

ATTACHMENT 3

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA TO CANCEL THE EXISTING RICE RANCH DEVELOPMENT AGREEMENT AND APPROVE THE DEVELOPMENT AGREEMENT FOR THE MODIFIED RICE RANCH PROJECT, APNSs 101-380-001 THROUGH -003; 101-390-001, 002, -007; 101-400-001 THROUGH -003, AND 101-440-001, LOCATED ON THE SOUTH SIDE OF STUBBLEFIELD ROAD AND RICE RANCH ROAD IN THE ORCUTT AREA, FOURTH SUPERVISORIAL DISTRICT.

Case No. 14ORD-00000-00004

The Board of Supervisors of the County of Santa Barbara ordains as follows:

SECTION 1:

Pursuant to Sections 65864 through 65869.5, inclusive, of the Government Code, the Board of Supervisors of the County of Santa Barbara, California hereby cancels the existing Rice Ranch Development Agreement and approve an new Development Agreement between the County of Santa Barbara and Rice Ranch Community, LLC and Rice Ranch Ventures which Development Agreement is attached hereto and incorporated herein by reference as Exhibit 1.

SECTION 2:

The Board of Supervisors is authorized and directed to execute said Development Agreement on behalf of the County of Santa Barbara. No later than ten (10) days of the execution by the County of Santa Barbara, the Clerk of the Board of Supervisors shall record a copy of the Development Agreement with the County Recorder of Santa Barbara County. Said new Development Agreement and approved Development Agreement are attached hereto as Exhibits 1 and 2 respectively, and are incorporated by reference.

SECTION 3:

The Board of Supervisors finds that the provisions of the new Development Agreement are consistent with the Comprehensive Plan, Orcutt Community Plan, and Rice Ranch Specific Plan (as amended by the Board of Supervisors on January 5, 2016).

SECTION 4:

This ordinance shall take effect and be in force thirty (30) days from the date of its passage; and before the expiration of fifteen (15) days after its passage it, or a summary of it, shall be published once, with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this fifth day of January, 2015, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

ATTEST:

PETER ADAM
Chair, Board of Supervisors
County of Santa Barbara

MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By _____
Deputy Clerk

APPROVED AS TO FORM:

MICHAEL GHIZZONI
COUNTY COUNSEL

By _____
Deputy County Counsel

EXHIBIT

1. New Development Agreement
2. Approved Development Agreement

Exhibit 1
RICE RANCH DEVELOPMENT AGREEMENT
(Effective Date _____, 2016)

1.0 Recitals

- 1.1 Legal Authority for a Development Agreement. Pursuant to California Government Code sections 65864-65869.5 (the "Development Agreement Statute") the County of Santa Barbara ("County") hereby enters into this binding Development Agreement (hereinafter "Agreement") with Rice Ranch Ventures, LLC ("Owner"). Rice Ranch Ventures, LLC, as "Owner" under this Agreement, has assumed all right, title and interest in the Rice Ranch Project and currently holds a legal and/or equitable interest in certain real property located in the unincorporated area of the County, consisting of approximately 495.6 acres, which is part of the approximately 560 acres originally set apart for development of Rice Ranch: the original legal description for the 560 acres is attached as Exhibit "A" ("Rice Ranch Property"). Approval of this Development Agreement is contingent on the County's approval of the Real Property Exchange Agreement by the required four-fifths (4/5) vote. This Development Agreement shall not be effective unless and until the Real Property Exchange Agreement is approved and executed by the County and completed per the terms of the Real Property Exchange Agreement. This Development Agreement shall apply to the property to be held by Owner after recordation of Tract Map 14,818 and completion of the Real Property Exchange Agreement as shown in Exhibit "G".
- 1.2 Original Entitlements. Development entitlements for the Rice Ranch Property were first issued by the County in December of 2003, and construction of improvements commenced and has continued since that date. Owner proposes to continue the development of Rice Ranch as a large-scale phased master planned community (the "Rice Ranch Project") in accordance with the approvals discussed in this document.
- 1.3 Original Development Agreement. The original Project Approvals were defined in the "Rice Ranch Development Agreement," effective date December 9, 2003 (hereinafter the "Original Agreement"; a copy of the Original Agreement is attached hereto as Exhibit "B").
- 1.4 Modified Rice Ranch Project. On February 28, 2014, Owner made an application which was deemed complete by the County on November 12, 2014. The application asked for modifications to the Specific Plan approved in 2003; specifically, a General Plan Amendment, Specific Plan, Tentative Tract Map, Development Plan, Development Agreement, and Large Lot Conveyance Map (collectively, the "2015 Project Approvals"), which were approved by the County on _____, 2015. A copy of these 2015 Project Approvals is attached hereto as Exhibit "C" and incorporated herein by reference.

