

RECORDED AT REQUEST OF
AND RETURN TO:

City Clerk
City of American Canyon
2188 Elliott Drive
American Canyon, CA 94589

Exempt Code: 27383

ORDINANCE NO. 97-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON APPROVING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF AMERICAN CANYON AND JACK H. NEWELL, SR., EDDIE BIGGS, DAVID GILBRETH, AND JOE GHISLETTA RELATIVE TO THE SOUTHEAST AREA PLAN, SUBZONE "1".

WHEREAS, the City of American Canyon (City) has received an application for a Development Agreement with Jack H., Newell, Sr., Eddie Biggs, David Gilbreth and Joe Ghisletta relative to the Southeast Area Plan, Subzone "1"; and

WHEREAS, this request for a Development Agreement has previously been reviewed by the City's Planning Commission at a public hearing; and

WHEREAS, on June 19, 1997, the American Canyon City Council held a noticed public hearing to consider the adoption of the attached Development Agreement relative to the Southeast Area Plan, Subzone "1", and after considering testimony, public input, and due deliberation, has found that such an agreement provides for needed public benefits and improvements; and

WHEREAS, the City Council has certified a Final Environmental Impact Report (Final EIR) for the Southeast Area Specific Plan (Specific Plan), and adopted a Statement of Overriding Consideration in compliance with the California Environmental Quality Act (CEQA), and has further found that the attached Development Agreement, and all of the provisions thereof, are consistent with the General Plan and the Southeast Area Plan for Subzone "1";

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON DOES HEREBY ORDAIN AS FOLLOWS:

1. The attached Development Agreement by and between the City of American Canyon and Jack H., Newell, Sr., Eddie Biggs, David Gilbreth and Joe Ghisletta relative to the Southeast Area Plan, Subzone "1", is hereby approved subject to the effective date of this Ordinance.

2. The Final EIR prepared and certified by the City, for the Specific Plan adequately assesses the effects of the Development Agreement in compliance with CEQA.

3. This ordinance shall take effect thirty (30) days after its adoption.

4. After thirty (30) days from the adoption of this ordinance, the Mayor is authorized to execute the aforementioned Development Agreement on behalf of the City.

The foregoing ordinance was introduced and read at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 19th day of June, 1997 and was passed and adopted at a continued regular meeting of the City Council of the City of American Canyon, State of California, held on the 26th day of June, 1997, by the following vote:

AYES: Benjamin Anderson, Don Colcleaser, Lori Maples, Keith Winterd

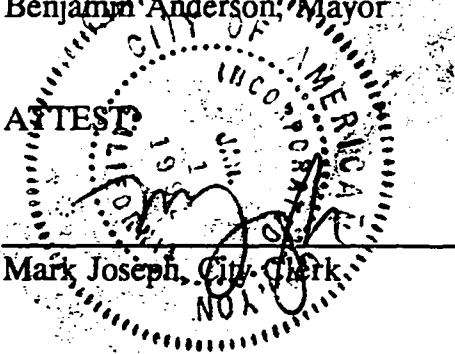
NOES: None

ABSTAIN: None

ABSENT: Roger Cypher

Ben Anderson
Benjamin Anderson, Mayor

ATTEST
Mark Joseph
Mark Joseph, City Clerk



APPROVED AS TO FORM:

William D. Ross
William D. Ross, City Attorney

Recording requested by
and when recorded, mail to

City Clerk
City of American Canyon
2185 Elliot Drive
American Canyon, CA 94589



1997 025415
OFFICIAL RECORDS OF
NAPA COUNTY
H. KATHLEEN BONDS

AT REQUEST OF: CITY OF AMERICAN CANYON
10/27/1997 12:33 pm
Fee: \$.00 Pgs: 43
TT : \$.00

No Recording Fee

Exempt from filing fees pursuant to Government Code Section 6103

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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF AMERICAN CANYON AND JACK H. NEWELL SR.,
EDDIE BIGGS, DAVID GILBRETH, AND JOE GHISLETTA
RELATIVE TO THE
SOUTHEAST AREA PLAN, SUBZONE "1"**

June 25, 1997

THIS DOCUMENT, INCLUDING EXHIBITS, TOTALS 38 PAGES.
EACH PAGE IS NUMBERED SEQUENTIALLY.

Southeast Area Plan - Subzone "1"
June 25, 1997

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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF AMERICAN CANYON AND JACK H. NEWELL SR.,
EDDIE BIGGS, DAVID GILBRETH, AND JOE GHISLETTA
RELATIVE TO THE
SOUTHEAST AREA PLAN, SUBZONE "1"**

THIS DEVELOPMENT AGREEMENT is made and entered into this 27th day of August, 1997, by and between the **CITY OF AMERICAN CANYON**, a municipal corporation ("City"), and **JACK H. NEWELL SR., EDDIE BIGGS, DAVID GILBRETH, AND JOE GHISLETTA** (individually and collectively "Developer"), pursuant to the authority of Article 2.5, Chapter 4, Division 1, Title 7 (§§65864 *et seq.* of the Government Code) relating to Development Agreements.

RECITALS

1. In order to strengthen the public land use planning process, to encourage private participation in the process, to reduce the economic risk of development and to reduce the waste of resources, the Legislature adopted the Development Agreement Statutes (§§65864, *et seq.* of the Government Code).

2. The Development Agreement Law permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements, as authorized by the Development Agreement Law, can assure property developers that they may proceed with projects assured that approvals granted by public agencies will not change during the period of development of their projects. Cities and counties are equally assured that costly infrastructure such as roads, sewers, schools, fire protection facilities, etc., will be available at the time development projects come on line.

3. The Development Agreement relates to the development known as Subzone "1" of the Southeast Area Plan (the "Project"), which includes single-family residential, open space, community park, and village center land uses. The Project has been in the planning stages since 1995. The parties have, in good faith, negotiated the terms hereinafter set forth which carry out the legislative purpose set forth above and will assure the parties to this Agreement of mutually desirable development of the subject property.

The completion of the Project will provide coordinated planning for new residential and commercial uses, parks, schools, roads and related infrastructure, in furtherance of the planning

objectives contained in the City General Plan, and will, in conjunction with other approved development within the City: (a) maintain an economic and social balance between housing supply and employment opportunities; (b) assure that City revenues meet expenditures necessary to provide an adequate level of municipal services; and (c) establish a balance of land uses that enables the City to provide necessary municipal services.

The means of attaining the aforementioned objectives and the public benefit to be received as a result of development of the Project through this Agreement shall provide for:

- a. A mix of residential opportunities;
- b. Additional park sites and recreational opportunities; and
- c. A solid residential base to support the financing mechanisms needed to implement the Southeast Area Specific Plan.

4. Developer owns in fee that certain real property, more particularly described in Exhibit "A" hereto, located in the City of American Canyon, and desires to create thereon a balanced residential development.

5. City, in response to Developer's applications, after public hearings and extensive environmental analysis, has granted the following approvals:

- a. By Resolution No. 97-29, certifying the Southeast Area Specific Plan EIR.
- b. By Resolution No. 97-31a approving the Mitigation Monitoring Program for the Southeast Area Specific Plan EIR.
- c. By Ordinance No. 97-09, approving the Southeast Area Specific Plan.
- d. By Ordinance No. 97-05, effective June 26, 1997, authorized the City to enter this Development Agreement with Developer.

6. Development of the subject property pursuant to the terms and conditions of the Southeast Area Specific Plan and the FEIR will provide for orderly growth and development consistent with the City's General Plan and other development policies and programs.

7. On May 22, 1997, the City Planning Commission, designated by City as the Planning Agency for purposes of Development Agreement review, after notice and public

hearing, transmitted the Development Agreement to the City Council.

8. Having duly considered this Agreement and having held the noticed public hearings, City finds and declares that the provisions of this Development Agreement are consistent with the maps and text of the City's General Plan and the Specific Plan; and

9. In consideration of Developer's agreement to work with City to seek annexation of Developer's property, and adjacent properties to City;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. The Project. The Project is the development and use of the Subject Property, consisting of approximately 165 acres in the southeast area of City, in accordance with the Specific Plan therefore. The land use characteristics of the uses are described in more detail in the Specific Plan. The Specific Plan also sets forth detailed Development Standards and an Implementation Program for the development of the Project.

