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DEVELOPMENT AGREEMENT

BETWEEN

COUNTY OF CONTRA COSTA

AND

SHAPELL INDUSTRIES, INC.

RELATING TO THE DEVELOPMENT COMMONLY KNOWN AS

THE GALE RANCH

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COUNTY OF CONTRA COSTA
DEVELOPMENT DEPT

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DEVELOPMENT AGREEMENT BETWEEN COUNTY OF CONTRA COSTA AND SHAPELL INDUSTRIES, INC. RELATING TO THE DEVELOPMENT COMMONLY KNOWN AS THE GALE RANCH

~~January~~^{April} THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into as of this 8th day of ~~January~~, 1996, by and between SHAPELL INDUSTRIES, INC., a Delaware corporation ("Developer" or "Shapell"), and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California ("County"), pursuant to Government Code section 65864 et seq. Developer and County are from time to time hereinafter referred to individually as a "Party" and collectively as the "Parties." This Agreement supersedes and replaces in its entirety that certain development agreement entered into by and between Developer and County dated October 2, 1990, which is hereby terminated.

RECITALS

A. 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 enacted Government Code section 65864 et seq. (the "Development Agreement Statute"), which authorizes County to enter into an agreement with any person having a legal or equitable interest in real property, regarding the development of such property.

B. Pursuant to Government Code section 65865, County has adopted rules and regulations establishing procedures and requirements for consideration of development agreements (Art. 26-2.12 of Contra Costa County Code and Board Resolution No. 85/412). This Development Agreement has been processed, considered and executed in accordance with those County rules and regulations, including without limitation, 26-2.1204 of the Contra Costa County Code.

C. Developer has a legal interest in certain real property consisting of approximately two thousand seven hundred eight (2,708) acres located in the unincorporated portion of the County known as the Dougherty Valley, which property is commonly referred to as the Gale Ranch. The property which is the subject of this agreement is a portion of the Gale Ranch comprised of approximately two thousand and ninety (2,090) acres as described in Exhibit A attached hereto (the "Gale Ranch Site"). The property is adjacent to property owned by Windemere Ranch Partners ("Windemere") also located in the Dougherty Valley.

D. Developer intends to develop the Gale Ranch Site as a residential planned community of 4,614 units (plus any units that may be transferred from the Country Club Site to central residential

receiver sites, as permitted under the Specific Plan), along with retail and office uses, community facilities and other uses in accordance with the Dougherty Valley Specific Plan.

E. County has determined that this Agreement is appropriate for the Gale Ranch and desires to enter into this Agreement. This Agreement establishes planning principles, standards, and procedures to: eliminate uncertainty in planning and guide the orderly development of the Gale Ranch consistent with the General Plan and the Dougherty Valley Specific Plan; mitigate significant environmental impacts; ensure installation of necessary on-site and off-site public improvements; provide for the preservation of substantial permanent open space; make provision for public trail facilities; provide funding for traffic improvements; provide for public services appropriate to the development of the Gale Ranch; provide affordable housing; ensure attainment of the maximum effective utilization of resources within the County at the least economic cost to its citizens; and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. Furthermore, development of the Gale Ranch pursuant to the Agreement would result in increased tax, fee and other revenues resulting in fiscal benefits to the County and an improved balance between jobs and housing within the County and the region.

F. This Agreement requires, through the provisions that follow, that any future development of the Gale Ranch Site comply with the Growth Management Element of the General Plan. As a result, County is precluded from approving development of the Gale Ranch absent compliance with certain standards relating to water, sanitary facilities, fire, police, parks, flood control and traffic.

G. In exchange for the benefits to County described in Recital E of this Agreement, together with the other public benefits that will result from the development of the Gale Ranch, Developer will receive by this Agreement assurance that it may proceed with the Gale Ranch in accordance with the "Applicable Law" (defined below), and therefore desires to enter into this Agreement. In the absence of this Agreement, Developer would have no present assurance that it could proceed with the Gale Ranch in accordance with the Applicable Law.

H. County has taken various environmental review and planning actions relating to the development of the Gale Ranch. These actions include, without limitation, the following:

1. **Dougherty Valley EIR.** On December 22, 1992, pursuant to the California Environmental Quality Act, the "CEQA Guidelines" and County's local guidelines promulgated thereunder (hereinafter collectively referred to as "CEQA") and in accordance with the recommendation of the County's Zoning Administrator, the Board, by Resolution 92/864, certified a final environmental impact report regarding the Gale Ranch (the "Dougherty Valley EIR").

2. **General Plan Amendment.** On December 22, 1992, following review by the San Ramon Valley Regional Planning Commission and the County Planning Commission, and recommendation by the County Planning Commission, and after duly noticed public hearing and certification of the Dougherty Valley EIR, the Board, by Resolution 92/866, approved an amendment to the County General Plan (the "General Plan Amendment"), addressing the Gale Ranch Site and certain real property adjacent to the Gale Ranch Site including (i) approximately 618 acres, also owned by Shapell, known as Country Club at Gale Ranch

(the "Country Club Site"), (ii) approximately 2379 acres owned by Windemere Ranch Partners (the "Windemere Site"), and (iii) approximately 892 acres owned by the United States Department of the Army ("Camp Parks").

3. **Specific Plan.** On December 22, 1992, following review by the San Ramon Valley Regional Planning Commission and the County Planning Commission and recommendation by the County Planning Commission, certification of the Dougherty Valley EIR, adoption of the General Plan Amendment, and duly noticed public hearing, the Board adopted, by Resolution 92/867, a single specific plan for the Gale Ranch Site, the Country Club Site, the Windemere Site, and Camp Parks (collectively, the "Dougherty Valley"), which specific plan is entitled the "Dougherty Valley Specific Plan" (the "Specific Plan").

4. **Country Club at Gale Ranch Approvals** On December 20, 1994, following review by the San Ramon Valley Regional Planning Commission and the County Planning Commission, and recommendation by the County Planning Commission, the Board's consideration and certification of the Country Club at Gale Ranch FEIR; and duly noticed public hearing, the Board adopted Resolutions 94/640, 94/641 and 94/649, and adopted Ordinance No 94-77 and Ordinance No. 94-79, by which a General Plan Amendment, Rezoning, Preliminary Development Plan, Final Development Plan, Vesting Tentative Map and Development Agreement for development of the Country Club at Gale Ranch (adjacent to the Gale Ranch Site) were approved.