1.5 Requirements In The Original Agreement That Have Been Fulfilled: Owner has completed the following matters, as required in the Original Agreement, which the County acknowledges as complete:

(a) Dedication of Open Space. Under the original approvals in 2003, Owner made Offers to Dedicate certain property prior to or concurrent with the recordation of Master Tract Map 14,636, which were made when the map was recorded. In 2009 the County accepted the offer to dedicate the Community Park (Lot 5) and in 2011 the County accepted the offer to dedicate open space Lots 1 through 4 and the public access trails. This resulted in the transfer of more than 336 acres (gross) of open space in the Rice Ranch Property to the County. Since acceptance of the open space, County has requested that Owner be responsible for all manufactured slopes in the open space and Owner has proposed additional changes to the boundaries of the open space. Therefore, Owner proposes a land exchange to make minor adjustments between the County-owned open space and the Owner-held property (transferring manufactured slopes back to Owner as well as making other modifications to the open space from the 2003 approval) and exchanging Owner-held property to the County as part of the 2015 Project Approvals.

(b) Dedication and Improvement of Community Park. Owner offered to dedicate 26 acres for a Community Park to the County, which offer the County accepted, and Owner has completed all improvements to the Community Park required by the Original Approvals, as well as new and additional requirements requested by the County in 2007. In 2007, the County and the developer entered into a Park Improvements Reimbursement Agreement that allowed the financing of the additional facility improvements requested by the County through a credit towards the Developers Quimby fees for the Pine Creek and Oaks neighborhoods. The Community Park has been in use since March 28, 2009.

(c) Maintenance of the Community Park. On October 8, 2002, the County proposed and the voters approved a Community Facilities District No. 2001-1 for, *inter alia*, flood and storm protection services, fire and sheriff protection services, and maintenance of County parks, parkways and open space. The fees raised should have included maintenance of the 26-acre Orcutt Community Park at Rice Ranch. However, due to various factors, the fees collected have not provided enough funding to maintain the Orcutt Community Park, and therefore Owner has continued to maintain this County-owned park since 2009, at an approximately cost of \$40,000 annually.

(d) Dedication and Improvement of Neighborhood Parks. Owner has constructed and improved the 1.5 acre neighborhood park for the Oaks Neighborhood within Rice Ranch, but the County did not want to accept maintenance obligations for this park due to budgetary constraints. Therefore, as part of the 2015 Project Approvals, the Oaks Neighborhood Park will be maintained by the Rice Ranch homeowners associations. Four other neighborhood parks will be constructed under

the 2015 Project Approvals, and will also be maintained by the Rice Ranch homeowners associations, as further described in Exhibit "C."

(e) Dedications and Improvements of Trails. Under the Original Approvals, Owner offered to dedicate and improve approximately eight (8) miles of trails within the open space. To date, approximately 4.7 miles of trails have been constructed. Owner was required to, and has, bonded such trail improvements in the amount of \$250,000.00, which bond for trails was required as part of the Original Approvals. Work on the trails has continued from the date of the Original Approvals through the present time. Owner and County agree and acknowledge that the dedications and improvements of the remaining 3.2 miles of trails will continue under the 2015 Project Approvals.

(f) Other Offers To Dedicate. Owner made an offer to dedicate two parcels of land, 1.4 acres and 9.4 acres, respectively to the Orcutt Union School District ("School District"); however, the School District has not yet accepted the offer to dedicate.

(g) Completion of Other Conditions From The Original Agreement. Since the Original Project Approvals, Owner or its predecessor-in-interest has completed numerous dedications, construction of roadways, installation of lighting and completion of other requirements set forth in the conditions. A matrix showing the Conditions of Approval from 2003 and its current status is attached as Exhibit "D" hereto.

2.0 Benefits

2.1.1 Benefits of This Agreement To County. Under both the Original Approvals and the 2015 Project Approvals, County receives benefits from the Rice Ranch Project as follows:

(a) Dedication of Parks and Open Space. Under the Original Agreement, the County received certain offers to dedicate, some (but not all) of which have been accepted by the County and the School District. County acknowledges that it received a benefit because the offers to dedicate were made concurrently with recordation of Master Tract Map 14,636, so such dedications were assured. Since the approval of the Original Agreement in 2003, Owner has made offers to dedicate the open space, the 26-acre Community Park, and the 1.5 acre Oaks neighborhood park, and has constructed both the 26-acre Orcutt Community Park, and the 1.5 acre Oaks neighborhood park, which have provided significant recreational benefits to the citizens of the County, and Owner has continued to provide funds to maintain the Orcutt Community Park, although there has been no legal obligation to do so.