Section 1.2. Subject Property. The property is specifically described in **Exhibit "A,"** which is incorporated herein and made part of this Agreement.

Section 1.3. Definitions. As used in the Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

(a) **Adopting Ordinance** means Ordinance Number 97-04 entitled: "An Ordinance Of The City Council Of The City Of American Canyon Approving The Development Agreement By and Between The City of American Canyon And Jack H. Newell, Sr., Eddie Biggs, David Gilbreth, and Joe Ghisletta Relative To The Southeast Area Plan, Subzone '1,'" dated June 23, 1997, and effective July 27, 1997, which approves this Development Agreement as required by Government Code §65867.5.

(b) **Assumption Agreement** means an agreement substantially conforming to the model assumption agreement described in **Exhibit "B,"** or other agreement in a form approved by the City Attorney, executed by a Landowner with the Developer, expressly assuming various obligations relating to the development of the Project, or portion thereof.

(c) **Certificate of Occupancy** means either a certificate issued after inspections by City authorizing a person or persons in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

(d) **CEQA** means the California Environmental Quality Act, §§21000 *et seq.*, of the Public Resources Code of the State of California.

(e) **City** means the City of American Canyon, or its designee.

(f) **City Council** means the City Council of the City, or its designee.

(g) **Collective Standards** means this Development Agreement, the Planning Documents, and the Existing Land Use Regulations.

(h) **Council** means the duly elected legislative body governing the City.

(i) **Developer** means Jack H. Newell Sr., Eddie Biggs, David Gilbreth, and Joe Ghisletta, individuals, or successors in interest.

(j) **Director** means Planning Director for the City of American Canyon.

(k) **Effective Date** means the effective date of the Adopting Ordinance.

(l) **Existing Land Use Regulations** mean the ordinances, resolutions and regulations adopted by City in effect on the Effective Date including the Adopting Ordinance that govern the permitted uses of land, the density and intensity of use, and the timing of development applicable to the development of the Subject Property, including, but not limited to, the General Plan, the Specific Plan, and the Mitigation Monitoring Program for the Southeast Area Specific Plan EIR.

(m) **Final Environmental Impact Report (FEIR)** means a detailed statement prepared under CEQA as defined in §15362(b) of the State CEQA Guidelines.

(n) **General Plan** means the General Plan of the City, including the text and maps, as amended in connection with the Project.

(o) **Landowner** is a party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement.

(p) **Planning Documents** means, the Southeast Area Specific Plan and the Mitigation Monitoring Program for the Southeast Area Specific Plan EIR.

(q) **Project** means the anticipated development of the Subject Property as specified in paragraph 1.1 and as provided for in the provisions of this Agreement, including the relevant portion of the Specific Plan and all other incorporated exhibits directly applicable to the Subject Property.

(r) **Specific Plan** means the Southeast Area Specific Plan.

(s) **Subject Property** means the property described in Section 1.2, or the remaining portions thereof, after releases from the provisions of this Agreement have been executed as authorized by this Agreement.

Section 1.4. Exhibits. Exhibits to this Agreement are as follows:

Exhibit "A" Subject Property
Exhibit "B" Assumption Agreement
Exhibit "C" Estoppel Certificate

Section 1.5. Parties to Agreement. The parties to this Agreement are:

(a) **The City of American Canyon**, a municipal corporation exercising general governmental functions and power. The principal office of the City is located at 2185 Elliot Drive, American Canyon, California 94589.

(b) **Jack H. Newell, Sr.; Eddie Biggs; David Gilbreth; and Joe Ghisletta**, are individuals who own in fee the Subject Property.

i. Jack H. Newell, Sr.'s principal office for the purpose of this Agreement is in Vallejo, California, and his mailing address is 384 Fairgrounds Drive, Vallejo, California 94589.

ii. Eddie Biggs' principal office for the purpose of this Agreement is in Suisun, California, and his mailing address is 1757 Green Acres Lane, Suisun, California 94585.

iii. David Gilbreth's principal office for the purpose of this Agreement is in Napa, California, and his mailing address is c/o Dickenson, Peatman & Fogarty, 809 Coombs, Napa, California 94559.

iv. Joe Ghisletta's principal office for the purpose of this Agreement is in Napa, California, and his mailing address is 1763 Second Street, Napa, California 94559.

(c) **Landowner.** From time to time, as provided in this Agreement, Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 1.6. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that City has no interest therein except as authorized in the exercise of its governmental functions. Nothing in this Agreement shall preclude the Developer from forming any form of private investment entity for the purpose of completing any portion of the Project.

Section 1.7. Term of Agreement. This Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement but shall not become operative until completion of annexation proceedings. Thereafter, the Agreement shall continue in force until January 1, 2010, unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect.

Section 1.8. Vested Rights of Developer. During the term of this Agreement, Developer is assured, and City agrees, that the development rights, obligations, terms and conditions specified in the Collective Standards are fully vested in Developer and may not be changed or modified by City except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, or as expressly consented thereto by Developer to the extent such proposed change or modification is applicable thereto. Subject to Developer's compliance with lot coverage, setbacks, road configuration and other specific regulations of the Collective Standards and all state and federal permits and regulations, Developer shall have the vested right to develop and construct up to 3.7 single-family units per gross acre and 14 cluster residential dwelling units per gross acre. City agrees to cooperate with Developer to achieve the maximum allowable density, if and only if Developer is in compliance with lot coverage, setbacks, road configuration and other specific regulations of the Collective Standards and all state and federal permits and regulations.

Section 1.9. Assignment and Assumption. Developer shall have the right to sell, assign, or transfer this Agreement with all the rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. The conditions and covenants set forth in this Agreement and incorporated herein by Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. Developer shall provide

City with a copy of the Assumption Agreement as provided for in Section 1.13. Express written assumption by such purchaser, assignee or transferee, to the satisfaction of the City Attorney, of the obligations and other terms and conditions of this Agreement with respect to the Subject Property or such portion thereof sold, assigned or transferred, shall relieve the Developer selling, assigning or transferring such interest of such obligations so expressly assumed. Any such assumption of Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form of the Assumption Agreement attached hereto as **Exhibit "B"** and incorporated herein by this reference, or such other form as shall be approved by the City Attorney.

Section 1.10. Covenants Running With the Land. Each and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it. Provided however, notwithstanding anything to the contrary above, if any such sale, assignment or transfer relates to a completed residential unit or non-residential building which has been approved by the City for occupancy, the automatic termination provisions of Section 6.1 herein shall apply thereto and the rights and obligations of Developer hereunder shall not run with respect to such portion of the Subject Property sold, assigned or transferred and shall not be binding upon such purchaser, assignee or transferee.

Section 1.11. Amendment to Agreement (Developer and City). This Agreement may be amended by mutual consent of the parties in writing, in accordance with the provisions of Government Code §65868, provided that any amendment which relates to the term, permitted uses, density, intensity of use, height and size of proposed buildings, or provisions for reservation and dedication of land shall require a noticed public hearing before the parties may execute an amendment. Unless otherwise provided by law, all other amendments may be approved without a noticed public hearing.

Any amendment entered into between City and Developer shall require the signature of each owner of any portion of the Subject Property to the extent that the amendment modifies the Development Agreement as to that other owner's property.

Section 1.12. Amendment to Agreement (Landowner and City). This Agreement may also be amended, subject to the provisions of Government Code §65868 and Section 1.11, between a Landowner who has acquired a portion of the Subject Property from Developer and City as to the portions of the Subject Property then owned by Landowner.

Any amendment entered into between the City and a Landowner shall require the signature of each Landowner of any portion of the Subject Property or the Developer to the extent the amendment modifies the Development Agreement as to that Landowner's or the Developer's property.

Section 1.13. Releases. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that:

- a. The City Clerk receives a copy of the Assumption Agreement provided for in Section 1.9; and
- b. The buyer, assignee, or transferee expressly assumes the obligations under this Agreement pursuant to Section 1.9 contained hereinabove.

Section 1.14. Notices. Notices, demands, correspondence, and other communication to City and Developer shall be deemed given if dispatched by prepaid first-class mail to the principal offices of the parties as designated in Section 1.5. Notice to City shall be to the attention of both the City Manager and the Director. Notices to subsequent Landowners shall be required to be given by City only for those Landowners who have given the City written notice of their address for such notices. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 1.15. Recordation of Agreement. The City Clerk of City shall, within ten (10) days after the effective date of this Agreement, record this Agreement.