5. **Settlement Agreements.** County, together with Developer and Windemere, has entered into various agreements to settle litigation brought by certain parties against the County as respondent, and against Developer and Windemere as real parties in interest, relating to County's approval of the General Plan Amendment and Specific Plan and its certification of the Dougherty Valley EIR (collectively, the "Settlement Agreements"). The Settlement Agreements establish, among other things, certain procedures and standards that will be applied to County's consideration and approval of the "Project Approvals" (defined below). The Settlement Agreements consist of the following:

(a) San Ramon and Danville: That certain agreement entered into by and among County, Developer, Windemere, the City of San Ramon ("San Ramon") and the Town of Danville ("Danville") on May 11, 1994 to settle certain claims brought by San Ramon and Danville as more fully described therein (the "San Ramon Settlement Agreement").

(c) Pleasanton: That certain agreement entered into by and between County, Developer, Windemere, and the City of Pleasanton ("Pleasanton") on June 20, 1995, to settle certain claims brought by Pleasanton as more fully described therein (the "Pleasanton Settlement Agreement").

(b) Walnut Creek: That certain agreement entered into by and among County, Developer, Windemere, and the City of Walnut Creek ("Walnut Creek") on July 11, 1995, to settle claims brought by Walnut Creek as more fully described therein (the "Walnut Creek Settlement Agreement").

(d) East Bay Municipal Utility District: That certain agreement entered into by and among County, Developer, Windemere, and the East Bay Municipal Utility District ("EBMUD") on September 26, 1995 to settle claims brought by EBMUD as more fully described therein (the "EBMUD Settlement Agreement").

(e) Alamo Improvement Association: That certain agreement entered into by and among County, Developer, Windemere, and the Alamo Improvement Association ("AIA") on October 12, 1995, to settle claims brought by the AIA as more fully described therein (the "AIA Settlement Agreement").

(f) Non-Governmental Organizations: That certain agreement entered into by and among County, Developer, Windemere, and several non-governmental organizations viz., the Sierra Club, the Greenbelt Alliance, Preserve Area Ridgeland Committee, Save Our Hills and the Mount Diablo Audubon Society on October 12, 1995, to settle claims brought by such non-governmental organizations as more fully described therein (the "NGO Settlement Agreement").

6. **P-1 Zoning and Preliminary Development Plan.** On December 19, 1995, following review by the San Ramon Valley Regional Planning Commission and the County Planning Commission, and recommendation by the County Planning Commission, the Board's consideration of an addendum to the Dougherty Valley EIR prepared in accordance with Section 15164 of the CEQA Guidelines (the "Dougherty Valley EIR Addendum") with the Dougherty Valley EIR, and duly noticed public hearing, the Board adopted County Ordinance No. 95402, rezoning the Gale Ranch Site to County's "P-1" zoning district consistent with the General Plan and the Specific Plan (the "P-1 Zoning") and, pursuant to Resolution 951639, approved a Preliminary Development Plan for the Gale Ranch Site in accordance with its P-1 zoning (the "Preliminary Development Plan").

The General Plan Amendment, Specific Plan, P-1 Zoning, Preliminary Development Plan, and this Agreement are sometimes collectively referred to herein as the "Planning Actions."

I. The Parties acknowledge and agree that applications for specific land use approvals, entitlements, permits and agreements (collectively, the "Subsequent Approvals") must be made by Developer and reviewed (in compliance with CEQA) and approved, issued or entered into by County prior to any development on the Gale Ranch Site. The Subsequent Approvals may include, without limitation, the following: design review approvals, improvement agreements and other agreements relating to the Gale Ranch, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps (including tentative, vesting tentative, parcel, vesting parcel, and final subdivision maps), preliminary and final development plans, rezonings, development agreements, landscaping plans, encroachment permits, resubdivisions, and amendments to, or repealing of, the Planning Actions or the Subsequent Approvals.

J. On December 19, 1995 (the "Approval Date"), after duly noticed public hearing, and considering the Dougherty Valley EIR Addendum, and the findings and recommendation of the

Zoning Administrator, the Board took the following actions: (1) made findings required by Board Resolution No. 85/412, that the provisions of this Agreement are consistent with the General Plan and the Specific Plan; and (2) adopted Ordinance No. ~~95-63~~, approving and authorizing the execution of this Agreement.

K. Each Party acknowledges that it is entering into this Agreement voluntarily.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. Effective Date and Term.

1.1 Effective Date. This Agreement shall become effective upon the date the Ordinance approving this Agreement becomes effective, or the date upon which this Agreement is executed by Developer and County, whichever is later (the "Effective Date"). However, the "Applicable Law" to which the Gale Ranch shall be subject shall be as set forth in Section 4.1 below.

1.2 Term. The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of twenty five (25) years.

Section 2. Definitions.

"Affordable Housing Program" shall have that meaning set forth in Section 3.3(c) of this Agreement.

"Applicable Law" shall have that meaning set forth in Section 4.1 of this Agreement.

"Approval Date" shall have that meaning set forth in Recital K of this Agreement.

"Board" shall mean the Board of Supervisors of the County.

"Changes in the Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Community Development Director" shall mean the Director of the County's Department of Community Development, or his or her designee.

"Country Club Site" shall mean the approximately 618 acres within the Shapell Site for which the County approved a general plan amendment, rezoning, preliminary development plan, final development plan, subdivision map, and development agreement on December 20, 1994.

"County" shall mean the County of Contra Costa, and shall include, unless otherwise provided, any of the County's agencies, departments, officials, employees or consultants.

"County General Plan" or "General Plan" shall mean the General Plan of the County.

"Deficiencies" shall have that meaning set forth in Section 7.2 of this Agreement.

"Developer" shall have that meaning set forth in the preamble, and shall further include, unless otherwise provided, Developer's successors, heirs, assigns, and transferees.

"Dougherty Valley EIR" shall have that meaning set forth in Recital H of this Agreement.

