AGREEMENT TO SETTLE LITIGATION REGARDING LOWER LAGOON VALLEY

This AGREEMENT TO SETTLE LITIGATION REGARDING LOWER LAGOON VALLEY ("**Agreement**") is entered into by and between Greenbelt Alliance ("**Greenbelt**") a California nonprofit corporation, the City of Vacaville ("**City**"), a California municipal corporation, and Triad Communities, LP ("**Triad**" or "**Developer**"), a California limited partnership, for the purpose of fully and finally resolving the matter of *Greenbelt Alliance v. City of Vacaville and Triad Communities, LP*, Solano County Superior Court Case No. FCS 024409. Collectively, Greenbelt, Triad and City shall be referred to herein as the "**Parties**."

RECITALS

A. On June 8, 2004, the Vacaville City Council ("**City Council**") certified a final environmental impact report (the "**EIR**") and approved a general plan amendment regarding that certain area within City's boundaries consisting of approximately 2,400 acres of real property and commonly known as Lower Lagoon Valley (the "**GPA**"). On June 22, 2004, City Council adopted (1) the Lower Lagoon Valley Specific Plan together with a rezoning of Lower Lagoon Valley in accordance with the Specific Plan (collectively, the "**Specific Plan**"); and (2) a development agreement with Triad (the "**Development Agreement**"), in accordance with California Government Code sections 65864 *et seq.*, providing for the development of Lower Lagoon Valley in accordance with the GPA, the Specific Plan and the EIR (the "**Project**").

B. As approved by City and set forth in the GPA, the Specific Plan and the Development Agreement (collectively, the "**2004 Approvals**"), the Project is proposed as a mixed use development covering approximately 2,400 acres of real property within Lower Lagoon Valley and located within the corporate limits of City (the "**Specific Plan Area**"), which real property is owned or controlled largely by Developer, except that approximately 1,300 acres of the Specific Plan area are owned by City as open space or park, including Lagoon Valley Park. The 2004 Approvals proposed the development of approximately 27 percent of the Specific Plan Area and designation or confirmation of approximately 73 percent of the Specific Plan Area as permanent open space, park or agricultural lands.

C. On July 8, 2004, Greenbelt filed in the Superior Court of the State of California for the County of Solano (the "**Court**") a petition for writ of mandate (Case No. FCS 024409) against City and Triad, seeking, among other things, to set aside the EIR and certain of the 2004 Approvals, and an award of costs and reasonable attorneys fees under Government Code section 800 and Code of Civil Procedure section 1021.5 (the "**Writ Petition**").

D. During the time following City's approval of the Project, certain persons or parties collected signatures and caused to be qualified two referendum petitions challenging City's approval of the GPA and the Specific Plan (the "**Referenda**"). Subsequently, City Council acted to put the Referenda before the voters at an election scheduled for March 8, 2005. City Council may reverse that action at any time prior to 88 days before March 8, 2005.

E. Subsequent to the filing of the Writ Petition, the Parties met on numerous occasions to discuss terms and conditions pursuant to which the litigation initiated by Greenbelt (the "**Litigation**") might be settled. As more fully set forth herein, the Parties have concluded these discussions and reached understandings upon which the Litigation will be finally settled in such a manner to allow a new project which substantially and materially revises the Project, to proceed upon satisfaction of certain terms and conditions.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, THE PARTIES HEREBY AGREE as follows:

A. INITIAL OBLIGATIONS

1. ***Rescind 2004 Approvals***. By executing this Agreement, Developer and Greenbelt hereby jointly request City to rescind the 2004 Approvals, which 2004 Approvals shall not be deemed to include the EIR or the design guidelines adopted by City Council in connection with its approval of the Project (the "**Design Guidelines**"). City agrees that City Council shall hear and take final action on such request as soon as possible after City Council's approval of this Agreement, and in no case later than 88 days prior to March 8, 2005. If City Council does not approve the rescission of the 2004 Approvals on or before the date specified above, this Agreement automatically shall become null and void. If City Council does approve the

rescission of the 2004 Approvals on or before the date specified above, then City Council shall timely take all necessary action to cancel the consideration of the Referenda by the voters at the March 8, 2005 election. Developer and Greenbelt each shall use best efforts to build public support for rescission in the context of this Agreement pending City Council's consideration thereof, including express support from key community leaders.

2. ***Dismiss Writ Petition***. Within five (5) business days following City Council's rescission of the 2004 Approvals, Greenbelt shall file with the court a voluntary dismissal with prejudice of all claims in the Writ Petition.

B. ADOPTION AND IMPLEMENTATION OF REVISED PROJECT

1. ***Implementation of Revised Project***. Developer has filed with City a complete application for a vesting tentative map and planned development permit to implement the 1990 Lagoon Valley Policy Plan subject to certain restrictions and additional terms and conditions more fully described below and on **Exhibit A** (the "**Revised Project**"). As proposed, and as a result of discussions among the Parties, the Revised Project incorporates a number of measures including, among others, a reduction in residential unit counts and commercial densities, a prohibition on certain types of commercial uses (*e.g.*, big box retail), inclusion of affordable and senior housing, and an increase in permanent open space. Developer agrees to undertake its best efforts to seek approval of the Revised Project substantially as described in **Exhibit A** and elsewhere in this Agreement, and City agrees that it shall take all necessary actions to promptly complete City's final consideration of and action on the Revised Project as permitted by applicable law. As more fully set forth below, Greenbelt agrees to allow the Revised Project to proceed without objection or challenge by Greenbelt or any entity under its legal control, provided the Revised Project is approved in a manner substantially consistent with **Exhibit A**, including the express condition precedent specified in **Section D.1** below (the "**UPA Condition**") except as otherwise provided for in **Sections D.2, D.3 and D.4** below, and all other terms and conditions of this Agreement.