(b) Owner To Maintain Neighborhood Parks. The County requested that the five neighborhood parks approved as part of the Original Project Approvals be maintained by Owner, instead of by County, and therefore

as part of the 2015 Project Approvals, the ownership and maintenance duties for the neighborhood parks has been shifted to Owner. This eliminates any future obligation for the County to maintain these neighborhood parks, which has provided a financial benefit to the County.

(c) Owner To Maintain Manufactured Slopes. Since the approval of the Original Agreement in 2003, the County has requested modifications to the Open Space Dedication accepted by the County. Specifically, the County has requested that all manufactured slopes within the open space be maintained by Owner, and therefore as part of the 2015 Project Approvals, Owner proposes to modify the boundaries of the open space. This eliminates any future obligation of the County to maintain areas with manufactured slopes, which is a financial benefit to the County.

(d) Owner To Maintain Rice Ranch Roads. In 2003, County's Public Works Department expected to accept dedication of certain roads within the Rice Ranch Project; however, due to changes in the economy since 2003, the Public Works Department does not want to accept dedication of any new roads that require future expenditure of Public Works Department funds for future maintenance costs. Therefore, the Public Works Department has requested modifications to the Rice Ranch Project to ensure certain roads within the Rice Ranch Project, roads that will be constructed to County standards, will not be maintained by the County, but by the homeowners associations of Rice Ranch, and Owner has agreed. Therefore, County will receive financial benefits from the approval and execution of this Agreement.

(e) Dedication of School Site. Under the Original Agreement, the School District received certain offers to dedicate, which have yet to be accepted by the School District. County acknowledges that it received a benefit because the offers to dedicate were made concurrently with the Original Project Approvals, so such dedications were assured.

(f) Use of The Inclusionary Housing Ordinance. Since the approval of the Original Agreement in 2003, the County has approved and adopted the Inclusionary Housing Ordinance (Ordinance 4855, dated May 14, 2013). County and Owner agree that due to changes in the housing market since 2003, and in lieu of the original affordable housing element in the Rice Ranch Specific Plan, that the Inclusionary Housing Ordinance will instead be applied to the modified Specific Plan and related approvals. Application of and compliance with the Inclusionary Housing Ordinance will provide significant benefits to the citizens of the County.

2.2 Benefits of This Agreement To Owner. Under both the Original Approvals and the 2015 Project Approvals, Owner receives benefit as follows:

(a) Minor Modifications To The Project Boundaries. Since the approval of the Original Agreement in 2003, the County has requested that Owner maintain manufactured slopes. Owner proposes to maintain the manufactured slopes by modifying the boundaries of the Open Space Dedication previously accepted by the County. Owner has requested adjustments to certain lot lines as well, in order to achieve a better, more well-designed project. Therefore as part of the 2015 Project Approvals, the boundaries of the open space will be modified and adjusted, which will provide a benefit to Owner.

(b) Use of the Inclusionary Housing Ordinance. Owner would prefer to use the in-lieu fee component of the Inclusionary Housing Ordinance to assist in providing affordable housing for the citizens of the County, rather than construct affordable housing units at Rice Ranch. Approval of 2015 Project Approvals allows application of the 2013 Inclusionary Housing Ordinance to the project and with the proposed amendments to the Comprehensive Plan, the Owner is able to receive the benefit of paying in-lieu fees instead of building affordable units onsite.

(c) Extension of Time To Complete Project. Since the approval of the Original Agreement in 2003, there have been significant changes in the overall economy. The County want to see completion of the Rice Ranch Project.. Therefore, Owner will receive benefits from the approval and execution of this Agreement.

3.0 Obligations of Parties.

3.1 County. The County agrees that:

3.1.1 Term. Under this Agreement, Owner has a vested right to develop the Rice Ranch Project in accordance with the 2015 Project Approvals for the submittal as described herein, and the policies, rules and regulations of the County ("Applicable Rules") in effect on _____, 2015 ("Applicable Rules Effective Date"), for fifteen (15) years from the date of this Agreement ("Term").

3.1.2 Owner Rights To Develop. The County and Owner intend that Owner shall have such rights to develop the Rice Ranch Project in accordance with the 2015 Project Approvals for the submittal as described herein, including application and use of the Inclusionary Housing Ordinance, to the full extent provided for in the Development Agreement Statute and case law construing or interpreting Development Agreements, except as expressly modified by this Agreement and the 2015 Project Approvals.

3.1.3 Development Agreement Statute Applies. This Agreement shall be subject to all the requirements and obligations of a Development Agreement under the Development Agreement Statute.