"Dougherty Valley EIR Addendum" shall have that meaning set forth in Recital H of this Agreement.

"Effective Date" shall have that meaning set forth in Section 1.1 of this Agreement.

"Facilities Fee" shall have that meaning set forth in Section 3.3(m)(2) of this Agreement.

"Gale Ranch" shall mean the Gale Ranch Site and all improvements to be constructed thereon by Developer as described in the Planning Actions and (as and when they are adopted or issued), the Subsequent Approvals, and all off-site improvements to be constructed in connection therewith.

"Gale Ranch Site" or "Shapell Site" shall mean the approximately 2,090 acres owned by Shapell Industries, Inc., located in Dougherty Valley and excluding the Country Club Site.

"General Plan Amendment" shall have that meaning set forth in Recital H of this Agreement.

"Growth Management Element" shall mean the Growth Management Element of the General Plan as of the Approval Date.

"Notice of Compliance" shall have that meaning set forth in Article 15 of this Agreement.

"On-Site Traffic Improvements" shall have that meaning set forth in Section 3.3(g)(1) of this Agreement.

"Off-Site Traffic Improvements" shall have that meaning set forth in Section 3.3(g)(1) of this Agreement.

"P-1 Zoning" shall have that meaning set forth in Recital H of this Agreement.

"Planning Actions" shall have that meaning set forth in Recital H of this Agreement.

"Planning Commission" shall mean the County Planning Commission.

"Preliminary Development Plan" shall have that meaning set forth in Recital H of this Agreement.

"Settlement Agreements" shall have that meaning set forth in Recital H of this Agreement.

"Shapell Site" or "Gale Ranch Site" shall mean the approximately 2,090 acres owned by Shapell Industries, Inc., located in Dougherty Valley and excluding the Country Club Site.

"Specific Plan" shall have that meaning set forth in Recital H of this Agreement.

"Subsequent Approvals" shall have that meaning set forth in Recital I of this Agreement.

"Traffic Impact Fee" shall have that meaning set forth in Section 3.3(g)(3) of this Agreement.

"Windemere" shall have that meaning set forth in Recital C of this Agreement.

"Windemere Site" shall have that meaning set forth in Recital H of this Agreement.

Section 3. Obligations of Developer and County.

3.1 Obligations of Developer Generally. The Parties acknowledge and agree that County's agreement to perform and abide by the covenants and obligations of County set forth herein is material consideration for Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein.

3.2 Obligations of County Generally. The Parties acknowledge and agree that Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is material consideration for County's agreement to perform and abide by the covenants and obligations of County set forth herein.

3.3 Specific Obligations.

(a) **Compliance with Settlement Agreements.** The terms and provisions of this Agreement are intended to be consistent with, and shall not be deemed to modify, abrogate or limit compliance with or the implementation or enforcement of, the terms and provisions of any of the Settlement Agreements. In the event of any conflict between the terms and provisions of this Agreement and any Settlement Agreement, the terms and provisions of such Settlement Agreement shall prevail to the extent of such conflict. If and to the extent any obligation of any party under any of the Settlement Agreements is terminated for any reason, including without limitation any obligation under Section 3.3(j) (relating to the Interstate 680/Highway 24 Interchange, Section 3.3(h) (relating to the payment of traffic fees to the City of Pleasanton), and Section 3.3(e) (relating to the design program for the Village Center), then such obligation shall not be required to be satisfied hereunder.

(b) **Preliminary Development Plan.** Except as otherwise specifically agreed by County, Developer shall comply with all conditions of approval to the Preliminary Development Plan.

(c) **Affordable Housing.** Developer shall, in connection with its development of the Gale Ranch, implement the terms and provisions of the Affordable Housing Program adopted by the Board on March 22, 1994 pursuant to Board Order, (the "Affordable Housing Program"), which requires that a minimum of twenty-five percent (25%) of all dwelling units be developed as affordable to low, very low and moderate income households.

(d) **Designation of Preferred Water Provider.** In consequence of the court-sanctioned EBMUD Settlement Agreement, Policy U-1 of the Specific Plan which identifies alternative water suppliers shall be interpreted and applied to the Gale Ranch development as follows: The Dublin San Ramon Services District ["DSRSD"] is the preferred water provider for the Gale Ranch Site (except for one or two school sites as provided in the EBMUD Settlement Agreement). EBMUD is an alternative water provider, but only pursuant to the terms and conditions set forth in the EBMUD Settlement Agreement. Staff will support and diligently process an amendment which will incorporate such language into the Specific Plan.

(e) **Design Program for Dougherty Valley Village Center.** Paragraphs 2, 3(a) and 3(b) of the NGO Settlement Agreement require certain actions to be taken with respect to the design of Gale Ranch, including participation in the development of a design program for the "Village Center" of the Dougherty Valley and provision of approximately forty (40) acres of additional open space (provided that such reconfiguration is physically feasible and permitted by law). Any obligation of Developer or County under such provisions of the NGO Settlement Agreement shall be satisfied in connection with any tentative map covering the area of the Gale Ranch Site affected by such obligation, which tentative map will be approved together with any necessary general plan amendment, specific plan amendment or rezoning.

(f) **Coordination of On-Site Improvements.** County shall require that access or right-of-way for those certain roadway improvements described on Exhibit B, attached hereto and incorporated herein by reference, as roadway segments W-1 and W-2, offered for dedication as and at the times provided in the conditions to the PDP; provided, however, that if the Windemere project generates the need for access or right-of-way for roadway segments W-1 and/or W-2, prior to the time such access or right-of-way is required for the Gale Ranch, then County shall ensure that the provision of such access or right-of-way is subject to the following: In order to accommodate Windemere's development schedule, Windemere may elect to assume responsibility for constructing, without reimbursement from Shapell, roadway segments W-1 and/or W-2 in which case Shapell shall dedicate or offer to dedicate, as required by County, the necessary access or right of way to County upon satisfaction of the following conditions: (a) Shapell will have reasonably reviewed and approved Bollinger Canyon Road's horizontal and vertical alignment, grading and improvement plans; (b) Windemere shall have provided to Shapell improvement agreements deemed acceptable by County and executed by all parties, together with completion and payment bonds so that the improvements shall be duly completed and no liens shall remain on Shapell's property; and (c) Windemere shall have procured a policy of Comprehensive General Liability Insurance in an amount and from an insurance company reasonably satisfactory to County naming Shapell as an additional insured. Shapell shall have the right but not the obligation reasonably to designate the source of cut/fill dirt (from the Gale Ranch Site) which shall be used to the extent needed for roadway segments W-1 and/or W-2.