2. ***Greenbelt Support for Agreement Including Revisions to the Project and the Adoption of the UPA***. Greenbelt agrees that, during City's formal administrative review of the Revised Project, Greenbelt shall state publicly its support for the Agreement, including the

adoption of a petition for an Urban Planning Area ("**UPA**") (the "**UPA Petition**") by City as more fully described below, and including a statement that the Revised Project constitutes an improvement over the project authorized by the 2004 Approvals. The statement shall be submitted orally and in writing to City's Planning Commission and to City Council during, and/or before in the case of writings, public hearings on the Revised Project. The Parties understand that nothing in this Agreement shall constitute an endorsement by Greenbelt of the Revised Project independent from the terms of this Agreement and that Greenbelt reserves the right to challenge any approvals that either: (a) cause a substantial deviation from the Revised Project as described in **Exhibit A**, except as such deviations or enactments are required by a court order that results from litigation against the Revised Project by a party other than one of the Parties, or (b) require additional legislative enactments by City Council, except as otherwise agreed upon by the Parties, provided that such agreement shall not be unreasonably withheld or delayed. City Council's adoption of this Agreement, rescission of the 2004 Approvals, approval of the vesting tentative map and planned unit development permit for the Revised Project, and adoption of the UPA as described in **Sections C.1 through C.5** below, shall not be considered "legislative enactments" for the purposes of this provision or **Section B.3** below. Greenbelt shall also take reasonable action to build community support for the Agreement in advance of the Planning Commission's and City Council's action on the Revised Project. Greenbelt further agrees that it shall neither: (a) object to or oppose, whether administratively, judicially or by initiative, referendum or otherwise, any action taken by City or Developer to adopt, approve, implement or develop the Revised Project or any aspect or component thereof (provided such action by City or Developer is carried out in a manner consistent with this Agreement, including the UPA Condition); nor (b) support, encourage or assist (including, without limitation, by providing financial or technical assistance) any other person or organization in so doing. Greenbelt further agrees that it shall not initiate, support, encourage or assist (including, without limitation, by providing financial or technical assistance) in any initiative measure or other legislative effort (whether city-wide or otherwise) specifically intended to impede in any way the adoption, approval, implementation or development of the Revised Project. Furthermore, nothing in this Agreement shall prevent Greenbelt from disbursing approximately $10,800 in funds solicited on behalf of Friends of Lagoon Valley from the Temper of the Times Foundation on October 15, 2004 to defray the cost of printing a Lagoon Valley photograph calendar.

3. ***No Further Challenge***. Without limiting the provisions of **Section B.2** above, provided the Revised Project is adopted, approved, implemented and developed in a manner substantially consistent with the terms and provisions of this Agreement, including the UPA Condition, neither Greenbelt nor any entity it legally controls, shall initiate or otherwise carry out, encourage, aid or fund any litigation, initiative, referendum or other challenge against the adoption, approval, implementation or development of the Revised Project including, but not limited to, any such action against: (a) any local, regional, state or federal permit or approval required for all or a portion of the Revised Project, including, but not limited to, any component infrastructure, services or facilities; (b) any environmental review document prepared under the California Environmental Quality Act or the National Environmental Policy Act to evaluate the environmental impacts of all or any portion of the Revised Project or any component infrastructure, services or facilities for the Revised Project; or (c) any action taken by Developer, City or any other person or entity to carry out all or a portion of the Revised Project or any component infrastructure, services or facilities for the Revised Project. The prohibitions on actions by Greenbelt in this **Section B.3** and in **Section B.2** above extend only to the use of Greenbelt's name and funds by any person, and to actions taken by Greenbelt, Greenbelt's staff or members of Greenbelt's Board of Directors acting on behalf of Greenbelt. Without limiting the foregoing, the prohibitions do not extend to Greenbelt's members acting individually or to its outside consultants Shute, Mihaly & Weinberger LLP, Terrell Watt or Jones & Stokes Associates, provided that Greenbelt shall ensure that these entities and individuals shall not use any work product developed on behalf of Greenbelt or in the course of representing or assisting Greenbelt in opposing the Revised Project, the UPA or this Agreement.

C. ADOPTION OF URBAN PLANNING AREA

1. ***Circulation of UPA Initiative Petition***. Following City Council's approval of the Revised Project, and at such time to ensure compliance with the timing requirements set forth below in this **Section C.1**, Greenbelt and Developer shall circulate for signature by eligible Vacaville voters an initiative petition for a UPA in accordance with sections 9200, *et seq.* of the California Elections Code and in such a manner as Greenbelt and Developer may agree. The legislation proposed in the UPA Petition shall be drafted by Developer in such form as may be agreed upon by Developer and Greenbelt, and shall be written to create a UPA substantially as

described on **Exhibit B** hereto, and as described in **Sections C.3** and **C.4** below, however, in no event shall the UPA boundaries set forth in the UPA Petition deviate from the boundary set forth in **Exhibit B** without prior written approval of City. The language of the UPA Petition, including the ordinance establishing the UPA, shall be approved in final form by Developer and Greenbelt prior to City's approval of the Revised Project. Such approval shall not be unreasonably withheld or withheld solely for purposes of delaying approval of the Revised Project. During the period prior to and during which the UPA Petition is circulating, Greenbelt and Developer shall publicly support and shall use all best efforts to obtain sufficient signatures to qualify the UPA Petition for action pursuant to California Elections Code sections 9200, *et seq.*, provided that: (i) Greenbelt shall publicly take the lead in this effort; and (ii) Developer shall pay for the services of a petition circulating firm selected by Developer in consultation with Greenbelt and other costs, including, but not limited to, printing, reproduction, and circulation of the UPA Petition, as such costs may be reasonably incurred or authorized by Developer. If Developer and Greenbelt are unable to collect sufficient signatures to qualify the UPA Petition for the ballot within 180 days of the filing of the notice of intent to circulate the UPA Petition and despite their best efforts, developer may elect to invoke the provisions of **Section D.3.a** below as if the UPA Petition had been submitted to, and disapproved by, the ballot. Upon the due collection of sufficient valid signatures to qualify the UPA Petition for action, Greenbelt and/or Developer shall present the UPA Petition as described in section 9208 of the California Elections Code; provided, however, that in no event shall the UPA Petition be presented for certification prior to the expiration of all periods for legal challenges against City's approval of the Revised Project or the successful defense by City and Developer of any and all such challenges, including any appeals deriving therefrom. If, at the conclusion of such defense, time has elapsed so that such signatures are no longer valid for presentation, the actions to circulate the UPA Petition and obtain sufficient signatures, as set forth in this **Section C.1** and in **Section C.2** below, shall be repeated by the Parties.