3.1.4 Limit On Type Of Impact Fees. The County agrees to the types of all impact fees within the control of the County shall be limited to those types of fees in effect as of the date of this Agreement. The types of fees currently in effect include, but are not limited to, the following:

See Attached Exhibit "E": Orcutt Impact Fees & Exhibit "F"
Santa Barbara County Land Development Fees, effective as of
December 2015

3.2 Owner. The Owner agrees that:

3.2.1 Revised Dedications of Open Space and Parks. Owner made all offers to dedicate as proposed under the Original Project Approvals, prior to or concurrent with recordation of Master Tract Map 14,636. Owner has made the Open Space Dedication and has dedicated and constructed the 26-acre Orcutt Community Park with recordation of Tract Map 14,430. Upon approval and execution of the Real Property Exchange Agreement, County and Owner agree that as part of the 2015 Project Approvals there will be minor adjustments to the boundaries of the dedicated open space and Orcutt Community Park due to changes in the orientation and size of certain of the lots within the modified Specific Plan, and because the County's Parks Department policy is that manufactured slopes are not appropriate within the open space areas under County control. Owner agrees to re-dedicate the Open Space and parks to accomplish the proposed land exchange, as described in more detail below. County and Owner agree that such adjustments are not material changes and that no additional dedication of open space or parks shall be required of Owner, other than as set forth below.

3.2.2 Minor Boundary Adjustments. To effectuate the minor adjustments to the boundaries of the dedicated open space and Orcutt Community Park generally described above, if approved by a four-fifths (4/5) vote of the County, the County and Owner shall enter into a Real Property Exchange Agreement under Government Code section 25365(b) that sets forth the summarized process below in more detail. In accordance with that agreement, Owner shall obtain from Owner's Lender (Wells Fargo) an executed deed of reconveyance releasing any and all interest in the Rice

Ranch Property encumbered by the Deed of Trust, County shall quitclaim to Owner the County's fee title ownership in the existing Rice Ranch Property, Owner shall deposit \$8,500 in escrow as payment to balance the transaction, and Owner shall dedicate to County on the face of the new Final Map, as required by California Government Code section 66439, the adjusted open space lots and Orcutt Community Park contained in the new Map, No. 14,818. The adjusted lots and for the County Open Space, the Orcutt Community Park, and Bradley and Stubblefield Roads are being created by Owner via recordation of Map 14,818, through the merger and resubdivision provisions of California Government Code Section 66499.20.2 at the moment Owner holds title to the entire property. This process is outlined in more detail in the Land Exchange Agreement between Owner and County. Approval of this Development Agreement is contingent on the County's approval of the Real Property Exchange Agreement by the required four-fifths (4/5) vote.

3.2.3 Construction and Maintenance of Neighborhood Parks. Under the Original Agreement and Original Project Approvals, there were to be five neighborhood parks to be dedicated to the County, of which the Oaks Neighborhood Park was completed in 2014. The County has informed Owner that it will not accept dedication of these neighborhood parks due to County budgetary constraints regarding maintenance. As a result, County and Owner acknowledge that the Oaks Neighborhood Park and the four yet-to-be-constructed neighborhood parks (in the Pine Creek, Meadows, Grove and Valley View neighborhoods) will not be developed as noted in the Original Project Approvals, but will instead be developed as described in the 2015 Project Approvals, and maintained by the Rice Ranch homeowners' associations. The timing of the construction of each of these parks will be as follows: the park for each remaining neighborhood will be completed on or before the County issues an occupancy permit for the unit that completes the first half of the neighborhood; by way of example, the Meadows neighborhood includes 155 housing units. By the time the occupancy permit is issued for the 77th unit, the neighborhood park for Meadows must be completed.

3.2.4 Maintenance of Roads Within Rice Ranch. Under the Original Agreement and Original Project Approvals, Owner was to construct roads within Rice Ranch to County road standards, and then dedicate those roads to the County. County Public Works has requested that such roads be

maintained instead by the Rice Ranch homeowners associations, and Owner has agreed to such maintenance obligation.