(g) Danville/San Ramon/County Traffic Mitigation

(1) Certain traffic improvements within the County, San Ramon and Danville are or may be required to accommodate development under the Specific Plan (the "Project Traffic Improvements"). The Project Traffic Improvements include (i) the on-site traffic

improvements described in the Specific Plan as the "Internal Circulation System" (the "On-Site Traffic Improvements"), (ii) the off-site traffic improvements described on Exhibit C-1, attached hereto and incorporated herein by reference (the "Initial Project Traffic Improvements") and (iii) certain additional off-site traffic improvements described on Exhibit C-2, attached hereto and incorporated herein by reference (the "Additional Project Traffic Improvements"). The Initial Project Traffic Improvements and the Additional Project Traffic Improvements are sometimes referred to collectively below as the "Off-Site Traffic Improvements."

(2) Subject to the provisions of 3.3(g), Developer shall be responsible for the construction of the On-Site Traffic Improvements made necessary by the Gale Ranch.

(3) Developer shall pay to County a per-unit traffic impact fee (the "Traffic Impact Fee") in the amount necessary, but no more than the amount necessary, to fund Developer's fair share of the cost of construction of the Off-Site Traffic Improvements; provided, however, that Windemere shall have responsibility for constructing roadway segment W-3 and Shapell shall have responsibility for constructing roadway segments S-1 and S-2 as shown on Exhibit B to this Agreement. In calculating Developer's and Windemere's respective obligations for the construction and/or funding of the Off-Site Traffic Improvements, the costs of S-1, S-2, and W-3 shall be deducted from the aggregate total cost of the Off-Site Traffic Improvements and not considered in making such calculations. The amount of the Traffic Impact Fee shall be determined as set forth in subsection (4) below, and shall apply to residential units developed on the Gale Ranch Site. The Traffic Impact Fee applicable to a residential unit shall be paid when the building permit for such unit is issued. The County will retain responsibility for the issuance of building permits and collecting the fees notwithstanding the municipal annexation of any portion of the Gale Ranch.

(4) The amount of the Traffic Impact Fee shall be determined within six (6) months following County's approval of this Agreement, but no later than the date upon which the County first approves a tentative subdivision map showing individual residential lots for any portion of the Dougherty Valley (other than for the Country Club Site), in the following manner: County, Developer, Windemere and, as required by the San Ramon Settlement Agreement, representatives of Danville and San Ramon, shall meet and confer in good faith to determine (i) the estimated reasonable cost of the Off-Site Traffic Improvements and (ii) the respective proportions of such cost that fairly should be borne by Shapell and Windemere, (taking into account, among other things, development planned for the Country Club Site and the fees being paid by Shapell with respect thereto) and other projects or parties, if any, contribution to the need for such improvements and to whom the Traffic Impact Fee will apply. In making such determinations, and establishing the amount of the Traffic Impact Fee, it shall be recognized that (a) Developer's *pro rata* contribution to the traffic improvements described on Exhibit C-3, attached hereto and incorporated herein by reference, shall be no more than is specified in, and shall be paid as described in, Exhibit C-3; and (b) Developer and Windemere shall, taken together, be responsible for the entire cost of the Initial Project Traffic Improvements as set forth in the San Ramon Settlement

Agreement (although each shall be responsible only for its fair share of the cost of such improvements). The costs and proportions so determined and agreed upon by County and Developer shall be reflected, as appropriate, in the Traffic Impact Fee. The amount of the Traffic Impact Fee shall be adjusted annually in accordance with the construction cost index published in the *Engineering News Record*.

(5) County shall enter into such agreements with San Ramon and Danville as may be necessary or appropriate to establish a joint exercise of powers agreement ("JEPA"), or some other program or mechanism, to provide for (i) the collection of traffic impact fees from development projects in San Ramon, Danville and Contra Costa County and within the boundary of the JEPA or other program or mechanism that will contribute to the need for the Additional Project Traffic Improvements, which fees shall be in amounts consistent with the determinations made under Subsection (4) above, (ii) the establishment of an account or accounts (the "Local TIF Account") to hold Traffic Impact Fees collected from Developer and Windemere, and traffic impact fees collected from the developers of other projects that will contribute to the need for the Additional Project Traffic Improvements (collectively, the "Local TIF Funds"), and (iii) the transfer to San Ramon, Danville and County of Local TIF Funds attributable to the Off-Site Traffic Improvements to be developed within those jurisdictions (the "Local TIF Program").

(6) The timing of when an Off-Site Traffic Improvement is needed is determined by Measure C and by any conditions of approval for subsequent subdivision maps. If the Local TIF Program has not received sufficient developer fees to fund an improvement when it is needed, then Developer will fund the difference, or construct the improvement, to ensure the improvement is built on time. In such case, Developer shall enter into a reimbursement agreement with County to credit or reimburse Developer the eligible construction costs that were advanced to build the project. Any credit so provided shall be applied in full against the Traffic Impact Fee for each residential unit that receives a building permit following completion of the Off-Site Traffic Improvement by Developer (rather than *pro rata* against the Traffic Impact Fee for all remaining residential units in the Project) until such time as the full credit has been provided.

(7) County shall establish and implement a mechanism to reimburse Developer, and shall reimburse Developer, that portion of the costs to be incurred by Developer in connection with the funding or construction of the On-Site Traffic Improvements and the Off-Site Traffic Improvements that represents the extent to which such traffic improvements will serve traffic generated by projects that are developed pursuant to general plan amendments approved on or after the Effective Date.

