys' fees on any appeal and any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

21.14 Limitation of Legal Acts. In no event shall the City, or its officers, agents, attorneys, or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

21.15 Interpretation and Governing State Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objective and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, both Parties having been represented by counsel in the negotiation and preparation hereof. All legal actions brought to enforce the terms of this Agreement shall be brought and heard in the Superior Court of the State of California, County of Sutter.

21.16 Successor Statutes Incorporated. All references to a statute or ordinance, shall incorporate any, or all, successor statute or ordinance enacted to govern the activity now governed by the statute or ordinance, noted herein to the extent, however, that incorporation of such successor statute or ordinance does not adversely affect the benefits and protections granted to the Developer under this Agreement.

21.17 Counterparts. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and each of which shall be deemed to be one and the same instrument when each Party signs each such counterpart.

21.18 Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

21.19 Days. Unless otherwise specified in this Agreement, the term "days" means calendar days.

21.20 Authority. The Parties hereby represent that the person hereby signing this Agreement on behalf of each respective Party has the authority to bind the Party to the Agreement.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

"City"

CITY OF YUBA CITY,
A General Law City

By:_____

Shon Harris, Mayor

Date:_____

Attest:

_____
City Clerk

Approved as to Form:

_____
Shannon Chaffin, City Attorney

"Landowner"

Newkom Ranch LLC,
a California limited liability company

By: Newkom Ranch LLC
a California limited liability company

By:_____
Dave Lanza, Member

Attachments

Exhibit A-1: Property legal description
Exhibit A-2: Newkom Ranch Subdivisions

2013-0014069

Recorded Official Records County of Sutter Donna M. Johnston Clerk Recorder	REC FEE 26.00
	SURVEY MONUME 10.00
12:15PM 22-Aug-2013	RB Page 1 of 5

RECORDING REQUESTED BY
First American Title Insurance Company National Commercial Services

AND WHEN RECORDED MAIL DOCUMENT TO:

NEWKOM RANCH, LLC
Attn: David W. Lanza
P. O. Box 591
Marysville, CA. 95901

Space Above This Line for Recorder's Use Only

APN: **23-040-001, 004, 005, 062, 064 and 23-380-007**

GRANT DEED

Conf.

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX **$R&T Code 11932 – Per separate statement**; CITY TRANSFER TAX **$NONE**; SURVEY MONUMENT FEE $ **10.00**

[ ] computed on the consideration or full value of property conveyed, OR
[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
[**XX**] unincorporated area; [ ] City of -----, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

DANE SILLER and LISA SILLER, husband and wife, as joint tenants

hereby GRANTS to

NEWKOM RANCH, LLC, a California limited liability company

the following described property in the unincorporated area of the County of **Sutter**, State of **California**:

PARCEL ONE:

BEGINNING AT A POINT ON THE WEST LINE OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, 80 RODS NORTH OF THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; AND RUNNING THENCE NORTH ON THE WEST SECTION LINE OF SAID SECTION 3, A DISTANCE OF 40 RODS; THENCE AT A RIGHT ANGLE EAST 1860 FEET MORE OR LESS TO THE WEST LINE OF A PRIVATE ROADWAY DESCRIBED IN THE DEED FROM GEORGE WALTON TO FRANCIS WALTON, DATED NOVEMBER 10, 1910 AND RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92; THENCE SOUTH ALONG THE WEST LINE OF SAID PRIVATE ROADWAY AS DESCRIBED IN SAID DEED RECORDED IN BOOK 51 OF DEEDS, AT PAGE 92, A DISTANCE OF 40 RODS TO A POINT 80 RODS NORTH OF THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; AND THENCE WEST AND PARALLEL WITH SAID LAST NAMED LINE 1860 FEET MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED FROM HAROLD E. NEWKOM, ET UX, RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

APN: 23-040-004

Mail Tax Statements To: **SAME AS ABOVE**

PARCEL TWO:

BEGINNING AT A POINT ON THE WEST LINE OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, 160 RODS NORTH OF THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; THENCE NORTH ON THE WEST SECTION LINE OF SAID SECTION 3, TO A POINT ON SAID LINE 40 RODS; SOUTH OF THE NORTHWEST CORNER OF SAID SECTION 3; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 1860 FEET, MORE OR LESS, TO THE WEST LINE OF A PRIVATE ROADWAY DESCRIBED IN THE DEED FROM GEORGE WALTON TO FRANCIS WALTON, DATED NOVEMBER 10, 1910 AND RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92; THENCE SOUTH ALONG THE WEST LINE OF SAID PRIVATE ROADWAY AS DESCRIBED IN SAID DEED RECORDED IN BOOK 51 OF DEEDS, AT PAGE 92, TO A POINT 160 RODS NORTH OF THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; AND THENCE WEST AND PARALLEL WITH SAID LAST NAMED LINE 1860 FEET MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED FROM HAROLD E. NEWKON, ET UX, RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

APN: 23-040-005 (PORTION)

PARCEL THREE:

BEGINNING AT A POINT ON THE WEST LINE OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, 120 RODS NORTH OF THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; AND RUNNING THENCE NORTH ON THE WEST SECTION LINE OF SAID SECTION 3, A DISTANCE OF 40 RODS; THENCE AT A RIGHT ANGLE EAST 1860 FEET MORE OR LESS TO THE WEST LINE OF A PRIVATE ROADWAY DESCRIBED IN THE DEED FROM GEORGE WALTON TO FRANCIS WALTON, DATED NOVEMBER 10, 1910 AND RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92; THENCE SOUTH ALONG THE WEST LINE OF SAID PRIVATE ROADWAY AS DESCRIBED IN SAID DEED RECORDED IN BOOK 51 OF DEEDS, AT PAGE 92, TO A POINT 120 RODS NORTH OF THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; THENCE WEST AND PARALLEL WITH SAID LAST NAMED LINE 1860 FEET MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED FROM HAROLD E. NEWKON, ET UX, RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

APN: 23-040-005 (PORTION)

PARCEL FOUR:

BEGINNING AT A POINT ON THE WEST LINE OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, 40 RODS NORTH OF THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; AND RUNNING THENCE NORTH ON THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 40 RODS; THENCE AT A RIGHT ANGLE EAST 1860 FEET MORE OR LESS TO THE WEST LINE OF A PRIVATE ROADWAY DESCRIBED IN THE DEED FROM GEORGE WALTON TO FRANCIS WALTON, DATED NOVEMBER 10, 1910 AND RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92; THENCE SOUTH ALONG THE WEST LINE OF SAID PRIVATE ROADWAY AS DESCRIBED IN SAID DEED RECORDED IN BOOK 51 OF DEEDS, AT PAGE 92, TO A POINT 40 RODS NORTH OF THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; THENCE WEST AND PARALLEL WITH SAID LAST NAMED LINE 1860 FEET MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED FROM HAROLD E. NEWKON, ET UX, RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

APN: 23-040-062

PARCEL FIVE:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND RUNNING THENCE NORTH ALONG THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 40 RODS; THENCE AT A RIGHT ANGLE EAST A DISTANCE OF 1860 FEET MORE OR LESS TO THE WEST LINE OF A PRIVATE ROADWAY AS DESCRIBED IN THE DEED FROM GEORGE WALTON TO FRANCIS WALTON, DATED NOVEMBER 10, 1910 AND RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92 THENCE SOUTH ALONG THE WEST LINE OF SAID ROADWAY A DISTANCE OF 40 RODS TO THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; THENCE RUNNING WEST ALONG SAID LAST NAMED LINE, A DISTANCE OF 1860 FEET MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED FROM HAROLD E. NEWKON, ET UX, RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PORTION;

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND RUNNING THENCE NORTH ALONG THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 710 FEET; THENCE AT A RIGHT ANGLE EAST, A DISTANCE OF 645 FEET; THENCE SOUTH ON A LINE PARALLEL WITH THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 710 FEET MORE OR LESS, TO THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; THENCE RUNNING WEST ALONG SAID LAST MENTIONED LINE A DISTANCE OF 645 FEET TO THE POINT OF BEGINNING.

APN: 23-040-064

PARCEL SIX:

BEGINNING AT A POINT ON THE TOWNSHIP LINE BETWEEN TOWNSHIPS 14 NORTH AND 15 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN WHERE THE SAME IS INTERSECTED BY THE WEST LINE OF THE NEW HELVETIA RANCHO, SAID POINT BEING KNOWN AS THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND RUN THENCE SOUTH 1° 0' WEST ALONG THE WEST BOUNDARY LINE OF SAID NEW HELVETIA RANCHO, 35 CHAINS AND 32 LINKS TO A POINT; THENCE SOUTH 87 ½° WEST 1 CHAIN AND 37 LINKS TO A POINT ON THE WEST SIDE OF THE COUNTY ROAD AT THIS PLACE, WHICH LAST NAMED POINT IS THE POINT OF BEGINNING FOR THE DESCRIPTION OF THE LAND HEREBY DESCRIBED; FROM SAID POINT OF BEGINNING RUN THENCE SOUTH 87 ½° WEST 660 FEET TO A POINT; THENCE NORTH 1° 0' EAST 327.67 FEET TO A POINT; THENCE NORTH 87 ½° EAST 660 FEET TO A POINT; THENCE SOUTH 1° 0' WEST 327.67 FEET TO THE POINT OF BEGINNING.

APN: 23-380-007

PARCEL SEVEN:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN; AND THENCE SOUTH ON THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 40 RODS; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID SECTION; A DISTANCE OF 1860.0 FEET, MORE OR LESS, TO THE WEST LINE OF A PRIVATE ROADWAY AS DESCRIBED IN DEED FROM GEORGE WALTON TO FRANCIS WALTON DATED NOVEMBER 10, 1910, RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92; THENCE NORTH ALONG THE WEST LINE OF SAID ROADWAY, A DISTANCE OF 40 RODS, MORE OR LESS, TO A POINT ON THE NORTH LINE OF SAID SECTION 3; THENCE WEST ALONG SAID NORTH LINE 1860 FEET, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED MARCH 07, 2002 AS DOCUMENT NO. 2002-0004534 OF OFFICIAL RECORDS.