3.2.5 Compliance With Inclusionary Housing Ordinance. Owner will comply with, and take actions consistent with, the in-lieu fee component of the County's 2013 Inclusionary Housing Ordinance (Ordinance No. 4855, hereinafter "IHO") in the completion of the Rice Ranch Project and the 2015 Project Approvals. Owner agrees to pay fees in accordance with the IHO, which was adopted by the County in 2013 and allows for, along with the proposed amendment to the Orcutt Community Plan for the payment of in-lieu fees instead of building affordable housing units on a particular site. As part of an annual adjustment, the County has adjusted the IHO requirements for moderate and workforce income categories to zero in the Santa Maria Housing Market Area because the median sale price of all housing units in the Santa Maria Housing Market Area is affordable to moderate and workforce income households. Thus, the IHO requires that the 2015 Project price-restrict 2.5% of housing units to the low level and price-restrict 2.5% of housing units to the very low level. These requirements are proposed by Owner to be satisfied with the payment of in-lieu fees, as follows:

(a) Total Project Fees: Fees will be paid for five percent (5%) of the 725 units anticipated under the Modified Project Approvals, or 36.25 units of the total project units, with in-lieu fees at \$62,100.00 per unit, for a total of \$2,251,125.00 due under the IHO. Because Owner previously sought and received a recorded map modification to postpone construction of price-restricted units until later phases of the development (after homes in the Oaks and Pine Creek neighborhood were constructed), Applicant has agreed that the total in-lieu fee paid will be based on the total number of units proposed for the Rice Ranch Property (725).

(b) Phase 1: For the already-constructed homes in the Pine Creek and Oaks neighborhoods, Phase 1 of the project, Owner agrees to pay an in-lieu fee of \$605,553.00. The percentage of in-lieu fees owed under Phase 1 of the Rice Ranch Project is approximately 26.9% of the total due (195 homes/725 homes = 26.9%; 26.9% of \$2,251,125.00 = \$605,553.00). The first affordable in-lieu fee payment of \$605,553.00 for the Oaks and Pine Creek neighborhoods is due within 30 days of project approval.

(c) Phase 2: Phase 2 consists of 66 homes. The percentage of in lieu fees owed under Phase 2 is 9.1% (66 homes/725 homes = 9.1%; 9.1 % of \$2,251,125.00 = \$232,243.00). The in-lieu payment for Phase 2 homes is due prior to the recordation of Phase 2.

(d) Subsequent Phases: After the payment of the fees for Phase 1 and Phase 2, each corresponding in-lieu payment would be due prior to the recordation of that phase. If there are changes to, or repeal of, the IHO after the date of this Agreement, including any annual adjustments of inclusionary housing requirements for moderate and workforce income categories (which are currently adjusted to zero), the parties acknowledge that the IHO in effect as of the date of this Agreement will control.

4.0 Project Development

4.1 Conflicting enactments. Except as otherwise provided herein, any change in the Applicable Rules, including, without limitation, any change in any applicable general, area or specific plan, zoning, subdivision or building regulation, adopted or becoming effective after the Applicable Rules Effective Date, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the County Board of Supervisors, the Planning Commission or any other board, commission or department of County, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Rice Ranch Project and which would conflict in any way with, be more restrictive, or impose greater obligations or burdens on Owner, than the Applicable Rules (“Subsequent Rules”), shall not be applied by County within the Rice Ranch Project unless both Owner and County consent in writing.

4.2 Expiration. Following the expiration of the Term, this agreement shall be deemed terminated and of no further force and effect except as to actions arising from enforcement of its terms during the Term; provided, however, such termination shall not affect any right or duty arising from County approvals, including, without limitation, the 2015 Project Approvals, and provided that any ongoing construction work being performed pursuant to the 2015 Project Approvals shall be allowed to be completed pursuant to the Applicable Rules notwithstanding the termination of this Agreement.

- 4.3 Term of Maps and Other Approvals. Pursuant to California Government Code Sections 66452.6(a) and 65863.9, the term of any subdivision or parcel map that may be processed on all or any portion of the Rice Ranch Project, and the term of each of the 2015 Project Approvals shall be extended for a period of time through the scheduled termination date of this Agreement as set forth in Section 3.1.1, above.
- 4.4 Timing of Development. 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 such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right (without obligation) to develop portions of the Rice Ranch Project in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment.
- 4.5 Moratoria/Initiatives. No County-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Rice Ranch Project, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the County Board of Supervisors, the Planning Commission, an agency of County, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within County, or portions of County, shall apply to the Rice Ranch Project under the 2015 Project Approvals.
- 4.6 Vesting of Owner's/Developer's Rights. The rights to the Applicable Rules and entitlements pursuant to the 2015 Project Approvals granted to Owner pursuant to this Agreement shall be and constitute "vested rights" or the equivalent of "vested rights" applicable to the development of land and property and the right of a public entity to regulate or control such development of land or property, including, without limitation, vested rights to land use permits, building permits and certificates of occupancy consistent therewith, unless the County determines that failure to apply a new ordinance or regulation would place the residents of Rice Ranch or other residents of the County in a condition of substantial danger to their health or safety, or both. The county may condition or deny an entitlement, permit, extension or approval as may be necessary to comply with later enacted state or federal laws and regulations.