2. ***Support for UPA***. Upon presentation to City, Greenbelt and Developer shall publicly state their support for the UPA Petition and request City Council to adopt the UPA Petition as a City ordinance as more specifically described in section 9214(a) or 9215(a) of the California Elections Code. City Council agrees to act on the UPA Petition at the earliest

practicable time, but in no event later than the time required by the California Elections Code. Although nothing herein shall be intended to limit the discretion of City Council as to whether to adopt the UPA Petition directly or submit it to the ballot, Developer and Greenbelt acknowledge and agree that the purposes of this Agreement will best be satisfied through adoption of the UPA by City Council. In no event shall Developer, Greenbelt, or any entity that Greenbelt legally controls, initiate or otherwise carry out, encourage, aid or fund any opposition, litigation, initiative, referendum or other challenge against the adoption, approval or implementation of the UPA, provided that the UPA Petition is submitted as and in the manner described herein.

3. ***Description of Urban Planning Area.*** The UPA shall consist of a 20-year prohibition on any legislative action by City to rezone or redesignate for uses other than agricultural or open space uses any lands outside of the UPA as shown on **Exhibit B** attached hereto. The UPA Petition shall provide that, the UPA may be amended or revoked only by a majority vote of the persons registered and voting on the issue at an election in the City of Vacaville, except as amendment or revocation may be necessary to avoid a taking of real property without just compensation or as otherwise agreed by Developer and Greenbelt or described in the UPA Petition. In those areas located outside the UPA, all uses permitted in City's general plan and zoning ordinance on the date of the UPA's adoption or approved and existing on that date shall continue to be permitted, and in the event they are damaged or destroyed by natural disaster, fire or Act of God may be rebuilt and continued. New uses consistent with City's general plan and zoning ordinance as they exist on the date of the UPA's adoption or approval shall be permitted outside the UPA, as shall any infrastructure improvements necessary or appropriate to serve or protect existing uses and new permitted uses within the UPA, including but not limited to public facilities outside the UPA that support development elsewhere, such as stormwater detention basins, water tanks (reservoirs), sewer and water lines, and wastewater treatment plants, including but not limited to the further expansion beyond 15 million gallons per day of City's existing wastewater treatment plant to accommodate buildout of City's general plan. No provision of the UPA Petition shall address or affect any area within the UPA with respect to City's general plan, land use and development code or other City actions regarding land use regulation, development standards, construction of public improvements and facilities, or rate of growth. The UPA shall also provide that land identified

on **Exhibit B** as "Area A" shall remain zoned Hillside Agriculture as long as the UPA is in effect.

4. ***Additional Protection for Area Inside UPA but East of Leisure Town Road.*** The UPA ordinance shall include a new general plan goal requiring mitigation for any new urban development on lands inside the UPA but east of Leisure Town Road, between the Locke Paddon Colony area on the north and New Alamo Creek on the south, at the ratio of one (1) acre of land outside of the UPA but within one mile of the UPA, or within Pleasants Valley, Upper Lagoon Valley, or Vaca Valley, for every acre of land developed in the area east of Leisure Town Road described in this **Section C.4** or an equivalent in-lieu fee as determined by City in consultation with the Solano Land Trust (the "**City Requirement**"). If for any reason adequate land to meet the conservation goals described in this **Section C.4** cannot be identified or acquired, the City and Greenbelt shall agree to meet and confer with the Solano Land Trust, or another mutually agreeable land acquisition entity if the Solano Land Trust declines to participate, to identify other areas where conservation acquisitions can occur at a reasonable cost and in order to satisfy the conservation goals described in this **Section C.4**. The new general plan goal shall provide that lands acquired or fees collected pursuant to this **Section C.4** shall first be offered to the Solano Land Trust, and that acquisitions pursuant to this **Section C.4** be coordinated with the Solano Land Trust. If the Solano County Local Agency Formation Commission ("**LAFCO**") adopts an open space or agricultural land mitigation program applicable to the area defined in this **Section C.4**, lands defined herein shall be subject only to the requirements of the LAFCO mitigation program (the "**LAFCO Requirement**"), provided that if the City Requirement is greater than the LAFCO Requirement, the incremental difference between the two programs shall be imposed in addition to the LAFCO Requirement to the extent not preempted or otherwise prohibited by State law. To the extent the LAFCO Requirement and City Requirement overlap, development only shall be subject to the LAFCO Requirement.

5. ***Interim Land Protection if Revised Project is Challenged.*** If the Revised Project is challenged by a party other than one of the Parties in a manner resulting in a delay in the adoption of the UPA, the Parties shall use best efforts to ensure, pending resolution of the challenge and adoption of the UPA, that no new use that is not permitted in City's general plan and zoning ordinance as of the date this Agreement is executed is approved in the area outside

the UPA as described in **Exhibit B**. If City formally initiates action to approve or approves any such new use pending adoption of the UPA, then UPA shall be deemed "not adopted" for purposes of this Agreement, and no building permits for the Revised Project may be issued unless Greenbelt consents to the new use in writing. The obligations and requirements of this **Section C.5** shall not apply to any infrastructure improvements outside the UPA as described in **Exhibit B** that are necessary and appropriate to serve or protect existing uses and new permitted uses within the UPA, such as stormwater detention basins, water tanks (reservoirs), sewer and water lines, and wastewater treatment plants. Further, the obligations and requirements of this **Section C.5** shall terminate and shall become of no force or effect on the earlier of: (a) the adoption or approval of the UPA or the implementation of the provisions of **Sections D.2** or **D.3**, or (b) March 31, 2006.

D. RELATIONSHIP OF UPA AND REVISED PROJECT

The City shall not issue any grading or building permit for the Revised Project, except as provided in this **Section D**. Section D.1 shall govern in the event City Council adopts the UPA Petition and **Section D.3** shall govern in the event City Council submits the UPA Petition to the ballot. **Section D.2** shall govern in the event of a challenge to the UPA by a party other than one of the Parties, as further described below.

1. ***Basic Prohibition***. City shall not issue any grading or building permit for the Revised Project until the UPA Petition has been adopted by City Council and: (a) all challenge periods have expired without the filing against City, within ninety (90) days following adoption of the UPA, of a judicial challenge seeking to set aside or have declared invalid the UPA or, if such a challenge is so filed, the dismissal or defeat of such challenge and the unsuccessful exhaustion or waiver by the challenging party of any and all appeals to such dismissal or defeat; and (b) if the UPA is adopted by City Council and thereafter challenged by timely referendum, the certification of the election on such matter upholding the UPA. A challenge to the UPA that seeks or obtains only compensation for a taking of property shall not trigger this prohibition. The provisions of this **Section D.1** shall be incorporated into the conditions of approval of the Revised Project.