APN: 23-040-001

Date: **August 16, 2013**

DANE SILLER

LISA SILLER

STATE OF **CALIFORNIA**)SS
COUNTY OF **SACRAMENTO**)

On **August** 20 **, 2013,** before me, CAROLYN HUNT, Notary Public, personally appeared **DANE SILLER and LISA SILLER**, 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.

CAROLYN HUNT
COMM. # 1932930
NOTARY PUBLIC - CALIFORNIA
SACRAMENTO COUNTY
MY COMM. EXP. APR. 17, 2015

Signature

My Commission Expires: APRIL 17, 2015

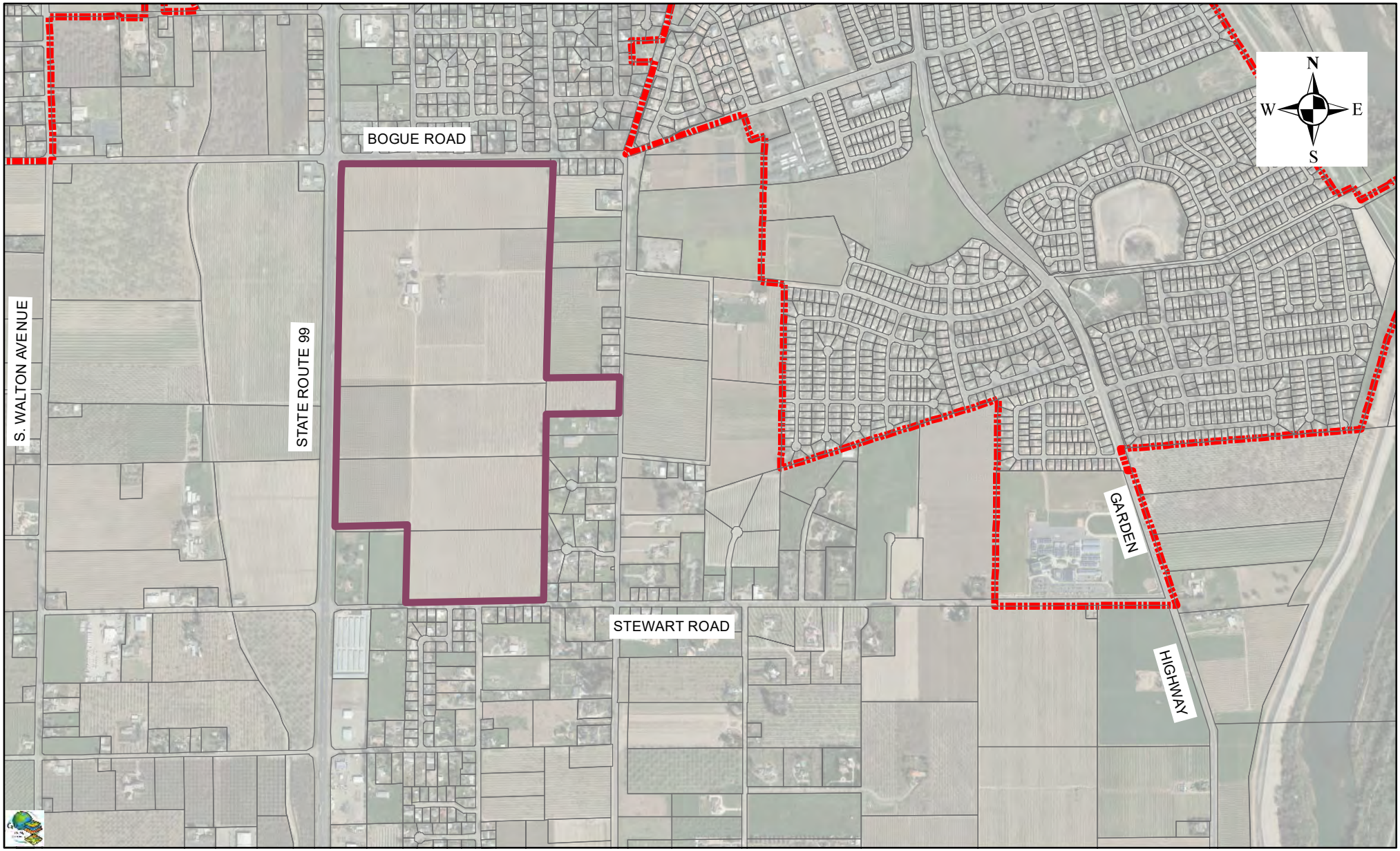
This area for official notarial seal

Notary Name: CAROLYN HUNT
Notary Registration Number: 1932930

Notary Phone: 916-576-3141
County of Principal Place of Business: SACRAMENTO

END OF DOCUMENT

Vicinity Map



Bogue Stewart Master Plan

EXHIBIT A-2

Newkom Ranch Subdivision

City Limits

1 inch = 1,200 feet