Section 1.16. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 1.17. Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which became effective after the Effective Date, the remaining provisions shall continue in full force and effect.

Section 1.18. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner, challenging this Agreement, any provision herein, or the approval of the Specific Plan, the City, Developer and any Landowner agrees to cooperate with each other in good faith to defend said lawsuit, each

party and any Landowners to be liable for its own legal expenses and costs. Notwithstanding the foregoing, City may elect to tender the defense of any lawsuit filed by a third person or entity to Developer and/or Landowner(s) (to the extent the litigation seeks to overturn or invalidate any approval held by or granted to Developer and/or Landowner), and, in such event, Developer and/or such Landowner(s) shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City, such consent shall not be unreasonably withheld.

Section 1.19. Reserved Powers. Notwithstanding any provision of this Agreement to the contrary, the City shall have the right to amend the General Plan and Specific Plan and the Developer shall be subject to said amendment for the purposes of: (a) increasing the allowable commercial land uses located at American Canyon Road and Highway 29 from 20,000 square feet to 120,000 square feet; (b) redesignating an additional 10 acres of single-family residential land uses adjacent to the aforementioned commercial area to "study area," with the option to further redesignate the "study area" to an alternative use; and (c) modifying the improvement requirements for Donaldson Way. The City shall also retain the authority to periodically amend the Uniform Building Codes and the City Engineering Standard Plans and specifications for Public Improvements..

In the event that the City desires to exercise any or all of the Reserved Powers, the City shall exercise those powers within one year of the completion of the annexation of the Southeast Area to the City, or December 31, 1999, whichever occurs first.

Notwithstanding any provision of this Agreement generally, and Sections 2.4, 2.7 and 2.8 specifically, nothing shall limit the authority of the City to adopt interim ordinances as permitted by Government Code §65858, except that the City agrees not to adopt any interim ordinances applicable to the Subject Property except when the failure to do so would place the residents of the Subject Property or the immediate community, or both, in a condition dangerous to their health or safety, or both, or when necessary to comply with state or federal law.

Section 1.20. Joint Preparation of this Agreement. This document will not be construed against the party preparing it, but will be construed as if prepared by both parties.

Section 1.21. Attorney's Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, which may be set by the Court in the same action or in a separate action brought for that purpose.

ARTICLE 2

PROJECT DEVELOPMENT

Section 2.1. Vested Right to Develop. Developer shall have the vested right to develop the Subject Property in accordance with Section 1.9 of this Agreement.

Section 2.2. Permitted Uses and Development Standards. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards, implementation program for processing of subsequent entitlements and other conditions of development for the Subject Property shall be those set forth in the Collective Standards. The parties hereto intend that the Collective Standards shall serve as the definitive and controlling document for all subsequent actions, discretionary or ministerial, relating to the development and occupancy of the Project, and shall also serve, where noted herein, to satisfy certain conditions of the Vesting Tentative Map and the Specific Plan.

Section 2.3. Amendments. Modifications to the approved Exhibits agreed to in writing by Developer, may be approved in accordance with the provisions of the Specific Plan and shall not require an amendment to this Agreement.

Section 2.4. No Conflicting Enactments. Neither City nor any agency of City, nor the voters, shall enact any ordinance, resolution, or other measure that relates to the rate, timing or sequencing of the development or construction of the Subject Property on all or any part of the Subject Property that is in conflict with this Agreement, or any amendments thereto, or that reduces the development rights provided by this Agreement. Without limiting the foregoing general statement, and for all purposes pursuant to this Agreement generally, and this Section specifically, an ordinance, resolution or other measure shall be deemed to conflict with this Agreement if the ordinance, resolution, or measure seeks to accomplish any one or more of the following results, either with specific reference to this Subject Property or as part of a general enactment that applies to this Subject Property:

- (a) Limiting, reducing or modifying the density or intensity of development on the Subject Property;
- (b) Limiting the timing of the development of the Subject Property in any manner.

Section 2.5. Further Reviews. Developer acknowledges that the Existing Land Use Regulations contemplate further reviews of elements of the Project by City. These reviews include tentative maps, specific plan design permits, use permits, and approval of the Southeast Area Financing Plan. The Southeast Area Financing Plan, to be prepared by Developer, shall include a financing plan for public improvements and the maintenance thereof for improvements within or otherwise directly related to implementation of the Southeast Area Specific Plan, including design and construction of the sewer and water transmission facilities necessary to provide sewer and water service to the Southeast Area Specific Plan. Determinations regarding land dedications and reservation shall be made either in conjunction with the tentative maps or the Financing Plan. Except for new fees or financing strategies that are adopted as part of the Financing Plan, nothing in this Section 2.5 shall be deemed to limit or expand the legal authority of City with respect to such reviews as provided by, and otherwise consistent with, this Agreement. Both parties have a duty to cooperate with each other in the implementation of the Finance Plan.

Section 2.6. Application, Processing and Inspection Fees. Application fees, processing fees, and inspection fees that are revised during the term of this Agreement shall apply to the development pursuant to this Agreement, provided that such revised fees apply generally to similar private projects or works within City.

Section 2.7. Additional Water Supply. City confirms that it presently has sufficient water capacity to serve the Subject Property. City represents and warrants that to the extent it possesses exercisable water rights of sufficient capacity, it will serve the Subject Property in the future. City covenants it will cooperate with all planning necessary to make additional water capacity available within the City.

Section 2.8. Sewer Service. City confirms that it presently has sufficient sewer capacity to serve the Subject Property. City represents and warrants that the extent that it has exercisable contractual rights to sewer capacity, it will serve the Subject Property in the future. City further covenants that it will cooperate with all planning necessary to make additional sewer capacity available within the City.

Section 2.9. Timing of Development. The parties acknowledge that the most efficient and economical development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition, and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers to have the rate of development determined by Developer. Accordingly, the timing, sequencing, and phasing of the development is solely the responsibility of Developer and, except as expressly set forth in the Specific Plan, the City Council shall not impose by ordinance, resolution, or otherwise any restrictions on such timing, sequencing or phasing of development within the Subject Property. In particular, and

without limitation thereof, City acknowledges that it will not withhold or delay approval of any entitlements for development of the Subject Property or the construction of public improvements required therefore that are consistent with the terms and conditions of this Agreement or Specific Plan.

Section 2.10. Obligation and Rights of Mortgage Lenders. The holder of any mortgage, deed of trust or other security arrangement with respect to the Subject Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Subject Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Subject Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Subject Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Subject Property, or such portion thereof, which accrue prior and subsequent to the time such holder comes into possession. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Subject Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

Section 2.11. Residential Construction Prior to Street Construction. Subject to approval of the City Manager and Fire Chief, Developer shall be allowed to engage in construction of residential structures in advance of installation of finished streets to serve the structure(s) under construction. In no case shall Developer begin construction on any structure which is located in excess of one thousand (1000) feet from the nearest completed street. City's rules and regulations shall include the authority to withhold approval of any and all requests.

Section 2.12. Flosden-American Canyon Road Intersection Improvements. City and property owners within the Southeast Area Subzones "1" and "6" agree that it is to the advantage of the City and the property owners for the Flosden-American Canyon intersection to be improved early in the implementation of the Specific Plan. Therefore, to that end, through this Development Agreement, and the Development Agreement for Subzone "6," City and Developer agree as provided herein.

Developer agrees to prepare, and City agrees to cooperate with Developer in the adoption of a financing plan for the Flosden-American Canyon Road intersection (the "F/ACR financing plan"). This Plan shall be adopted prior to the completion of the annexation of the Southeast Area, unless the parties agree to extend the adoption date. The F/ACR financing plan shall address all costs associated with the intersection improvements, including by way of illustration, but not limitation, engineering, right of way acquisition, and construction costs, including a

reasonable contingency factor. City and Developer agree to assist and cooperate with each other in completing this plan.

Through the two Development Agreements, the following individuals (Jack Newell Sr., David Gilbreth, Eddie Biggs, Joe Ghisletta and Terry Galvin), agree to advance all the costs for the intersection improvements. Each owner's share shall be determined according to each owner's relative ownership of land subject to Subzone "1" and "6" Development Agreements, or on such other basis as may be mutually agreed upon. As long as any of the aforementioned individuals are "Developers" as the term is used in the two Development Agreements, each person agrees to be jointly and severally liable to advance the costs for the intersection improvements.