5.0 Cooperation of Implementation.

- 5.1 Further Assurances: Covenants to Sign Documents. Each party shall take all actions and do all things, and execute, with acknowledgment or affidavit, if required, any and all documents and writings, that may be necessary or proper to achieve the purposes and objectives of this Agreement.
- 5.2 Processing by County. Upon satisfactory completion by Owner of all required preliminary actions and payments of appropriate processing fees, if any, County shall subject to all legal requirements, initiate process, complete at a reasonable time all required steps, and grant ministerial approvals or permits necessary for the development by Owner of the Rice Ranch Project in accordance with this Agreement, including but not limited to, the processing of applications for and issuing of all ministerial approvals required for the implementation of and the determination of conformance with the 2015 Project Approvals, this Agreement, and Applicable Rules as necessary for the completion of the development of the Rice Ranch Project (“Ministerial Approvals”).
- 5.3 Processing during litigation. The filing of any third party lawsuit(s) against County or Owner relating to this Agreement or to other development issues affecting the Rice Ranch Project shall not delay or stop the development, processing or construction of the individual Planning Areas, approval of the Future Approvals, or issuance of Ministerial Approvals, unless the third party obtains a court order enjoining or otherwise preventing the activity. County shall not stipulate the issuance of any such order.
- 5.4 Defense of Agreement. Owner shall indemnify, and offer to defend and hold harmless County and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting from, County’s approval of this Agreement or either party’s performance pursuant to this Agreement. Owner agrees that Owner’s counsel will not disclose any information confidential to the County, gained during such defense, in any future proceedings where County may be adverse to Owner or Owner’s counsel, including quasi-judicial, administrative proceedings. County further irrevocably agrees not to assert any representation in such defense by Owner’s counsel as a potential conflict of interest in any future quasi-judicial, administrative proceeding, where County is a permitting agency, not related to the Rice Ranch Project and hereby irrevocably waives any actual or potential conflict of interest under such circumstances. If this Agreement is adjudicated or determined to be invalid or unenforceable, County agrees, subject to all legal requirements, to

consider modifications to this Agreement to render it valid and enforceable to the extent permitted by applicable law.

5.5 Cooperation when County body also serves as other agency body. The County, its Board of Supervisors, the Laguna County Sanitation District, Santa Barbara Flood Control and Water Conservation District, the Community Facilities District 2002-1, and the Santa Barbara County Water Agency shall not take any action that conflicts with County's obligations under this Agreement. In addition, County agrees to cooperate with Owner in obtaining the approval of other public agencies and Departments by providing any documents or certificates reasonably required to process and obtain such permits and approvals from other governmental agencies.

5.6 State or Federal Laws. In the event that state or federal laws or regulations, enacted after the Agreement has been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such later enacted State or Federal laws or regulations.

5.7 County Discretion. County retains full discretion in any future discretionary actions with respect to the Rice Ranch Project consistent with the Applicable Rules and section 5.6 herein.

6.0 General Provisions

6.1 Covenants 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 (by merger, reorganization, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Rice Ranch Project, 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 assigns. All of the provisions of this Agreement shall constitute covenants running with the land.

6.2 Transfer and Assignment, Right to Assign. Owner shall have the right to sell, assign or transfer all or portions of the real property comprising the Rice Ranch Project to any person at any time during the term of this Agreement.

6.2.1 Liabilities Upon Transfer. Upon the delegation of all duties and obligations and the sale, transfer or assignment of all or any portion of the Rice Ranch Property, Owner shall be released from its obligations under

this Agreement with respect to the Rice Ranch Property, or portion thereof, so transferred arising subsequent to the effective date of such transfer if (i) Owner has provided to County fifteen (15) business days' written notice of such transfer and (ii) the transferee has agreed in writing to be subject to all of the provisions hereof applicable to the portion of the Rice Ranch Property so transferred and (iii) owner is not in default of this Agreement and (iv) the Board of Supervisors agrees to release the Owner from its duties and obligations under this agreement, which release shall not be unreasonably withheld. As to item (iv) above, County's failure to respond within 30 days of the receipt of notice shall be deemed an agreement to release the Owner. Upon any transfer of any portion of the Rice Ranch Property and the express assumption of Owner's obligations under this Agreement by such transferee, County agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Rice Ranch Property acquired by such transferee. A default by any transferee shall only affect that portion of the Rice Ranch Property owned by such transferee and shall not cancel or diminish in any way Owner's rights hereunder with respect to any portion of the Rice Ranch Property not owned by such transferee. The transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Rice Ranch Property owned by such transferee, and any amendment to this Agreement between County and a transferee shall only affect the portion of the Rice Ranch Property owned by such transferee.