2. ***Insurance against Challenge to UPA***. Notwithstanding **Section D.1** above, if any challenge is filed by a party other than one of the Parties against the UPA that seeks to void or set aside the adoption of the UPA, City may nonetheless issue grading and building permits for the Revised Project, and Developer may proceed to develop the Revised Project, provided that Developer first deposits into an interest-bearing escrow account: (a) the amount of $2,000,000, and (b) a bond or letter of credit in the amount of $5,000,000 and reasonably acceptable to the Parties, which amounts shall be used for the permanent protection of Alternate Conservation Lands in the event the UPA ultimately is set aside. In addition, City shall establish, at Developer's request, a public financing (*e.g.*, CFD) or other mechanism to generate at least $5 million to be deposited into said escrow to replace the bond or letter of credit described above at the earliest practicable date. Such public financing mechanism shall be formed using Developer's lands and at Developer's sole cost and expense. If the UPA is ultimately upheld and all appeals thereon are exhausted or waived, then within fifteen (15) days following the entry of an order finally disposing of such challenge and expiration of the final appeal period without any appeal being timely and properly filed, any and all funds in the escrow account, together with any and all interest accrued thereon, shall immediately be returned to Developer. If the UPA is ultimately defeated and all appeals have been exhausted or waived, then within fifteen (15) days following the entry of an order finally disposing of such challenge and expiration of the final appeal period without an appeal being timely and properly filed, any and all funds in the escrow account, together with any and all interest accrued thereon, shall immediately be offered to the Solano Land Trust to be used exclusively for the permanent preservation of agricultural or open space property satisfying the criteria set forth in **Section D.4** below ("**Alternate Conservation Lands**"). Challenges against City Council's adoption of the UPA that allow Developer to trigger this provision include, but are not limited to, challenges alleging that City Council's adoption of the UPA is subject to referendum. The Parties agree to cooperate in good faith to defend against any challenge to the UPA, subject to the indemnification provisions set forth elsewhere in this Agreement. Developer agrees to pay one-half (50 %) of Greenbelt's reasonable costs and attorneys fees incurred in the event Greenbelt chooses to intervene to defend the UPA in any legal challenge against the UPA by a party other than one of the Parties that triggers this **Section D.2**.

3. ***UPA Submitted to Ballot; Alternate Conservation Mechanism.***

a. If City Council decides not to adopt the UPA in accordance with California Elections Code sections 9214(a) or 9215(a) and instead sets it for an election in accordance with California Elections Code sections 9214(b) or 9215(b), then City may not issue grading permits and Developer may not commence and conduct grading for the Revised Project until the UPA is upheld in the election or as otherwise set forth below. If the UPA is disapproved by the voters, City may issue any and all permits for the Revised Project, and Developer may proceed to develop the Revised Project in accordance with this Agreement, notwithstanding the provisions of **Section D.1**, only if Developer causes the permanent conservation by recording of an appropriate permanent deed restriction or conservation easement, in favor of and acceptable to City, the Solano Land Trust or some other agency or entity reasonably acceptable to Greenbelt, of 1,400 acres of Alternate Conservation Lands. The restriction(s) or easement(s) shall be drafted in consultation with the Solano Land Trust to ensure the permanent conservation of such land in agricultural or open space uses. Such Alternate Conservation Lands shall be conserved at the following rate: (a) at least 700 acres on or before the issuance of the first residential building permit for the Revised Project; (b) at least 1,150 acres on or before the issuance of the three-hundredth (300th) residential building permit for the Revised Project; and (c) at least 1,400 acres on or before the issuance of the six-hundredth (600th) residential building permit for the Revised Project. The deed restrictions and/or conservation easements shall be recorded in favor of the Solano Land Trust, or, if the Solano Land Trust declines to serve as the holding entity, by an alternative holding entity agreeable to Developer and Greenbelt, provided that agreement regarding an alternative entity shall not be unreasonably withheld or withheld for the purposes of delay. If the UPA is approved by voters but a legal challenge seeking to set it aside is subsequently filed by a party other than one of the Parties, then **Section D.2** shall apply.

b. ***Best Efforts for Approval on Ballot.*** If City Council decides not to adopt the UPA in accordance with California Elections Code sections 9214(a) or 9215(a) and instead sets it for an election in accordance with California Elections Code sections 9214(b) or 9215(b), Developer and Greenbelt shall use best efforts to ensure that the UPA is approved by the ballot. Notwithstanding the foregoing, it is the intent and strong desire of Developer and Greenbelt that the City Council adopt the UPA as it is specifically permitted to do under California Elections Code sections 9214(a) and 9215(a) in order to promote a speedy and complete resolution to the Litigation, allow the Revised Project to proceed in a timely and unimpeded manner consistent with the goals and objectives of this Agreement, and bring an end to the acrimony and use of resources associated with this Litigation and battles over growth in Vacaville more generally.

c. ***Further Incentive to Adopt UPA.*** If City Council adopts the UPA in accordance with California Elections Code sections 9214(a) or 9215(a), Greenbelt generally recognizes that it is appropriate for development to occur within the UPA that is consistent with City's General Plan and other applicable plans and ordinances. In particular Greenbelt recognizes that development that meets critical needs such as senior housing, housing affordable to low and very low income households, and military housing is appropriate within the UPA. Further, Greenbelt agrees that Greenbelt will actively support development proposals or projects inside the UPA that Greenbelt determines to be consistent with the endorsement criteria of Greenbelt's Compact Development Endorsement Program.

4. ***Identification of Alternate Conservation Lands.*** To qualify for treatment as Alternate Conservation Lands, a parcel of real property must either be: (a) located within Upper Lagoon Valley, Vaca Valley or Pleasants Valley; or (b) be located outside of the UPA and at least fifty percent (50%) (on an acreage basis) within one mile of the UPA and be comprised of lands of which at least fifty percent (50%) (on an acreage basis) either: (i) constitutes Prime Farmland (as designated by the State of California or Solano County pursuant to the State Farmland Mapping and Monitoring Program) or possesses a rating above 75 on the Storie index; (ii) possesses significant value as habitat for special status species as determined by a qualified

biologist reasonably acceptable to Developer and Greenbelt; (iii) holds significance for other open space purposes; (iv) is located contiguous with other lands previously acquired as Alternate Conservation Lands; or (v) serves as buffer lands for any lands meeting the foregoing criteria. Developer shall consult with and seek the concurrence of Greenbelt and City prior to acquiring any parcel intended by Developer to serve as Alternate Conservation Lands to discuss whether the proposed Alternate Conservation Lands satisfy the foregoing criteria. In the event of any dispute between Developer and Greenbelt as to whether a particular parcel of land qualifies as Alternate Conservation Lands, such dispute shall be decided (on either a pre-conservation or post-conservation basis) by the Solano Land Trust, or if Solano Land Trust declines to decide the dispute, another entity reasonably acceptable to Developer and Greenbelt. If for any reason adequate Alternate Conservation Lands cannot be identified or acquired, Developer and Greenbelt agree to meet and confer to identify other parcels that could be acquired at a reasonable cost and would satisfy the conservation goals described in this **Section D**.