City agrees to construct the improvements upon funding by the property owners, or if otherwise provided in the F/ACR financing plan, to accept dedication of the improvements upon completion of the same by the property owners.

City and Developer agree that the Southeast Area property owners must pay their fair share of intersection improvement costs, and that the remaining share must come from other sources. Therefore, within the F/ACR financing plan, City agrees to adopt and thereafter implement a comprehensive fair share financing plan for the intersection which includes contributions from the American Canyon Golf Course and related development, other properties within and outside the City to the extent allowed under applicable law, which contribute traffic to the intersection whether now or in the future, and any other sources which the City deems appropriate. In conjunction with the F/ACR financing plan, City shall enter into reimbursement agreements with those property owners who advanced the intersection improvement costs so that those property owners are reimbursed for those costs in excess of their fair share contribution. The reimbursement shall be proportionate to each owner's relative contribution to the advanced costs.

In the event that the property owners elect to qualify the F/ACR improvements for acquisition by an assessment district (existing or in the future), City agrees to cooperate in approving those costs as allowable costs, where permitted by law and determined to be reasonable by the underwriter and financial consultant.

ARTICLE 3

ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

Section 3.1. City Approvals. Subject to Developer's compliance with applicable regulations, City is bound to permit the uses on the Subject Property that are consistent with the

Collective Standards. The City agrees to grant and implement the land use and building approvals, including, but not limited to, planned unit developments, development plans, subdivision improvement plans and agreements, building plans and permits, specifications, landscape plans, grading plans and permits, parcel maps, tentative subdivision maps, final subdivision maps (including phased final subdivision maps), amendments to maps, lot line adjustments, resubdivisions, use permits and certificates of occupancy (collectively "City Approvals"), reasonably necessary or desirable to accomplish the goals, objectives, policies, standards, and plans described in the Collective Standards. City Approvals shall include any applications, permits and approvals required to complete the infrastructure and improvements necessary to develop the Subject Property (collectively, the "Improvements"), in accordance with the Collective Standards, including, without limitation, those related to: (i) clearing the Subject Property; (ii) grading the Subject Property; (iii) construction of roads, storm drainage facilities, sewer facilities, and other utility facilities and connections; (iv) construction of water treatment and delivery facilities and storage tanks; and (v) construction of all commercial, ~~industrial~~ and residential structures and all structures and facilities accessory thereto, subject to the limitations set forth in the Collective Standards.

Section 3.2. Duty to Grant and Implement. City's obligation to grant and implement the City Approvals set forth above shall not infringe upon the City's right to withhold such City Approvals for failure to conform to the Collective Standards.

Section 3.3. Timely Processing. Subject to compliance with the provisions for preapplication notification and the submittal of information required by the California Environmental Quality Act, the aforementioned City Approvals and any environmental review required thereon shall be granted and approved by City on a timely basis; provided that applications for such approvals are submitted to City during the term of this Agreement; and provided further that Developer is not in default under the terms and conditions of this Agreement. City agrees to hire and/or retain appropriate personnel and consultants to process all City Approvals in an expeditious manner. In the event that the City is unable to process applications as provided herein, City agrees to notify the Developer of any potential delay. In addition, the City agrees to meet with the Developer to discuss options to resume prompt processing, including contracting with outside staff at the Developer's expense. In particular, and without limitation thereof:

(a) **Tentative Subdivision Maps.** City shall process and schedule for final approval before the City Council within a reasonable time, but no later than the following timeframes specified herein.

- (1) Where a "Prior EIR" or "Addendum" determination is made - 180 days;

- (2) Where a "Negative Declaration" determination is made - 180 days;
and
- (3) Where "Supplemental or Subsequent EIR" determination is made -
180 days.

(b) **Building Permits.** City shall process and approve all residential building permit applications within thirty (30) days of submission by Developer of completed plans and all commercial, office or industrial building permit applications within sixty (60) days of submission by Developer of completed plans. Upon request of Developer, City shall inform Developer of the necessary submission requirements for each application for a building permit or other entitlement for use in advance and review said application and schedule the application for review by the appropriate authority within the times set forth in this Article.

(c) **Inspections.** City agrees it will perform all required inspections for residential structures called for by Developer within five (5) working days following the request for inspection by Developer.

Section 3.4. Cooperation Between City and Developer. City agrees to cooperate with Developer in securing all permits which may be required by the City.

ARTICLE 4

DEFAULT

Section 4.1. General Provisions. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement to perform any term or provision of this Agreement, shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than sixty (60) days notice in writing specifying the nature of the alleged default and the manner in which said default may be cured. During any such sixty (60) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the sixty (60) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at his option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to California Government Code §65868 and any regulations of City implementing said Government Code section. Following notice of intent to terminate, or prior to instituting legal proceedings, the matter shall be

scheduled for consideration and review in the manner set forth in Government Code §§65865, 65867, and 65868 and City regulations implementing said sections by City within thirty (30) calendar days.

Following consideration of the evidence presented in said review before City and an additional 30-day period to cure, either party alleging the default by the other party or Landowner may institute legal proceedings or may give written notice of termination of this Agreement to the other party; provided, however, a Landowner may only give such notice with respect to such portion of the Subject Property in which that Landowner owns an interest.

Evidence of default may also arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code §65865.1. If either party or Landowner determines that a party or Landowner is in default following the completion of the normally scheduled periodic review, said party or Landowner may give written notice of termination of this Agreement specifying in said notice the alleged nature of the default, and potential actions to cure said default where appropriate. If the alleged default is not cured in thirty (30) days or within such longer period specified in the notice, or the defaulting party or Landowner waives its right to cure such alleged default, this Agreement may be terminated by City as to Developer or Landowner and the property in which Developer or Landowner owns an interest.

Section 4.2. Annual Review. City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with the terms of this Agreement. Such periodic review by the Planning Director shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code §65865.1. Each said review shall be completed within thirty (30) days of the first meeting of the Planning Director and Developer, respectively, at which such review is undertaken, unless said period is extended by mutual consent of City and Developer. Failure to complete said review within the prescribed period shall be deemed a finding of good faith substantial compliance. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. A finding by City of good faith compliance by Developer and Landowner with the terms of the Agreement shall conclusively determine said issue up to and including the date of said review.

City shall deposit in the mail or fax to Developer and/or Landowner a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least seven (7) calendar days prior to such periodic review. The Developer or Landowner shall be entitled to appeal a determination of the Director to the Commission and then to the Council. Any appeal has to be filed within ten (10) days of the decision to the Director, and the Commission, respectively. Developer or Landowner shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the City

Council and, if the matter is referred to a City Planning Commission, before said Commission.

Section 4.3. Estoppel Certificates.

(a) City shall at any time upon not less than twenty (20) days prior written notice from Developer, execute, acknowledge and deliver to Developer, lender, or investor, a statement in writing in substantial compliance with **Exhibit "C"** to this Agreement.

(b) At Developer's option, the failure to deliver such statement within the stated time period may/shall be conclusive that the Agreement is in full force and effect, that there are no incurred defaults in Developer's performance of the Agreement or of any City ordinances, regulations and/or policies regulating the use and development of Developer's property subject to this Development Agreement.

Section 4.4. Default by Developer/Withholding of Building Permit.

City may, at its discretion, refuse to issue a building permit for any structure within the geographical confines of the Subject Property as the same is defined at the time of said application, if Developer or Landowner thereof has failed and refuses to complete any requirement applicable to said building permit.

Section 4.5. Default by City. In the event City does not accept, review, approve or issue necessary development permits or entitlements for use in a timely fashion as defined by this Agreement, or as otherwise agreed to by the parties, or the City otherwise defaults under the terms of this Agreement, City agrees that Developer or Landowner shall not be obligated to proceed with or complete the project or any phase thereof, nor shall resulting delays in Developer performance constitute grounds for termination or cancellation of this Agreement.

Section 4.6. Cumulative Remedies of Parties. In addition to any other rights or remedies, City, Developer and any Landowner may institute legal or equitable proceedings to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, to enjoin any threatened or attempted violation of the provisions of this Agreement.