6.3 Statement of Compliance. Within sixty days following any written request which either County or Owner may make from time to time, the other shall execute and deliver to the requesting party a statement certifying that: (1) this Agreement has not been modified and in full force and effect or, if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications; (2) there are no current known uncured defaults under this Agreement or specifying the dates and nature of any such defaults; and (3) any other reasonable information requested. The failure to deliver such statement within such time shall be conclusive upon the party which fails to deliver such statement that this Agreement is in full force and effect without modification and that there are no uncured known defaults in the performance of the requesting party. The County Administrative Officer shall be authorized to execute any certificate. County and Owner may make only one request for a Statement of Compliance, respectively, within any twelve month period beginning at the Applicable Rules Effective Date or the date of an immediate past request by the requesting party, whichever occurred

last. County shall not be bound by a statement of compliance if a default existed at the time of execution, but was concealed from the County.

6.4 Default. Failure by County or Owner to perform any term or provision of this Agreement for a period of sixty days, subject to extensions to time by mutual consent in writing, from the receipt of written notice thereof from the other shall constitute a default under this Agreement. Said notice shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 60-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the foregoing, after notice and expiration of the 60-day period without cure, the notifying party, at its option, may institute legal proceedings pursuant to this Agreement and subject to Section 7.8 hereof, and/or give notice of intent to terminate this Agreement, in the manner provided by Government Code Section 65867 for adoption of a development agreement. Following public hearing before the Board of Supervisors as provided in Section 65867, the party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

6.5 Default Remedies. In addition to that provided for in Section 6.4, in the event either party defaults (as defined in Section 6.4) under the terms of this Agreement, the other party shall have all rights and remedies provided herein or under applicable law, including the specific performance of this Agreement.

6.6 Legal Action. Any party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto. Venue in any legal action instituted in the Superior Court of the State of California shall be Santa Barbara County. Venue in any legal action instituted in United States District Courts shall be in the Central District of California.

6.7 Waiver & Remedies. Failure by County or Owner to insist upon the strict performance of any of the provisions of this Agreement, irrespective of the length of time for which such failure continues, shall not constitute a waiver of the right to demand strict compliance with this Agreement in the future. No waiver by County or Owner of a default or breach of any other party shall be effective or binding upon it unless made in writing, and no such waiver shall be implied from any omission by

County or Owner to take any action with respect to such default or breach. No express written waiver of any defaults or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified in such express waiver. One or more written waivers of a particular default or breach under any provision of this Agreement shall not be a waiver of any subsequent default or breach of that provision or the performance of the same or any other term or provision contained in this Agreement. Subject to notice of default and opportunity to cure under Section 7.5, all of the remedies permitted or available under this Agreement, at law or in equity, shall be cumulative and 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.

6.8 Non-Recourse. The obligations of Owner under this Agreement shall be without recourse to the assets of the general partners or of any general partner, officer, shareholder, director, unit holder or employee of Owner or any general partner of Owner. The sole recourse of County for any obligation of Owner under this Agreement shall be limited solely to the value of the Rice Ranch Property and 2015 Project Approvals.

6.9 Permitted Delays & Supersedure By Subsequent Laws.

6.9.1 Permitted Delays. In addition to any specific provisions of this Agreement, performance of obligations hereunder shall be excused and the Term of Agreement shall be similarly extended during any period of delay caused at any time by reason of: acts of God, such as floods, earthquakes, fires, or similar catastrophes; wars, riots or similar hostilities; strikes and other labor difficulties beyond the party's control (including the party's employment force); the enactment of new laws or restrictions imposed or mandated by other governmental or quasi-governmental entities preventing this Agreement from being implemented; litigation involving this Agreement, the Original Project Approvals, the 2015 Project Approvals, Future Approvals or Ministerial Approvals, which directly or indirectly delays any activity contemplated hereunder or other causes beyond the party's control. County and Owner shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained. Owner and County, by mutual consent, may elect to extend the term of this Agreement for the duration of the period during which such permitted delay precludes compliance with the provisions of this Agreement.

6.9.2 Supersedure by Subsequent Laws. If any federal or state law, made or enacted after the Effective Date 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 or promulgation of any such new law, County and Owner 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. Owner and County shall 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. Owner and County, by mutual consent, may elect to extend the term of this Agreement for the duration of the period during which such new law precludes compliance with the provisions of this Agreement.

6.10 Amendments. This Agreement may be amended from time to time by mutual consent of the parties to this Agreement, in accordance with the provisions of Government Code sections 65867 and 65868.