E. SUBSTANTIVE REQUIREMENTS FOR REVISED PROJECT

1. ***In General.*** As described in **Sections B.1, B.2, B.3, C.1 and C.2** above, Greenbelt has agreed to allow the Revised Project to proceed without objection or challenge by Greenbelt or any entity it legally controls, provided the Revised Project is approved in a manner substantially consistent with the requirements of **Exhibit A** and the other terms and conditions of this Agreement, including this **Section E**, and the UPA is adopted as provided in **Section C** and/or the provisions of **Section D** are implemented. The Parties acknowledge and agree that the Revised Project has not been approved as of the date of this Agreement, nor has City committed to approve the Revised Project as of this date. Rather, the requirements set forth herein serve solely as conditions to Greenbelt's agreement not to challenge the Revised Project. The Parties may, from time to time, meet and confer as to alternatives or revisions to the Revised Project that would nonetheless meet Greenbelt's criteria for development projects and may be approved without objection or challenge by Greenbelt.

2. ***Limits on Residential Component of Revised Project.*** The Revised Project may include no more than 1,025 total residential dwelling units. The actual number of dwelling units allowed by City shall be determined through the vesting tentative map and planned development permit process. Assuming 1,025 units are approved (Greenbelt shall not oppose the approval of

all 1,025 dwelling units), this figure shall include approximately: (a) 850 market-rate single-family units (the "**Market-Rate Units**"), (b) 100 units reserved for persons 55 and older generally arranged in at least one separate, internally contiguous Senior Citizen Housing Development, and as otherwise defined in Civil Code section 51.3 (the "**Age-Restricted Units**"), (c) 75 units made affordable to persons of moderate income (the "**Affordable Units**"), and (d) a $1,000,000 contribution offered upon the issuance of the occupancy permit for the five-hundred twenty-fifth (525th) dwelling unit in the Revised Project to the Solano Land Trust for the purpose of acquiring or otherwise protecting open space and other lands in the Upper Lagoon Valley, Pleasants Valley and Vaca Valley areas (the "**Open Space Contribution**"), all as further described in **Section E.3** below and as otherwise required by applicable law, provided that parcels acquired or protected with the Open Space Contribution shall be selected in consultation with City. In the spirit of cooperation, City and Solano Land Trust shall endeavor to identify acquisition activities of mutual benefit, including acquisition of parcels that may serve, in whole or in part, as storm water detention facilities. City has identified approximately 50 acres within Upper Lagoon Valley, Vaca Valley and Pleasants Valley which are suitable for the construction of storm water detention facilities that are needed to alleviate downstream flooding. Generally, these lands are portions of larger parcels. Acquisitions, whereby Solano Land Trust uses funds identified in this **Section E.2** to effectively acquire the majority of the parcel and the City uses additional funds to effectively acquire the portion to be used for storm water detention purposes will help City adequately provide storm water management services to uses within the UPA. In the case of such acquisitions, City and Solano Land Trust shall jointly determine how to best carry out long term management of the parcel. If sufficient lands meeting the above criteria cannot be identified and protected, City and Solano Land Trust shall meet and confer to identify alternate lands to be protected using the Open Space Contribution. If Solano Land Trust declines to accept the Open Space Contribution and abide by the terms of this **Section E.2**, Greenbelt and Developer shall meet and confer to select an alternative recipient. All residential uses shall be located south of Lagoon Valley Road. All Age-Restricted Units and Affordable Units shall be deed-restricted as necessary for a period of not less than 30 years, or longer as required by state law, including, but not limited to, the State Density Bonus Law. The Parties agree that it best serves the interests of this Agreement that the full Open Space Contribution in the amount of $1,000,000 be maintained and ultimately offered to the Solano Land Trust. Notwithstanding the

foregoing, if the Revised Project is approved with fewer than 1,025 units, the distribution of units among Market-Rate Units, Age-Restricted Units and Affordable Units, and the amount of the Open Space Contribution, shall be adjusted proportionately with the reduction in the total number of units, and consistent with any applicable requirements and City conditions and approvals. Also notwithstanding the foregoing, if Developer is required to construct units on-site in the Revised Project for low or very low income persons for any reason, the Open Space Contribution shall be adjusted downward proportionately in relation to the number of on-site units for low or very low income persons, so that 75 such units would eliminate the Open Space Contribution entirely, and such units shall comply with the Design Guidelines applicable to the remainder of the Revised Project.

3. ***Age-Restricted and Affordable Units and Open Space Contribution***. The Age-Restricted Units shall be made available to persons qualifying pursuant to the standards set forth in California Civil Code section 51.3. The Affordable Units shall be offered at a sale price that makes them affordable to households earning 80 percent to 120 percent of the median household income for the Vallejo-Fairfield, California Metropolitan Statistical Area ("**AMI**") as of the last census year preceding the initial offering of the Affordable Unit or as otherwise required by applicable law, and shall be deed-restricted as affordable in that range, allowing for inflation in the AMI, for a period of not less than 30 years. Developer shall have the right to include mixed-use or other alternative product type(s) as all or part of the Affordable Units or the Age-Restricted Units, provided that all other criteria set forth in this Agreement are satisfied.