(8) To the extent that any Project Traffic Improvement funded or constructed by Developer is included on a project list under any Measure C Action Plan or CMP Deficiency Plan, and provided such transportation improvement has sufficient priority under such Action Plan or Deficiency Plan, Developer shall receive a credit against, or reimbursement

from, any regional traffic fee imposed upon Developer under Sections 3.3(g)(11) and 3.3(j) of this Agreement.

(9) Some portion of the Traffic Impact Fee may be allocated to and collected from commercial development (on a per-square-foot basis) to occur as a part of Gale Ranch, provided, however, that the total amount of Traffic Impact Fee to be collected from residential development to occur as a part of Gale Ranch (as determined above) shall be reduced by the amount of funds to be so collected from commercial development.

(10) County shall make its final determination of compliance with the standards of the Growth Management Element of the General Plan relating to traffic in conjunction with the review and approval of tentative subdivision maps.

(11) County shall not impose on Developer any fee or other obligation with respect to roads or traffic impacts other than as set forth in this Agreement, Section 4.4 of the San Ramon Settlement Agreement (relating to assurance of compliance with traffic service objectives), Paragraph 1 of the Walnut Creek Settlement Agreement or Paragraph 1 of the Pleasanton Settlement Agreement (relating to Developer's payment of fees to Pleasanton). Notwithstanding the foregoing, nothing in this Agreement shall prevent the County from (i) applying to the Gale Ranch to any tentative maps any subregional traffic impact fee required by Measure C (1988) and adopted and applied consistently and on a uniform basis throughout the Tri-Valley subregion by each of the seven jurisdictions that are now signatories to the Tri-Valley Transportation Council joint powers authority which is adopted prior to the vesting date of any tentative map (provided, however, that County shall provide to Developer a credit against any such fee for traffic improvements constructed and/or funded by Developer under this Agreement or the Settlement Agreement) or (ii) imposing on the Gale Ranch reasonable requirements for the funding or construction of additional minor traffic improvements made necessary by Gale Ranch and identified through CEQA review of individual tentative map applications for Gale Ranch, or (iii) imposing on the Gale Ranch a subregional traffic fee developed by the JEPAs identified in Section 3.3(g)(5) to satisfy Measure C requirements and for the sole purpose of funding a fair share contribution of the Alcosta ramp realignment project at I-680 and the auxiliary lanes project on I-680 between Bollinger Canyon Road and Diablo Road.

(h) **Pleasanton Traffic Mitigation.** Separate and apart from the Traffic Impact fee, Developer shall pay to County \$150 for each residential unit developed on the Gale Ranch Site pursuant to the Project Approvals ("Pleasanton Traffic Fees"). The Pleasanton Traffic Fees will be collected by County upon its issuance of the building permit for each such unit and delivered to Pleasanton for the mitigation of traffic impacts on roadways located in its jurisdiction. If for any reason San Ramon assumes the responsibility for issuing building permits for the Project (although the parties anticipate that County will retain responsibility for the issuance of building permits notwithstanding the municipal annexation of any portion of the Gale Ranch), San Ramon shall

collect and deliver the Pleasanton Traffic Fees as set forth above. As provided in Paragraph 5(b) of the Pleasanton Settlement Agreement, Developer's obligations pursuant to this Section 3.3(h) and Paragraph 1 of the Pleasanton Settlement Agreement shall cease in the event that Pleasanton files any legal action challenging any use or approval or any modification to any use or approval relating to Dougherty Valley.

(i) **Dublin Traffic Mitigation.** County and Developer shall work with the City of Dublin to establish a mutually acceptable fee to account for the cost of mitigating the traffic-related impacts of the Project on roadways located in the City of Dublin net of the cost of mitigating the traffic-related impacts of development projected to occur within the City of Dublin (including, without limitation, the East Dublin project) on the On-Site and Off-Site Traffic Improvements, if any. If County, Developer and the City of Dublin are unable to arrive at a mutually acceptable fee within six (6) months following the Effective Date, then County and Developer may themselves determine the amount of such fee, provided, however, that such six-month period shall be extended for a period of time equal to the period of any undue delay caused by Developer or County in establishing the amount of such fee. Any fee imposed on the Project pursuant to this Section 3.3(i) shall be approved by the Board of Supervisors and, except as otherwise agreed by County and Developer, remain fixed throughout the term of this Agreement; provided, however, that such fee may be subject to escalation in accordance with the "Construction Cost Index" published in *Engineering New Record*. Such fee, if any, shall be paid upon the issuance of the building permit for each residential unit in the Project and delivered to Dublin for the mitigation of traffic impacts on roadways in its jurisdiction. If for any reason San Ramon assumes the responsibility for issuing building permits for the Project (although the parties anticipate that County will retain responsibility for the issuance of building permits notwithstanding the municipal annexation of any portion of the Gale Ranch), San Ramon shall collect and deliver the fees to Dublin as set forth above. If any regional traffic fee is established and required to be paid by Developer under Section 3.3(g)(11) of this agreement, and such regional traffic fee provides funding for those improvements in Dublin included in calculating the amount of the traffic fee to be paid to Dublin as set forth in this Section 3.3(i), then with respect to any residential unit upon which such regional traffic fee is imposed, Developer shall be relieved of its obligation to pay such portion of the fee described in this Section 3.3(i) that is attributable to those improvements in Dublin that are funded by such regional fee.

(j) **Walnut Creek Traffic Mitigation.** Notwithstanding any other provision contained herein, all future tentative subdivision maps covering the Gale Ranch Site shall be subject to all standards and requirements adopted by the County pursuant to Measure C (1988), including but not limited to the Tri-Valley Action Plan or fees adopted thereunder, and all standards and requirements adopted pursuant to Title 7, Division 1, Chapter 2.5 of the Government Code (Section 65080 *et seq.*), including but not limited to all congestion management plans and deficiency plans adopted thereunder, provided that (a) such standards and requirements are designed to mitigate congestion on the Interstate 680/Highway 24 interchange or streets within Walnut Creek, (b) are applied to all other major residential projects within the member jurisdictions of SWAT, TRANSPAC, and TRANSPLAN, and (c) are imposed by the County or City only to the extent of the project's impacts on the interchange or streets within Walnut Creek. Neither the foregoing provision nor any other provision of this Agreement (other than the subsection of this Agreement relating to Traffic-Based

reductions in permitted development [Section 4.1] shall limit the authority of the County to apply the standards and requirements described above adopted pursuant to Measure C (1988), including but not limited to any Action plan or fees.