7.0 Miscellaneous Provisions

7.1 Incorporation of Recitals and Exhibits. *Exhibits "A" through "G"* attached hereto and referred to herein are incorporated in this Agreement as though fully set forth in the body hereof. For reference purposes, those exhibits are: Exhibit "A": Legal description of the Rice Ranch Property; Exhibit "B": The Original Development Agreement from 2003, with attachments; Exhibit "C": 2015 Project Approvals as approved by the County on _____, 2015; Exhibit "D": the Conditions of Approval imposed on the Rice Ranch Project in 2003, and the status of each condition as of 2015; Exhibit "E": Orcutt Impact Fees as of 2015; Exhibit "F": Santa Barbara County Land Development Fees, and Exhibit "G": Large Lot Conveyance Map.

7.2 Negation of Partnership. The Rice Ranch Project constitutes private development, neither County nor Owner is acting as the agent of the other in any respect hereunder, and County and Owner are independent entities with respect to the terms and conditions of this Agreement. None of the terms or provision of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of Owner, the affairs of County, or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

- 7.3 No Third party beneficiary. This Agreement is not intended, nor shall it be construed, to create any third-party beneficiary rights in any person who is not a party, unless expressly otherwise provided.
- 7.4 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.
- 7.5 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 and the rights and obligations of the parties hereto.
- 7.6 Construction. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against Owner or County and consistent with the provisions hereof, in order to achieve the objectives and purposes. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine general shall include the feminine or neuter genders, or vice versa.
- 7.7 Section Headlines. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 7.8 Applicable law. This Agreement shall be construed and enforced 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, all parties having been represented by counsel in the negotiation and preparation hereof.
- 7.9 Notice. Any notice shall be in writing and given by delivering the same in person or by sending the same registered, or certified mail, return receipt requested, with

postage prepaid, by overnight delivery, or by facsimile to the respective mailing addresses, as follows:

County: Ms. Mona Miyasato
County Administrator
County of Santa Barbara
105 East Anapamu Street, Suite 406
Santa Barbara, CA 93101
Email: _____

Copy to: Michael Ghizzoni, Esq.
County Counsel
County of Santa Barbara
105 East Anapamu Street, Suite 201
Santa Barbara, CA 93101
Email: _____

Owner: Rice Ranch Ventures, LLC
Attn: John Scardino
1640 Trilogy Parkway
Nipomo CA 93444
Email: italianesq@aol.com

Copy to: Rice Ranch Communities, LLC
Attn: Andrew Daymude
1640 Trilogy Parkway
Nipomo CA 93444
Email: andrew.daymude@sheahomes.com

Copy to: Kate Neiswender, Esq.
Law Office of K.M. Neiswender
Post Office Box 24617
Ventura, CA 93002
Email: kmn-law@sbcglobal.net

County or Owner may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt or air bill. Delivery by email shall not be an effective means of delivering notice; however, any notice provided should, whenever possible, be given by email as well as other means of allowed delivery.

7.10 Time is of the essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

7.11 Recordation. In order to comply with section 65868.5 of the Government Code, the parties do hereby direct the County Clerk to record a copy of this Agreement against the Rice Ranch Property with the County Recorder of Santa Barbara County within thirty (30) days after the Effective Date, as that date is identified in Section 1.1.

7.12 Successors and Assigns. The provisions of this Agreement shall be binding of the parties hereto, and subsequent owner of all or any portion of the property and their respective successors and assigns. Any successors in interest to the County shall be subject to the provisions set forth in sections 65865.4 and 65868.5 of the California Government Code.

IN WITNESS WHEREOF, OWNER AND COUNTY have executed this Agreement as of the date hereinabove written.

“County”

COUNTY OF SANTA BARBARA

By: _____

Chair

LAGUNA COUNTY SANITATION DISTRICT

By: _____

Chair

SANTA BARBARA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By: _____

Chair

ATTEST: _____

Mona Miyasato, County Administrator

Approved as to Form:

Michael C. Ghizzoni,
County Counsel

BY _____

Deputy County Counsel

“Owner”

RICE RANCH VENTURES, LLC

By: _____

John Scardino, Authorized Signatory

By: _____

Kate M. Neiswender, Counsel for Owner

EXHIBITS

Exhibit "A": Legal description of the Rice Ranch Property

Exhibit "B": The Original Development Agreement from 2003, with attachments

Exhibit "C": 2015 Project Approvals as approved by the County on January 5, 2015

Exhibit "D": the Conditions of Approval imposed on the Rice Ranch Project in 2003, and the status of each condition as of 2015

Exhibit "E": Orcutt Impact Fees and Santa Barbara County Land Development Fees as of 2015

Exhibit "F": Santa Barbara County Land Development Fees

Exhibit "G": Large Lot Conveyance Map