Section 4.7. Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party or Landowner hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation enacted by the state or federal government or litigation. Notwithstanding the foregoing sentence, delays incurred in

conjunction with the delivery of water or sewer service shall not result in any extensions. An extension of time for such cause shall be granted in writing by City for the period of the enforced delay or longer, as may be mutually agreed upon, but in no case shall the cumulative extensions add more than five years to the effective period of this Agreement.

ARTICLE 5

LEGAL PROCEEDINGS

Section 5.1. Venue. Venue for all legal proceedings shall be in the Superior Court for the County of Napa, California.

Section 5.2. Conflicting Initiative Measure. In the event that the voters of the City of American Canyon qualify and the City Council adopts an initiative, or the voters pass an initiative which conflicts with the terms of this Agreement, then the Developer has the option of amending this Agreement to be consistent with the terms of the initiative, or instituting litigation by way of declaratory relief and/or specific performance to adjudicate its rights under this Agreement. In the event that the Developer seeks an action in declaratory relief and/or specific performance, then Developer waives any claim against the City, its agents and employees and the electorate, it may have for monetary damages, and agrees to limit relief to declaratory relief and/or specific performance.

In the event that the Developer institutes litigation pursuant to this Section 5.2 and the City elects to take a position in the litigation that is adverse to that of the Developer, then the Developer shall be relieved of its obligation to defend and indemnify the City as provided for in Section 1.19 of this Agreement.

ARTICLE 6

TERMINATION

Section 6.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the term or when the subject property has been fully developed and all of the Developer's obligations in connection therewith are satisfied as determined by City. Upon termination of this Agreement, City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force or effect as to any single-family residence, any other residential dwelling unit(s), or any nonresidential building, and the lot or parcel upon which such residence or building is located, when it has been approved by City for occupancy.

Section 6.2. Effect Upon Termination on Developer Obligations. Termination of this Agreement as to Developer of the Subject Property or any portion thereof shall not affect any of Developer's obligations to comply with the City General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlements approved with respect to the Subject Property, any other covenants or any other development requirements specified in this Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees, or taxes.

Section 6.3. Effect Upon Termination on City. Upon any termination of this Agreement as to Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning law) and City shall no longer be limited, by this Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to such property.

Section 6.4. Failure to Complete Annexation. In the event that the Subject Property is not annexed to the City by January 1, 2010, this Agreement shall become null and void.

IN WITNESS WHEREOF, this Agreement was executed by the parties thereto on the dates set forth below.

CITY OF AMERICAN CANYON
a municipal corporation

By: *Ben Anderson* ✓
Mayor, City of American Canyon

ATTEST:

[Signature] ✓
City Clerk

APPROVED AS TO FORM:

William D. [Signature] ✓
City Attorney

JACK H. NEWELL SR.

Jack H. Newell Sr ✓ Aug 26 97
Date

EDDIE BIGGS

Eddie Biggs ✓ 8-21-97
Date

DAVID GILBRETH

David Gilbreth ✓ 8/5/97
Date

JOE GHISLETTA

Joe Ghisletta Aug 27, 97
Date

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Napa

On October 16, 1997 before me, MILLETT THOMAS
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared BENT ANDERSON
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Millett Thomas
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Subzone 1 - Southeast Area
Plan Development
Agreement
TITLE OR TYPE OF DOCUMENT

34
NUMBER OF PAGES

June 25, 1997
DATE OF DOCUMENT

Jack H. Jewell, Sr., Eddie Biggs,
Joe Ghisler, Dave Gilbreth,
Mark Joseph & William L. Ross
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Napa

On October 22, 1997 before me, MILLETT THOMAS

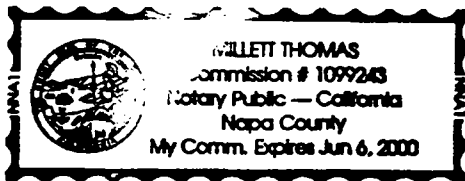
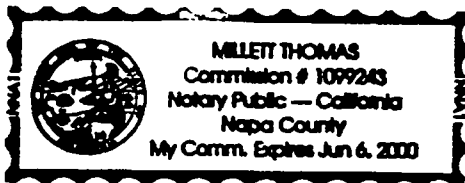
DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared MARK JOSEPH

NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Millett Thomas
SIGNATURE OF NOTARY

OPTIONAL

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- CORPORATE OFFICER

TITLE(S)

- PARTNER(S)
- LIMITED
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

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DESCRIPTION OF ATTACHED DOCUMENT

SUBZONE 1 - Southeast Area Plan development Agreement

TITLE OR TYPE OF DOCUMENT

34

NUMBER OF PAGES

June 25, 1997

DATE OF DOCUMENT

Jack H. Howell, Sr., Eddie Biggs, Joe Griesler, Dave Gullerup, Ben Anderson + William D. Co's

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

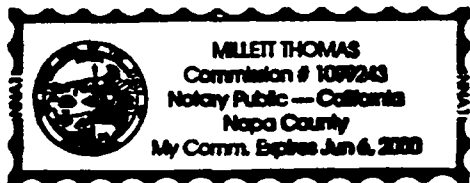
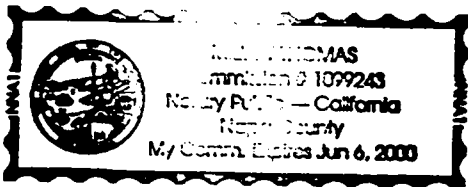
State of California

County of Napa

On October 16, 1997 before me, MILLET THOMAS
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared William A. Ross
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ ~~she~~ ~~they~~ executed the same in ~~his~~ ~~her~~ ~~their~~ authorized capacity(ies), and that by ~~his~~ ~~her~~ ~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Millet Thomas
SIGNATURE OF NOTARY

OPTIONAL

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TITLE(S)

- PARTNER(S) LIMITED
- ATTORNEY-IN-FACT GENERAL
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Subzone 1 - Southeast Area
Plan Development Agreement

TITLE OR TYPE OF DOCUMENT

34

NUMBER OF PAGES

June 25, 1997
DATE OF DOCUMENT

Jack H. Jewell, Sr., Eddie Biggs,
Joe Ghisler, Dave Gilbreth,
Mark Joseph - Benj. Anderson
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

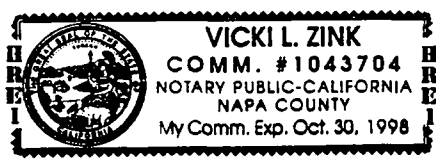
No. 5907

State of California
County of Napa

On September 2, 1997 before me, Vicki L. Zink, Notary Public,
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Jack H. Newell Sr.
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person ~~(s)~~ whose name ~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity ~~(ies)~~, and that by his/~~her~~/~~their~~ signature ~~(s)~~ on the instrument the person ~~(s)~~, or the entity upon behalf of which the person ~~(s)~~ acted, executed the instrument.



WITNESS my hand and official seal.
Vicki L. Zink
SIGNATURE OF NOTARY

OPTIONAL

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CAPACITY CLAIMED BY SIGNER

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- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Southeast Area Specific Plan Subzone "1"
TITLE OR TYPE OF DOCUMENT

34
NUMBER OF PAGES

June 25, 1997
DATE OF DOCUMENT

Joe Chisletta, Eddie Biggs, David Gilbreth, Ben Anderson, Mark Joseph, William D. Ross
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Napa

On August 28, 1997 before me, Vicki L. Zink, Notary Public

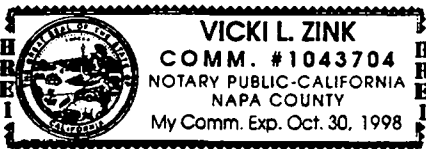
DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Eddie Biggs

NAME(S) OF SIGNER(S)

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WITNESS my hand and official seal.

Vicki L. Zink
SIGNATURE OF NOTARY

OPTIONAL

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CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Subzone "1" Southeast Area Specific Plan
TITLE OR TYPE OF DOCUMENT

34
NUMBER OF PAGES

June 25, 1997
DATE OF DOCUMENT

JACK H. Newell, SR., JOE Ghisletta, Ben Anderson, Mark Joseph, William D. Ross, DAVID Gilbreth
SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Napa

On August 5, 1997 before me, Vicki L Zink, Notary Public

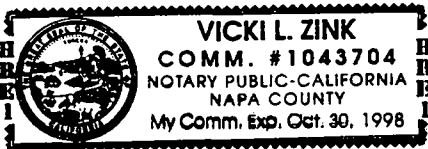
DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared David Gilbreth

NAME(S) OF SIGNER(S)

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WITNESS my hand and official seal.