(k) **Dougherty Road Improvements.** County shall not require, as a condition to any Planning Action or Subsequent Approval or in any other manner, that Developer construct or cause to be constructed a realigned Dougherty Road, as shown in the Specific Plan and Preliminary Development Plan, prior to 10 years from the effective date of this Agreement. Prior to County imposing any requirement involving a realigned Dougherty Road, County may require, as a condition to a Subsequent Approval, that Developer improve existing Dougherty Road in a manner acceptable to County.

(l) **Mitigation Monitoring** Developer shall fund development and operation of a system (the "Permit Tracking System") to monitor compliance with the requirements of the San Ramon Settlement Agreement regarding the provision of certain capital facilities, compliance with mitigation measures in the Dougherty Valley EIR, and compliance with project conditions, through the payment of a fee not to exceed \$100 per residential unit developed on the Gale Ranch Site, payable at recordation of the final map encompassing such unit. Developer shall, at the time services are performed, pay the County staff costs of carrying out the County's Mitigation Monitoring Program, as adopted by the Board on the First Approval Date, and as it may be amended for the purposes of compliance with CEQA, which are attributable to development of the Gale Ranch Site, on a time and materials basis, and shall pay the reasonable costs of consultants as necessary to implement the Mitigation Monitoring Program.

(m) Establishment of County Service Area.

(1) County and Developer shall cooperate in (i) the formation, as soon as reasonably practicable but in any event prior to filing of the first final subdivision map in the Dougherty Valley, of a County Service Area or other financing entity to receive certain funds and provide certain services, including the operation and maintenance of facilities and infrastructure, as described in Section 3.3 of the San Ramon Settlement Agreement and (ii) the establishment, as soon as reasonably practicable but in any event prior to filing of the first final subdivision map in the Dougherty Valley, of a mechanism and adequate to fund the provision of such services as described in Section 3.3 of the San Ramon Settlement Agreement.

(2) As described in Section 3.4 of the San Ramon Settlement Agreement, to ensure that the Community Center, Senior Center, Library, Corporation Yard and Police Substation described in the Specific Plan will be constructed on a timely basis and made available to Dougherty Valley residents at the appropriate time, County shall (except to the extent some other method for the financing or provision of such facilities is requested or established by Developer or Windemere, as appropriate) assess against residential units to be developed in the Dougherty Valley a fee, special tax or assessment in an amount sufficient to fund Developer's and Windemere's obligation to contribute to the cost of such facilities (the

"Facilities Fee"). Funds so collected will be held in a separate account and made available to Developer and Windemere, as appropriate, for the construction of such facilities. The precise form, timing, and amount of such fee, tax, or assessment shall be in accordance with the terms and provisions of Exhibit D attached hereto.

Section 4. Standards, Laws and Procedures Governing Gale Ranch.

4.1 Permitted Uses, Etc.; Applicable Law.

(a) **Permitted Uses, Etc., of the Gale Ranch Site.** The permitted uses of the Gale Ranch Site; the density and intensity of use of the Gale Ranch Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the location of public utilities; and other terms and conditions of development applicable to the Gale Ranch, shall be as set forth in the Planning Actions and, as and when they are adopted or issued, the Subsequent Approvals. Not in limitation of the foregoing, the permitted uses of the Gale Ranch Site combined with the Country Club Site shall include 5,830 residential units at the densities provided for in the Specific Plan and 450,800 square feet of commercial space, (exclusive of any community college uses) subject to the following limitations:

(1) All development of the Gale Ranch Site shall be consistent with the General Plan, including the Growth Management Element thereof as it existed on the Approval Date. County may modify the permitted uses of the Gale Ranch Site to the extent necessary to attain such consistency, provided no other method of attaining such consistency is feasible.

(2) Subject to Section 4.1(f) of this Agreement and the provisions of CEQA, County may modify the permitted uses of the Gale Ranch Site to the extent necessary to satisfy County's obligations under CEQA and (as provided in Section 4.2, below,) other State and federal laws, provided no other method of satisfying such obligations is feasible.

(3) The Parties acknowledge and agree that the terms and provisions of the Settlement Agreements include certain conditions to and limitations on the development of the Gale Ranch. All development of the Gale Ranch Site shall be consistent with such conditions and limitations. County may modify the permitted uses of the Gale Ranch Site to the extent necessary to attain such consistency, provided no other method of attaining such consistency is feasible.

(4) Except to the extent otherwise specifically required by state or federal law, no modification of the permitted uses of the Gale Ranch Site shall occur with respect to any portion of the Gale Ranch Site for which County has approved a tentative or vesting tentative subdivision map.

(b) **Applicable Law.** The rules, regulations, official policies, standards and specifications applicable to the Gale Ranch (the "Applicable Law") shall be those in force and effect on the Approval Date, including without limitation, the Planning Actions. The Applicable Law shall also be the rules, regulations, official policies, standards and specifications set forth in the Subsequent Approvals as and when they are adopted or issued.

(c) No Conflicting Enactments. Except as otherwise specifically set forth herein, County, whether by action of the Board or otherwise, or by initiative, referendum, issuance of a subsequent approval or other means, and whether through the exercise of County's police power or its taxing power, shall not apply to the Gale Ranch any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each, individually, a "County Law") that is in conflict with Applicable Law, including this Agreement, or that reduces the rights provided by this Agreement unless agreed to in writing by Developer. Without limiting the generality of the foregoing, any County Law shall be deemed to conflict with Applicable Law, including this Agreement, or to reduce the rights provided by this Agreement, if it would accomplish any of the following results, either by specific reference to the Gale Ranch or as part of a general enactment that applies to or affects the Gale Ranch:

(1) reduce the number of residential units permitted to be developed on the Gale Ranch Site to fewer than 4,614 (and any additional units that may be transferred from the Country Club Site to central residential receiver sites as permitted under the Specific Plan) or revise the densities permitted by the Specific Plan, except as otherwise specifically provided in Section 4.1(a) of this Agreement;