4. ***Limits on Business Village in Revised Project***. The business village portion of the Revised Project (the "**Business Village**") shall be located entirely south of Lagoon Valley Road as shown on **Exhibit A** and except as otherwise provided in this Agreement. To substantially reduce traffic impacts versus the 2004 Approvals, the commercial portion of the Business Village shall be not more than approximately 54 acres as generally shown on **Exhibit A.** The approximate amount of development allowed in conjunction with the Business Village shall be: 700,000 square feet of usable space, an 11-acre mixed use town center (the "**Town Center**") with residential uses as described in **Section E.2** above, up to 50,000 square feet of neighborhood-serving retail space, a 1.5-acre fire station, and a nine-acre village green developed as a public park with a multi-purpose play field (the "**Village Green**"). Permitted

uses of Business Village overall shall generally include residential and office uses, and shall generally exclude drive-throughs, retail and similar uses, except that retail uses shall be permitted in the Town Center. "Big Box" retail, as defined in Government Code section 53084, shall be prohibited entirely in the Business Village (including in the Town Center). Permitted retail uses in the Town Center shall include, but not be limited to, restaurants, specialty foods, child care, artist/graphic supplies, printing, photography, overnight postal services, retail U.S. post office, video, take-out food, dry clean drop off, music retail, bookstores, galleries, clothing, grocery, optometry, and fitness center. Other uses not specifically listed in this **Section E.4** as prohibited may be permitted or conditionally permitted at the discretion of the Director of Community Development or his designee, provided that such uses are consistent with City's general plan and zoning ordinance.

5. ***Implement Transportation Mitigation Measures.*** All occupants of the Business Village shall be required to implement TSM programs and other traffic mitigation programs as set forth in the EIR. Such mitigation programs shall be conditions of approval of the Revised Project. This requirement shall not apply to occupants of the Town Center, or to occupants of the Business Village occupying less than 25,000 gross square feet.

6. ***Portion to Remain as Open Space.*** Overall, a minimum of approximately eighty percent (80%) of the Specific Plan Area shall be zoned and designated for park, open space, recreational, or agricultural uses, as shown on **Exhibit A**, or if already so designated or zoned shall not be redesignated or rezoned to an urban use. Approximately 35 percent of the Revised Project is proposed for an area that is already developed with the Hines Nursery use.

7. ***Disposition and Development North of Lagoon Valley Road.*** As a condition of approval of the Revised Project, and as otherwise set forth below, property north of Lagoon Valley Road and generally west of Lagoon Valley Lake shall be disposed of or developed substantially as follows.

a. ***Mitigation and Open Space Parcel.*** Upon issuance of the first final map for the Revised Project, Developer shall dedicate to City those certain approximately 71 acres located immediately north of Lagoon Valley Road and designated in the Policy Plan for Office/Business Park and Highway Commercial uses and as more

particularly shown on **Exhibit A** (the "**Dedicated Area**"). The Dedicated Area shall be used as follows. Developer may use as much of the Dedicated Area as may be necessary for wetland and habitat mitigation for the Revised Project as such mitigation may be required by City or any state or federal agency as a condition of any approval required for the Revised Project. Developer shall propose to the appropriate agencies the additional wetland restoration mitigation measures and other measures to mitigate impacts on biological resources identified by Jones & Stokes in its review of the Specific Plan Area and shall implement those measures as approved by such agency(ies) in addition to any mitigation measures required by the agency(ies) and to the greatest extent practicable. City shall grant Developer a license to enter and work on the Dedicated Area for this purpose if such mitigation is not completed before the dedication of the Dedicated Area to City occurs. The remainder of the Dedicated Area not used for mitigation shall be used by City only for open space or recreational uses or the expansion of Lagoon Valley Park, provided that the precise uses of the Dedicated Area shall be determined by City through its anticipated master plan process for Lagoon Valley Park, and provided that City shall explore further potential wetland restoration opportunities on the Dedicated Area as part of that process.

b. ***Church Parcel***. The Parties acknowledge and agree that a church and ancillary uses, including, but not limited to a Church-related school, shall be permitted on the approximately 17.5 acre site north of Lagoon Valley Road as shown on **Exhibit A** (the "**Church Parcel**"); provided, however, that development of the church and ancillary facilities shall be subject to: (a) City's planning and approval processes, and shall include setbacks and other design considerations for viewshed protection, and (b) a deed restriction prohibiting any use on the Church Parcel that would not be permitted in the Business Village, as such uses are described in **Section E.4** above.

8. ***Park and Open Space Contribution and Fee Credits***. As a condition of approval of the Revised Project, Developer shall contribute $4,500,000 toward park and lake

improvements in Lagoon Valley Park as may be specified in City's park master plan process. In exchange for its dedication to City of the property described in **Section E.7** above, Developer shall receive from City park fee credits in the amount of $2,000,000, which park fees may have otherwise been expended by City for park facilities in other areas within its municipal boundaries and the benefits of which, pursuant to this Agreement, will remain in the Lower Lagoon Valley. In addition, City shall give Developer park fee credits of $800,000 to acquire and improve the Village Green substantially as shown on **Exhibit A**.

9. ***Further Wetland or Riparian Avoidance***. Developer shall endeavor in good faith to implement further (as compared with the 2004 Approvals) avoidance of wetland or riparian resources in the existing man-made riparian corridor within the proposed golf course between Villages 1 and 2, as shown on **Exhibit A**.

10. ***Landscape Buffers***. The Revised Project shall include landscape buffers of at least 150 feet in width along the north edge of the development area, between the development area and Lagoon Valley Park, as shown on **Exhibit A**. In addition, the existing trees along Lagoon Valley Road shall be retained in a median within the new Lagoon Valley Road, except as may be required by public health and safety concerns. The intent of these buffers is to create a visual barrier between the park and the development area. Additional steps will be taken as necessary and as practical to accomplish this goal.

11. ***Additional Developer Commitments***. Developer covenants to City that it will comply with the following in the design and development of the Revised Project, provided that such actions shall not be conditions precedent to Greenbelt's dismissal of the Writ Petition or Greenbelt's support for the Agreement.