Vicki L. Zink

SIGNATURE OF NOTARY

OPTIONAL

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CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
 CORPORATE OFFICER

TITLE(S)

- PARTNER(S) LIMITED GENERAL
 ATTORNEY-IN-FACT
 TRUSTEE(S)
 GUARDIAN/CONSERVATOR
 OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Subzone "1"
Southcoast Area Specific Plan

TITLE OR TYPE OF DOCUMENT

34

NUMBER OF PAGES

June 25, 1997
DATE OF DOCUMENT

JACK H. Newell, SR., Eddie Biggs,
Joe Ghisletta, Ben Anderson,
MARK JOSEPH & William D. ROSS

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Napa

On August 26, 1997 before me, Vicki L. Zink, Notary Public,

DATE

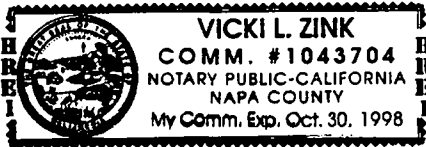
NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Joe Ghisletta

NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/his/their authorized capacity(ies), and that by his/his/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Vicki L. Zink

SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER

TITLE(S)

- PARTNER(S) LIMITED
- GENERAL

- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Development Agreement
SEASP - Subzone "1"

TITLE OR TYPE OF DOCUMENT

34

NUMBER OF PAGES

June 25, 1997

DATE OF DOCUMENT

JACK H. NEWELL SR., Eddie Biggs,
David Gilbreth, Ben Anderson,
MARK JOSEPH, William D. ROSS

SIGNER(S) OTHER THAN NAMED ABOVE

LIST OF EXHIBITS

Exhibit "A" Subject Property
Exhibit "B" Assumption Agreement
Exhibit "C" Estoppel Certificate

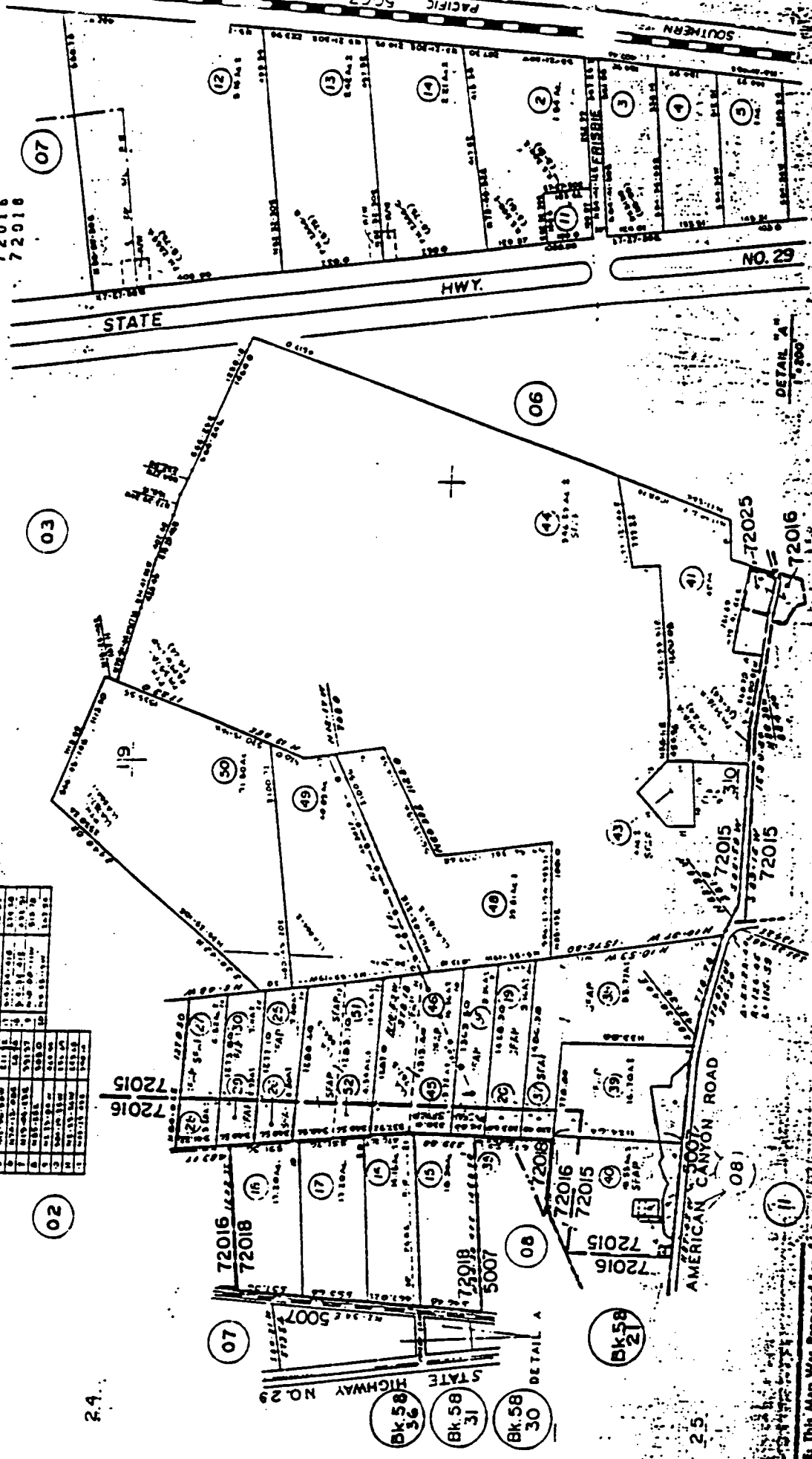
9705.29.2

Southeast Area Plan - Subzone "I"
June 25, 1997

DEC 07 1964

Tax Area Code 59-04
72015, 5007
72016
72018

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97	241.14	1120	99	241.30	1120	99	241.30	1120
98	241.14	1120	100	241.30	1120	100	241.30	1120



NOTE: This Map Was Prepared for Assessor's Purposes Only. No Liability is Assumed for the Accuracy of the Data Delineated Hereon.

Assessor's Map Bk. 59-Pg. 04
County of Napa, Calif.
1960
REDRAWN FROM 25 T.N.J. 12, 19, 20