(2) reduce the square footage of commercial development permitted to be developed on the Gale Ranch Site to fewer than 450,800 square feet (exclusive of community college uses), except as otherwise specifically provided in Section 4.1(a) of this Agreement;

(3) otherwise limit or reduce the density or intensity of the Gale Ranch, or any part thereof, or otherwise require any reduction in the square footage or number of proposed buildings or other improvements, except as otherwise specifically provided in Section 4.1(a) of this Agreement;

(4) otherwise change any land use designation or permitted use of the Gale Ranch Site, except as otherwise specifically provided in Section 4.1(a) of this Agreement;

(5) limit or control the location of buildings, structures, grading, or other improvements of the Gale Ranch in a manner that is inconsistent with or more restrictive than the limitations included in the Planning Actions and the Subsequent Approvals, except as otherwise specifically provided in Section 4.1(a) of this Agreement;

(6) limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections, sewage capacity rights, sewer connections, etc.) for the Gale Ranch, except as otherwise specifically provided in Section 4.1(a) of this Agreement;

(7) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Gale Ranch as set forth in Section 4.1(e), below, or in any other manner; except as otherwise specifically provided in Section 4.1(a) of this Agreement;

(8) apply to the Gale Ranch any County Law otherwise allowed by this Agreement that is not uniformly applied on a County-wide basis to all substantially similar types of development projects and project sites;

(9) require the issuance of additional permits or approvals by the County other than those required by Applicable Law;

(10) establish, enact, or increase in any manner applicable to the Gale Ranch, or impose against the Gale Ranch, any fees, taxes (including, without limitation, general, special and excise taxes), assessments, liens or other financial obligations other than (i) those specifically permitted by this Agreement (including Traffic Impact Fees, Facilities Fees, Processing Fees, fees to fund the Mitigation Monitoring Program and financial obligations associated with the financing of the operation and maintenance of the facilities and infrastructure, and provision of the services, set forth in Section 3.3(m) above) and made necessary by the Gale Ranch; (ii) any County-wide taxes and assessments;

(11) except as provided in Section 4.1(c)(10) of this Agreement, establish, enact, or increase in any manner applicable to the Gale Ranch, or impose against the Gale Ranch, any rules, regulations, policies or standards that were not in effect on the Approval Date, or otherwise impose against the Gale Ranch any condition, dedication or other exaction not specifically authorized by Applicable Law and, except as authorized by the Settlement Agreements and required by the conditions to the PDP, not made necessary by the Gale Ranch; or

(12) limit the processing of applications for, or the obtaining of, Subsequent Approvals.

Notwithstanding the foregoing, none of the Settlement Agreements shall be considered a conflicting enactment for the purposes of this Agreement.

(d) **Exceptions.** Notwithstanding the foregoing, the following provisions shall apply:

(1) Uniform Codes. County may apply the then-current California Building Standard Code, referred to in Health & Safety Code § 18935 and other uniform construction codes to the Gale Ranch throughout the Term of this Agreement, provided that any such uniform code shall apply to the Gale Ranch only to the extent that the code is in effect on a County-wide basis.

(2) Road and storm drainage design. County may apply throughout the terms of this Agreement its then-current design standards for construction of roads and storm drainage facilities, provided that any such standard shall apply to the Gale Ranch only to the extent that such standard has been adopted by County and is in effect on a County-wide basis.

(3) Processing fees. Fees charged by County which solely represent the reasonable costs to County for County staff time and resources spent reviewing and processing Subsequent Approvals are referred to in this Agreement as "Processing Fees." Processing

Fees do not include the Mitigation Monitoring Program fee described in Section 3.3(l) of this Agreement. County may charge Developer the applicable Processing Fees that are operative and in force and effect on a Countywide basis at the time such fees are customarily required by County to be paid.

(e) Moratoria and Restrictions and Limitations on the Rate or Timing of Development. In the event a County Law is enacted, whether by action of the Board, the County Zoning Administrator, any County planning commission, or County staff, or by initiative, referendum, issuance of a Subsequent Approval or any other means, which relates to the growth rate, timing, phasing or sequencing of new development or construction in County or, more particularly, development and construction of all or any part of the Gale Ranch, such County Law shall not apply to the Gale Ranch, or any portion thereof. County Laws made inoperative by this provision include, but are not limited to, those not in force and effect on the Approval Date that tie development or construction to the availability of public services and/or facilities (for example, the presence of a specified traffic level of service or water or sewer availability).

(f) Further CEQA Review. County's environmental review of Subsequent Approvals pursuant to CEQA shall utilize the Dougherty Valley EIR and Dougherty Valley EIR Addendum to the fullest extent permitted by law.

(g) Further Assurances.

(1) County shall not support, adopt or enact any County Law, or take any other action which would violate the express or implied provisions, conditions, spirit or intent of the Planning Actions or the Subsequent Approvals.

(2) Developer reserves the right to challenge in court any County Law that would, in Developer's opinion, conflict with Applicable Law, including this Agreement, or reduce the rights regarding development provided by this Agreement.

(3) County shall take any and all actions as may be necessary or appropriate to ensure that the rights provided by this Agreement can be enjoyed by Developer including, without limitation, any actions as may be necessary or appropriate to ensure the availability of public services and facilities to serve the Gale Ranch as development occurs.

(4) Should any initiative, referendum, or other measure be enacted, and any County lack of application thereof to the Gale Ranch be legally challenged, Developer agrees to fully defend the County against such challenge, including providing all necessary legal services, bearing all costs therefor, and otherwise holding the County harmless from all costs and expenses of such legal challenge and litigation.

(h) Life of Subdivision Maps, Development Plans, and Permits. The term of any subdivision map or other permit approved as a Subsequent Approval shall automatically be extended as provided under Government Code section 66452.6(a) or Government Code section 65863.9. Notwithstanding the foregoing, the vested rights associated with any vesting tentative map (but not the term of such tentative map) shall terminate upon the expiration of the Term of this Agreement.