a. ***Implementation of Development Agreement Obligations, Design Guidelines and Specific Plan Requirements***. The Revised Project shall incorporate and abide by: (i) the Development Impact Fees as shown on **Exhibit C** hereto, (ii) the Service District and Community Association Cost Allocation obligations shown on **Exhibit D** hereto, (iii) all provisions of the 2004 Development Agreement ("2004 DA") not in conflict with this Agreement, including, but not limited to, Sections 4 and 5 thereto and as more particularly reflected in an agreement to be

subsequently executed between Developer and City (the "**Obligations Agreement**"), whether or not City's original approval of the 2004 DA is expressly or impliedly repealed, (iv) the Design Guidelines, whether or not City's original approval thereof is expressly or impliedly repealed, and (v) the substantive requirements reflected in the Specific Plan, whether or not City's original approval thereof is expressly or impliedly repealed, including, but not limited to, pedestrian-friendly design of street sections, all as practicable and subject to the limitations set forth in **Section E.11.b** below, **Exhibits C** and **D**, and the Obligations Agreement, and to any administrative modifications necessary to ensure consistency with the Revised Project, unless Developer and City agree that such provision(s) is/are inconsistent with the 1990 Policy Plan, the applicable general plan, or inappropriate for the Revised Project. The Obligations Agreement shall be attached hereto as **Exhibit E** and shall contain only those provisions of the 2004 DA that Developer and City agree are necessary to implement the Revised Project as described in this Agreement and **Exhibit A** hereto, and subject to all rights and obligations of the Parties as set forth in this Agreement. The Obligations Agreement shall not contain any provision that conflicts with this Agreement. To the extent it contains any such provision, such provision shall be null and void and this Agreement shall control. Greenbelt shall have the right to review and approve the Obligations Agreement as to its consistency with this Agreement. Such approval shall not be unreasonably withheld or withheld for purposes of delay. The Obligations Agreement shall be executed before City's final approval of the Revised Project. The Obligations Agreement shall not be considered a legislative approval for the purposes of this Agreement, including, but not limited to, **Section B.2**.

b. ***Public Benefits***. In addition to and as modified by **Exhibit C**, **Exhibit D** and the Obligations Agreement, the Revised Project shall be subject to conditions of approval including, but not limited to, the following:

i. the Community Benefit Contribution ("CBC") in the 2004 DA is reduced to $7,500,000, which amount includes $3,000,000 for fire station and fire equipment as further described in the 2004 DA;

ii. no payment will be made for any school construction to City and no school shall be required as part of the Revised Project;

iii. the contribution toward Educational Facilities shall be as specified in **Exhibit C**;

iv. traffic impact fee, general facilities, and police fee shall be as specified in **Exhibit C**;

v. fire station levies for annual operations shall be as specified in **Exhibit D**;

vi. Police Services levies for annual operations shall be as specified in **Exhibit D**; and

vii. Lagoon Valley Park Maintenance levies for annual operations shall be as specified in **Exhibit D**.

c. ***Covenants, Conditions and Restrictions***. Prior to City approval of the Revised Project, Developer shall submit to the City proposed conditions, covenants and restrictions ("**CC&Rs**") for City's review and approval. City shall not be a party to said CC&Rs.

12. ***Minor Variations Permitted***. Minor variations in the Revised Project from that shown in **Exhibit A** and described in this Agreement or from that ultimately approved by City may be permitted by the Director of Community Development or his designee, provided that such variations shall not otherwise conflict with the express provisions of this Agreement and

shall not result in substantially greater impacts to biological or visual resources or a substantial increase in traffic as compared to the Revised Project shown on **Exhibit A**.

13. ***Future Agreements***. Developer and City may enter into subsequent memoranda or agreements further specifying the terms for development of the Revised Project, including, but not limited to any adjustments to **Exhibit C**, **Exhibit D** or the Obligations Agreement, that may be necessary in the event the Revised Project is reduced or altered substantially before approval.

F. MISCELLANEOUS RIGHTS AND OBLIGATIONS

1. ***Payment of Attorney Fees and Costs***. Within thirty (30) days following the dismissal of the Writ Petition as described in **Section A.2** above, Developer shall pay to Greenbelt the amount of Greenbelt's reasonable attorneys fees and costs in connection with the settlement of the Litigation, provided that such payment shall not exceed $100,000. In addition, to the extent Developer has not already paid such costs, Developer shall: (a) pay to Greenbelt, or Jones & Stokes Associates up to $7,000, which amount represents certain costs incurred by Greenbelt in its review of the biological condition of Lower Lagoon Valley during the course of settlement negotiations, and (b) pay up to $17,000 to cover fees and costs incurred by Shute, Mihaly & Weinberger in reviewing the UPA Petition.

2. ***Sole and Final Agreement***. Except as otherwise specifically provided herein, this Agreement (including the documents attached as exhibits hereto) is intended to be and is the final expression of the agreement between the Parties with respect to the settlement of the Litigation, and is intended as and is the complete, exclusive and entire statement of the terms of the settlement by and between the Parties. As such, this Agreement supersedes and fully and completely extinguishes any prior understandings or agreements by or between the Parties with respect to the settlement of the Litigation, whether oral or written, express or implied.

3. ***Indemnity***. Developer agrees to indemnify, hold harmless and defend, with counsel acceptable to City, City, its officers, officials, employees and agents from and against any and all claims, actions, causes of action, or demands, made, presented, alleged, asserted, instituted or brought by any assigns or affiliates of or successors in interest to Developer, or by any third party, to overturn, reject, set aside, modify, strike or void any portion of this Agreement

or any of the commitments or obligations made or assumed herein, or actions taken as a result of this Agreement. Additionally, Developer agrees to honor and fulfill the commitments to the City set forth in **Sections E.8. and E.11** of this Agreement, to the extent any legal challenge to those subsections by any assign, affiliate or successor in interest of Developer is ultimately successful and to the extent Developer is able given then-current land ownership and other applicable factors, provided that cost or other financial concerns shall not constitute "other applicable factors" for the purposes of this **Section F.3**.

4. ***Warranty of Authority***. By executing this Agreement, each of the undersigned covenants, warrants, and represents that he, she or it is fully authorized to enter into this Agreement.

5. ***Mutual Cooperation***. Each of the Parties shall execute and deliver to the others all such other further instruments and documents, and take all other such actions, as may be reasonably necessary to carry out the terms and provisions of this Agreement and secure to the others the full and complete enjoyment of their respective rights and privileges hereunder. The Parties agree not to take positions inconsistent with the terms of this Agreement and to exercise care in raising issues that may be contentious by first attempting to meet and resolve such issues with the others in good faith.

6. ***Changes in State Law***. In the event legislation is adopted in the State of California requiring the mitigation of impacts on agricultural land (*i.e.*, through the payment of fees, the acquisition of fee title to or conservation easement covering agricultural land, or some other mechanism) in connection with the development of real property, and such legislation applies to the Project, Greenbelt agrees to meet and confer with Developer and City regarding means by which Developer's obligations hereunder may be deemed to satisfy the requirements of such legislation in whole or in part.