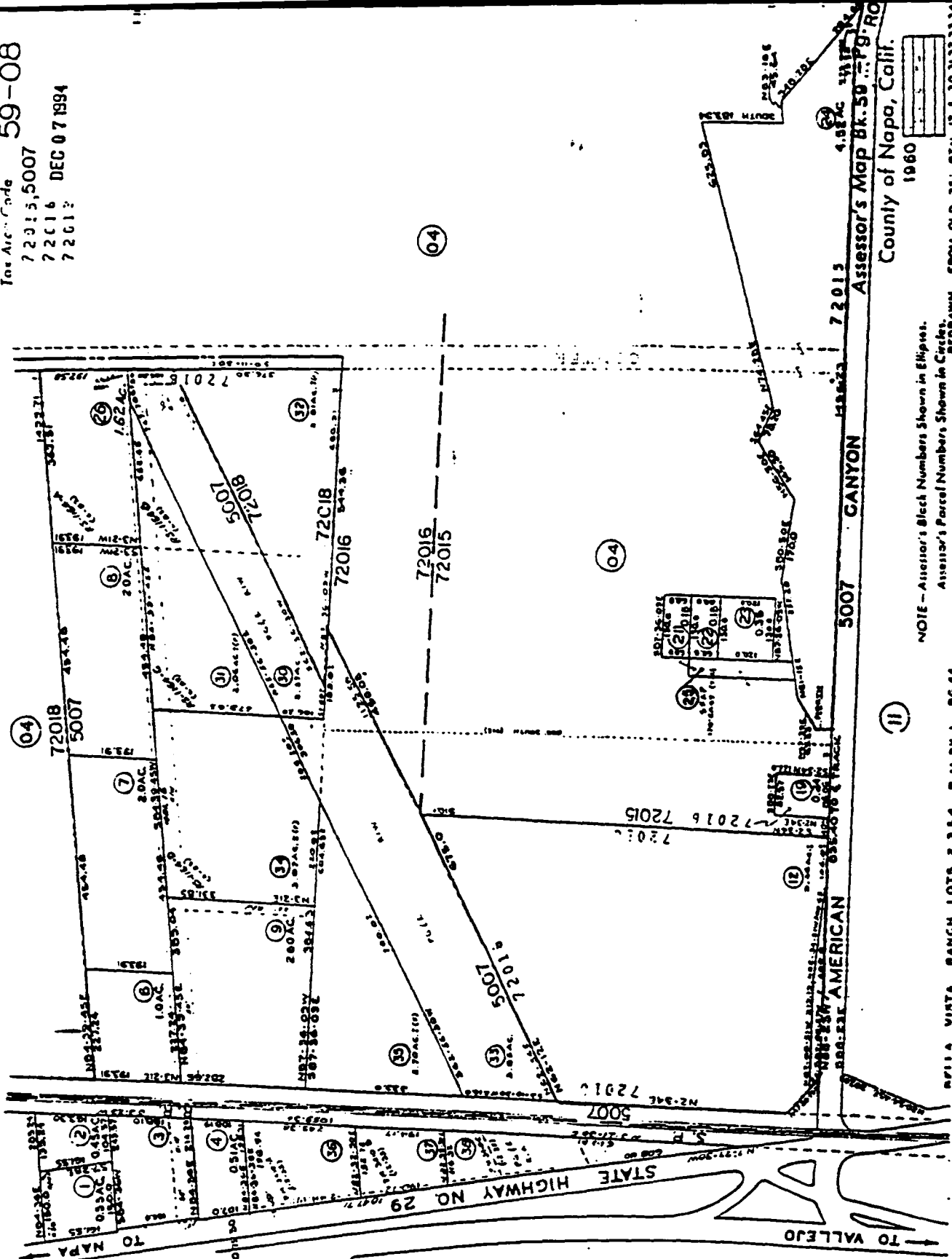
NOTE - Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

BELLA VISTA RANCH LOTS 4-18 & 19-21 B.M. 5N4, PG. 66

Tax Acre Code 59-08

72015, 5007

72016 DEC 07 1994



1960

Assessor's Map Bk. 59 Pg. 10
County of Napa, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers, Shown in Circles.
REDRAWN FROM OLD 23: PTH. 12 & 30, 31, 32, 33, 34

APHA VISTA RANCH INTD 2 3 3 4 B U R N I PG. 66

Bk. 58 30

Bk. 58 29

NOTE: This Map Was Prepared For
Assessment Purposes Only. No
ability is Assumed For the
accuracy Of the Data Delineated
thereon.

EXHIBIT "A"

The land referred to herein is situated in the State of California, County of Napa, and is described as follows:

TRACT ONE:

Lots 6 and 7, as shown on the map entitled, "Subdivision of the Bella Vista Ranch", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County.

EXCEPTING FROM said Lots 6 and 7, however, any portion thereof that lies within the wooden and wire fence referred to in the Decree Quieting Title, a certified copy of which was recorded July 19, 1937 in Book 119 at page 318 of Official Records of Napa County.

APNs 059-040-037 and 059-040-038

TRACT TWO:

Lot 8, as shown on the map entitled, "Subdivision of the Bella Vista Ranch", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County.

APNs 059-040-019 and 059-040-020

TRACT THREE:

Lot 9, as shown on the map entitled, "Subdivision of the Bella Vista Ranch", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County.

APNs 059-040-035 and 059-040-036

TRACT FOUR:

Lots 10 and 11 as shown on the map entitled, "Subdivision of the Bella Vista Ranch", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County.

APNs 059-040-045 and 059-040-046

TRACT FIVE:

Lot 14 as shown on the map entitled, "Subdivision of the Bella Vista Ranch", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County.

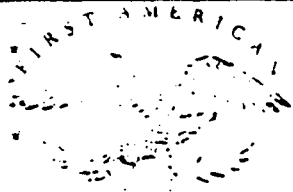
APNs 059-040-025 and 059-040-026

TRACT SIX:

Lot 15 as shown on the map entitled, "Subdivision of the Bella Vista Ranch", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County.

APNs 059-040-029 and 059-040-030

(Continued)



TRACT SEVEN:

Lot 16 as shown on the map entitled, "Subdivision of the Bella Vista Ranch", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County.

APNs 059-040-027 and 059-040-028

TRACT EIGHT:

Lot 5 as shown on the map entitled, "Subdivision of the Bella Vista Ranch", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County.

EXCEPTING THEREFROM any portion of said Lot 5 which lies within that certain 4.52 acre tract of land as described in the Quitclaim Deed to Lucille R. Mitchell, recorded October 6, 1948 in Book 298 at page 28 of Official Records of Napa County.

APN 059-040-039

TRACT NINE:

Lots 3 and 4 as shown on the map entitled, "Subdivision of the Bella Vista Ranch", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County.

EXCEPTING FROM said Lots 3 and 4, however, the following:

- a) Tract of land as described in the Deed to Charles H. Laepge, et ux, recorded June 4, 1908 in Book 92 of Deeds at page 360, Napa County Records.
- b) Lot 60 feet by 130 feet as described in the Deed from B.H. Pursell, et ux to Martha Ivanhoff, recorded May 13, 1911 in Book 100 of Deeds, at page 282, said Napa County Records.
- c) Lot 60 feet by 130 feet as described in the Deed from B.H. Pursell, et ux to Mrs. Alma M. Low, recorded May 13, 1911 in Book 100 of Deeds at page 283, said Napa County Records.
- d) Lot 60 feet by 130 feet as described in the Deed from B.H. Pursell, et ux to Wm. J. Low, recorded May 13, 1911 in Book 100 of Deeds, at page 284, said Napa County Records.
- e) Tract of land as described in the Deed to E. B. Henley, et ux, recorded November 4, 1912 in Book 105 of Deeds at page 303, Napa County Records.
- f) Lot 60 feet by 130 feet as described in the Deed from B.H. Pursell, et ux to Frank Todt, recorded July 17, 1914 in Book 109 of Deeds at page 439, Napa County Records.
- g) That certain 0.03 acre tract of land described in the Deed to State of California, recorded October 20, 1943 in Book 203 at page 287 of Official Records of Napa County.

(Continued)



3:

h) That certain 4.52 acre tract of land described in the Quitclaim Deed to Lucille R. Mitchell, recorded October 6, 1948 in Book 298 at page 28 of Official Records of Napa County.

i) Tract of land as described in the Deed to Robert J. Spratt, et al, recorded January 30, 1968 in Book 781 at page 444 of Official Records of Napa County.

APNs 059-040-040 and 059-080-025

TRACT TEN:

A portion of Lot 3 as delineated on that certain map entitled, "Subdivision of the Bella Vista Ranch, Napa County, California", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County, described as follows:

COMMENCING at a point 625 feet East of the Westerly boundary of Lot 3, 1000 feet South of the Northerly boundary of said Lot 3; running thence Easterly parallel to the Northerly boundary of said Lot 3, a distance of 82.97 feet; thence Southerly parallel to the Westerly boundary of said Lot 3, a distance of 122 feet, more or less, to the County Road; thence Westerly along said County Road, 86.06 feet; thence Northerly 122 feet, more or less, to the point of commencement.

APN 059-080-019

TRACT ELEVEN:

A portion of Lot 4 as shown on the map entitled, "Subdivision of the Bella Vista Ranch, Napa County California", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County, described as follows:

BEGINNING at a point 170 feet East of the West line of said Lot 4 and 748 feet South of the North line thereof; running thence Easterly and parallel to said North line 130 feet; thence Southerly and parallel with the said West line 60 feet; thence Westerly and parallel with said North line 130 feet; thence Northerly 60 feet, more or less, to the point of beginning.