4.2 State and Federal Law. As provided in Government Code section 65869.5, this Agreement shall not preclude the application to the Gale Ranch of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law"). Not in limitation of the foregoing, nothing in this Agreement shall preclude County from imposing on Developer any fee specifically mandated and required by state or federal laws or regulations. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with the Changes in the Law, and County and Developer shall take such action as may be required pursuant to this Agreement, including, without limitation, Section 6. (Cooperation-Implementation) and Section 9.4 (Enforced Delay; Extension of Time of Performance) of this Agreement.

4.3 Timing of Construction and Completion.

(a) Notwithstanding Sections 84-66.1406(1) and 84-66.1602 of the County Code, there is no requirement that Developer initiate or complete development of the Gale Ranch or any particular phase of the Gale Ranch within any particular period of time, and County shall not impose such a requirement on any Subsequent Approval.

(b) The Parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, competition and other similar factors. In light of the foregoing and except as set forth in subsection (c) below, the Parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time, and that Developer shall determine the order in which portions of the Gale Ranch shall be developed. Not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Gale Ranch in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

4.4 Developer Review of On-Site Infrastructure Improvements. Developer shall have the right to review and comment on plans for any infrastructure improvement (including, without limitation, streets, roads, trails, and detention basins) to be constructed on the Gale Ranch Site by any private entity.

Section 5. Amendment.

5.1 Amendment of Planning Actions and Subsequent Approvals. To the extent permitted by state and federal law, any Planning Action (other than this Agreement) or Subsequent Approval may, from time to time, be amended or modified in the following manner:

(a) **Administrative Amendments.** Upon the written request of Developer for an amendment or modification to a Planning Action (other than this Agreement) or Subsequent Approval, the Community Development Director or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Gale Ranch as a whole; and (ii) whether the requested amendment or modification is consistent with Applicable Law, other than that portion of Applicable Law sought to be amended. If the Community Development Director or his/her designee finds that the proposed amendment or modification is both minor and consistent with Applicable Law (other than that portion of Applicable Law sought to be amended), the amendment shall be determined to be an "Administrative Amendment," and the Community Development Director or his designee may, except to the extent otherwise required by law, approve the Administrative Amendment without notice and public hearing. For the purposes of this Section 5 and without limiting the generality of the foregoing, lot line adjustments, changes in trail alignments, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of lots or homesites that do not substantially alter the design concepts of the Gale Ranch, and variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Gale Ranch, shall be treated as Administrative Amendments.

(b) **Non-Administrative Amendments.** Any request of Developer for an amendment or modification to a Planning Action (other than this Agreement) or Subsequent Approval which is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to Applicable Law (other than subsection (1) above). Nothing in this section 5.01 shall limit any obligations of the County under the San Ramon Settlement Agreement to submit any amendment or modification of a Planning Action or Project Approval to the "Dougherty Valley Oversight Committee," established under the San Ramon Settlement Agreement, for its review and comment or to submit or provide any documentation required by any Settlement Agreement in accordance with the terms of such Settlement Agreement..

5.2 Amendment of This Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, in accordance with this Agreement and the provisions of Government Code sections 65867, 65867.5, and 65868 as follows:

(a) **Insubstantial Amendments.** Paragraph G of the County's "Procedures and Requirements for the Consideration of Development Agreements," adopted by Board Resolution No. 85/412, permits a development agreement to establish an alternative procedure for the processing of "insubstantial amendments" to such an agreement. Notwithstanding the other provisions of this Section 5.2, and pursuant to said Paragraph G, any amendment to this Agreement which does not relate to (i) the Term of this Agreement; (ii) permitted uses of the Gale Ranch Site, (iii) provisions for reservation or dedication of land, (iv) conditions, terms, restrictions, or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Gale Ranch Site, (vi) the maximum height or size of proposed buildings, or (vii) monetary contributions by Developer, shall not, except to the extent otherwise required by law, require notice or public hearing before the Parties may execute an amendment hereto.

(b) Amendments of Planning Actions, Subsequent Approvals or the Affordable Housing Program. No amendment of a Planning Action (other than this Agreement) or Subsequent Approval requested by Developer shall require an amendment to this Agreement. Instead, any such amendment automatically shall be deemed to be incorporated into the Gale Ranch and made subject to this Agreement.

(c) Parties Required to Amend. Where a portion of Developer's rights or obligations have been transferred and a "Transfer Agreement" (as described in Section 13 below) has been executed in connection therewith, the signature of the person to whom such rights or obligations have been transferred shall not be required to amend this Agreement unless such amendment would materially alter the rights or obligations of such transferee hereunder; provided, however, that any such transferee shall be provided with thirty (30) days' prior written notice of any amendment to this Agreement.

(d) Non-Assuming Transferees. In no event shall the signature or consent of any "Non-Assuming Transferee" (described in Section 14.3 below) be required to amend this Agreement.

Section 6. Cooperation-Implementation.

6.1 Processing.

(a) In taking the Planning Actions, County has established basic planning principles, standards, and procedures to guide development of the Gale Ranch Site. The Subsequent Approvals shall be deemed to be tools to implement those principles, standards and procedures and must be consistent therewith.

(b) Without limiting the generality of the foregoing, unless agreed to in writing by Developer County shall not, through any Subsequent Approval or the imposition of any condition of approval thereto, either: **(i)** except as specifically required pursuant to Section 4.1(a) of this Agreement, reduce the number of residential units permitted to be developed on the Gale Ranch Site to fewer than 4,614 (plus any additional units transferred from the Country Club Site to central residential receiver sites as permitted under the Specific Plan) or change the distribution of those units by density as provided in the Specific Plan or reduce the square footage of commercial development permitted to be developed on the Gale Ranch Site to fewer than 450,800 square feet (exclusive of community college uses); or **(ii)** otherwise enact or impose any ordinance, resolution, rule, regulation, standard, directive, condition or other measure that is in conflict with Applicable Law (including this Agreement) as it exists immediately prior to the adoption of such Subsequent Approval or that reduces the rights provided by this Agreement.

(c) Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, County shall commence and complete (and shall use its best efforts to promptly and diligently commence and complete) all steps necessary to act on the Subsequent Approval application including, without limitation, **(i)** the notice and holding of all required public hearings, and **(ii)** the decision on the Subsequent Approval application as set forth below.