APN 059-080-021

TRACT TWELVE:

PARCEL ONE:

Being a portion of Lot 4 as shown on the map entitled, "Subdivision of the Bella Vista Ranch, Napa County, California", made by George H. Herrold and recorded December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County, described as follows:

(Continued)

COMMENCING at a point 170 feet East of the Westerly boundary of said Lot 4 and 808 feet South of the Northerly boundary of said Lot 4; running thence in an Easterly direction, parallel to said Northerly boundary a distance of 130 feet; thence in a Southerly direction parallel to said Westerly boundary, a distance of 60 feet; thence in a Westerly direction parallel to said Northerly boundary a distance of 130 feet; thence Northerly a distance of 60 feet, more or less, to the point of commencement.

APN 059-080-022

PARCEL TWO:

A perpetual Right of Way, 40 feet in width, over a strip of land as described in the Deed to Martha Ivanhoff, recorded May 13, 1911 in Book 100 of Deeds at page 282, Napa County Records.

TRACT THIRTEEN:

PARCEL ONE:

A portion of Lot 4 as shown on the map entitled, "Subdivision of the Bella Vista Ranch, Napa County, California", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County, described as follows:

COMMENCING at a point 170 feet East of the Westerly boundary of said Lot 4 and 868 feet South of the Northerly boundary of Lot 4; running thence in an Easterly direction parallel to said Northerly boundary a distance of 130 feet; thence in a Southerly direction parallel to said Westerly boundary, a distance of 120 feet; thence in a Westerly direction a distance of 130 feet; thence Northerly a distance of 120 feet, more or less, to the point of commencement.

APN 059-080-023

PARCEL TWO:

A perpetual Right of Way, 40 feet in width, over a strip of land as described in the Deed to Alma M. Low, recorded May 13, 1911 in Book 100 of Deeds at page 283, Napa County Records, and in the Deed to William J. Low, recorded May 13, 1911 in Book 100 of Deeds at page 284, Napa County Records.

TRACT FOURTEEN:

Lots 12 and 13, as shown on the map entitled, "Subdivision of the Bella Vista Ranch", filed December 13, 1894 in Book 1 of Maps at page 66 in the office of the County Recorder of said Napa County, being more particularly described as follows:

BEGINNING at the Southwest corner of said Lot 12, said point being on the centerline of Center Avenue; running thence Easterly along the Southerly line thereof, 1287.0 feet to the Southeast corner; thence North 06° 48' West along the Easterly lines of Lots 12 and 13 of said map to the Northeast corner of Lot 13; thence Westerly along the Northerly line of Lot 13, 1280.40 feet to the above mentioned avenue centerline; thence Southerly along same 681.12 feet to the point of beginning.

APNs 059-040-051 & -052

Recording Requested by:

After Recordation, Mail to:

No Recording Fee Required

Space above this line for recorder's use

**ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO THE SOUTHEAST AREA DEVELOPMENT AGREEMENTS**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter "this Agreement") is entered into this ___ day of _____, 19__, by and between _____, a California _____ (hereinafter called "Owner") and _____, (hereinafter "Assignee").

RECITALS

A. On _____, 19__, the City of American Canyon and Owner entered into that certain agreement entitled "Southeast Area Development Agreement for Subzone _____," (hereinafter "Agreement"), pursuant to which Owner agreed to develop certain property more particularly described in the Agreement (hereinafter "the Subject Property"), subject to certain conditions and obligations as set forth in the Agreement. The Agreement was recorded against the Subject Property in the Official Records of Napa County on _____, 19__, in Book ___, Page ___, Series No. ___.

B. Owner entered into a purchase and sale agreement whereby a portion of the Subject Property will be sold to Assignee, which portion of the Subject Property is identified and described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel(s)").

C. Owner desires to assign all of its interests and rights and other terms and conditions under the Agreement with respect to the Assigned Parcel(s).

D. Assignee desires to assume all Owner's rights and obligations and other terms and conditions under the Agreement with respect to the Assigned Parcel(s).

NOW, THEREFORE, Owner and Assignee hereby agree as follows:

1. Owner hereby assigns, effective as of Owner's conveyance of the Assigned Parcel(s) to Assignee, all of the rights, interest, burdens and obligations of Owner under the Agreement with respect to the Assigned Parcel(s). Owner retains all the rights, interest, burdens and obligations under the Agreement with respect to all other property within the Subject Property owned thereby.

2. Assignee hereby assumes all of the burdens and obligations of Owner under the Agreement, and agrees to observe and fully perform all of the duties and obligations of Owner under the Agreement, and to be subject to all the terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both Owner and Assignee that, upon the execution of this Agreement and conveyance of the Assigned Parcel(s) to Assignee, Assignee shall become substituted for Owner as the "Developer" under the Agreement with respect to the Assigned Parcel(s).

3. All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. The Notice Address described in Section ___ of the Development Agreement for the Owner with respect to the Assigned Parcel(s) shall be _____ by _____, [address] _____.

5. Nothing in this Agreement is intended to modify or amend the agreement of purchase and sale entered into by Assignee and Owner with respect to the Assigned Parcel(s) and in the event of any inconsistency between said agreements, the terms and conditions of such agreement of purchase and sale shall control.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

By: _____, a
California
by _____

Dated: _____, 19__

By: _____

Title: _____

9705.76.2

EXHIBIT C

ESTOPPEL CERTIFICATE

_____ [Third party address]

Re: Southeast Area Development Agreement, Subzone ____.

Dated: _____

Between the City of American Canyon ("City") and "Developer"

Dear _____:

Reference is made to the above-described Development Agreement between the City and the Developer. City understands that you are entering into a transaction with Developer that relates to, among other things, this Agreement. City represents that:

1. A true and correct copy of the Agreement is attached as Exhibit "A."
2. There are no modifications, amendments, supplements, arrangements, side letters, or understandings, oral or written, of any sort, modifying, amending, altering, supplementing, or changing the terms of the Agreement except as follows: _____
3. The Agreement is in full force, and the Agreement has been duly executed and delivered by, and is a binding obligation of, City.
4. City acknowledges that Developer is in full compliance with all terms of the Development Agreement, as well as all other City ordinances, regulations and policies regulating the use and development of the Developer's property subject to this Development Agreement.
5. The undersigned is authorized to execute this letter on the City's behalf.

Very truly yours,

CITY OF AMERICAN CANYON

By: _____
Planning Director

9704.59.2

*Exhibit C to the Southeast Area Development Agreements
June 25, 1997*

ORDINANCE NO. 97-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF AMERICAN CANYON ADOPTING THE SOUTHEAST
AREA SPECIFIC PLAN

WHEREAS, the City Council of the City of American Canyon (City), after proper notice and hearing, heard and took several actions with regard to the Draft Southeast Area Specific Plan on June 5, 1997 (Specific Plan) including, requiring modification to the Specific Plan in the form of:

1. Changing the designated school acreage from five acres to ten acres, and reducing the allowed number of dwelling units by nineteen (19);
2. Allowing 120,000 square feet of commercial space, with a subsequent amendment to the General Plan, and,
3. Providing a buffer area around the Borgess and horse ranch properties; and,

WHEREAS, the City Council based on the changes described and accepted by the Applicant is prepared to make the finding required by Government Code section 65500 et seq. of this Government Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON DOES HEREBY ORDAIN AS FOLLOWS:

1. That the Specific Plan, as revised, a copy of which is attached, is found to be consistent with the General Plan;
2. That the approval of the Specific Plan, as revised, has been properly assessed under the California Environmental Quality Act (CEQA) in the Final Environmental Impact Report (Final EIR) prepared for the Specific Plan and certified in City Resolution No. 97-29 and as subject to a Statement of Overriding Considerations confirmed and adopted in City Resolution No. 97-30; and,
3. That based on the finding of consistency of the Specific Plan, as revised, with the General Plan and the certification of compliance with CEQA, the Specific Plan, as revised, is approved and adopted.
4. That this ordinance shall take effect thirty (30) days after its adoption.

The foregoing ordinance was introduced and read at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 19th day of June, 1997 and was passed and adopted at a continued regular meeting of the City Council of the City of American Canyon, State of California, held on the 26th day of June, 1997, by the following vote:

AYES: Benjamin Anderson, Don Colcleaser, Lori Maples, Keith Winters

NOES: None

ABSTAIN: None

ABSENT: Roger Cypher

Benj Anderson
Benjamin Anderson, Mayor

ATTEST:
Mark Joseph
Mark Joseph, City Clerk

APPROVED AS TO FORM:
William D. Ross
William D. Ross, City Attorney