7. ***Notices***. Except as otherwise specifically set forth herein, all notices or other communications specifically required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by certified mail, return receipt requested and postage prepaid, or sent by reputable overnight courier (such as Federal Express), or by telefacsimile or electronic mail with copies sent by overnight courier or U.S. Postal Service the following day, to

the addresses or telefacsimile numbers set forth below. Any party may at any time change its address or telefacsimile number for the delivery of notice upon five (5) days' written notice to the Parties.

GREENBELT ALLIANCE
631 Howard Street, Suite 510
San Francisco, California 94105
c/o Jeremy Madsen
Telephone: (415) 543-6771
Telefacsimile: (415) 543-6781

with a copy to:

M.R. Wolfe and Associates
140 Second Street, Sixth Floor
San Francisco, California 94105
Telephone: (415) 369-9400
Telefacsimile: (415) 369-9405

CITY OF VACAVILLE
650 Merchant Street
Vacaville, California 95688
c/o Director of Community Development
Telephone: (707) 449-5140
Telefacsimile: (707) 449-5423

with a copy to:

Vacaville City Attorney
650 Merchant Street
Vacaville, California 95688
Telephone: (707) 449-5105
Telefacsimile: (707) 449-5149

TRIAD COMMUNITIES, LP
1095 Hiddenbrooke Parkway
Vallejo, California 94591
c/o Curt Johansen
Telephone: (707) 557-1184
Telefacsimile: (707) 557-1187

with a copy to:

R. Clark Morrison, Esq.
Morrison & Foerster LLP
101 Ygnacio Valley Rd., Suite 450
Walnut Creek, California 94596
Telephone: (925) 295-3317
Telefacsimile: (925) 946-9912

8. ***Execution in Counterparts.*** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Furthermore, this Agreement may be executed and delivered by the exchange of electronic facsimile copies or counterparts of the signed documents, which facsimile copies or counterparts shall be binding upon the Parties.

9. ***Time of the Essence.*** Time is of the essence in the implementation of this Agreement.

10. ***Interpretation; Governing Law; Venue.*** This Agreement shall be interpreted, and the rights and the duties of the Parties shall be determined, in accordance with the laws of the State of California, as applied to contracts entered into and performed (or capable of performance) in California by California persons or entities. In the event that suit shall be brought by any party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of California, County of Solano or, where otherwise appropriate, exclusively in the United States District Court, Eastern District of California, Sacramento, California.

11. ***Headings; Cross-References; Exhibits.*** The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All cross-references in this Agreement, unless specifically directed to another agreement or document, shall refer to provisions in this Agreement and shall not be deemed to be references to any other agreements or documents. Each of the exhibits attached to this Agreement is hereby incorporated into this Agreement by this reference as if fully set forth herein.

12. ***No Duress.*** This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part of, or on behalf of, any of them. Each of the

Parties to this Agreement has read and full understands the meaning of each provision of this Agreement and has relied on the independent advice and representation of legal counsel in entering into this Agreement.

13. ***Successors and Assigns***. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties and, with respect to Triad only, their respective successors and assigns. Triad's rights and obligations hereunder shall be deemed to run with the land. Greenbelt's rights and obligations hereunder may not be assigned.

14. ***Construction***. This Agreement has been reviewed by legal counsel for all Parties, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or application of this Agreement.

15. ***Equitable Relief and Attorneys Fees in the Event of Challenges to this Agreement by the Parties***. Because the amount of damages in the event of a breach of this Agreement may be difficult or impossible to determine, the obligations of the Parties shall be enforceable by specific performance or other equitable relief, in addition to any other available remedy. If any legal action, arbitration or other proceeding is brought by any of the Parties to enforce, challenge or interpret any provision of this Agreement, the prevailing party shall, to the extent permissible by law, be entitled to reasonable attorneys fees and costs incurred therein, in addition to any other relief in law or equity to which the party may be entitled, provided that this attorneys fee provision shall not apply to City.

16. ***Denial of Wrongdoing and Liability***. Neither the negotiation of this Agreement, nor any action taken to carry out this Agreement, is or may be construed or used as an admission or concession by or against any Party of any fault, wrongdoing or liability whatsoever.

17. ***Recordation of Agreement.*** Once fully executed and approved, this Agreement shall be recorded against all property within the Specific Plan Area owned by Developer or City and as either entity subsequently acquires any additional such property it shall record this Agreement against such property. The obligations set forth in this Agreement shall terminate upon the purchase of individual residential lots to persons for the construction or occupancy of a single residential home as such obligations apply to the purchased lot only.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date hereinabove written.

Dated: December __, 2004	**GREENBELT ALLIANCE** By: _____ Name: Tom Steinbach Title: Executive Director
Dated: December 8, 2004	**CITY OF VACAVILLE** By: _____ Name: Leonard J. Augustine Title: Mayor
Dated: December 7, 2004	**CITY OF VACAVILLE** Approved as to form: By: _____ ~~Gerald L. Hobrecht~~ MELINDA C. H. STEWART Assistant City Attorney
Dated: December __, 2004	**TRIAD COMMUNITIES, LP,** a California limited partnership By: _____ (Print Name): _____ Title: _____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date hereinabove written.

Dated: December 2, 2004	**GREENBELT ALLIANCE** By: _____ Name: Tom Steinbach Title: Executive Director
Dated: December __, 2004	**CITY OF VACAVILLE** By: _____ Name: Leonard J. Augustine Title: Mayor
Dated: December __, 2004	**CITY OF VACAVILLE** Approved as to form: By: _____ Gerald L. Hobrecht City Attorney
Dated: December __, 2004	**TRIAD COMMUNITIES, LP,** a California limited partnership By: _____ (Print Name): _____ Title: _____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date hereinabove written.

Dated: December __, 2004	**GREENBELT ALLIANCE** By: _____ Name: Tom Steinbach Title: Executive Director
Dated: December __, 2004	**CITY OF VACAVILLE** By: _____ Name: Leonard J. Augustine Title: Mayor
Dated: December __, 2004	**CITY OF VACAVILLE** Approved as to form: By: _____ Gerald L. Hobrecht City Attorney
Dated: December 2, 2004	**TRIAD COMMUNITIES, LP,** a California limited partnership By: _____ (Print Name): Curtis G. Johansen Title: Executive Vice-President

Exhibit A

Revised Project

EXHIBIT A – REVISED PROJECT

LOT MIX

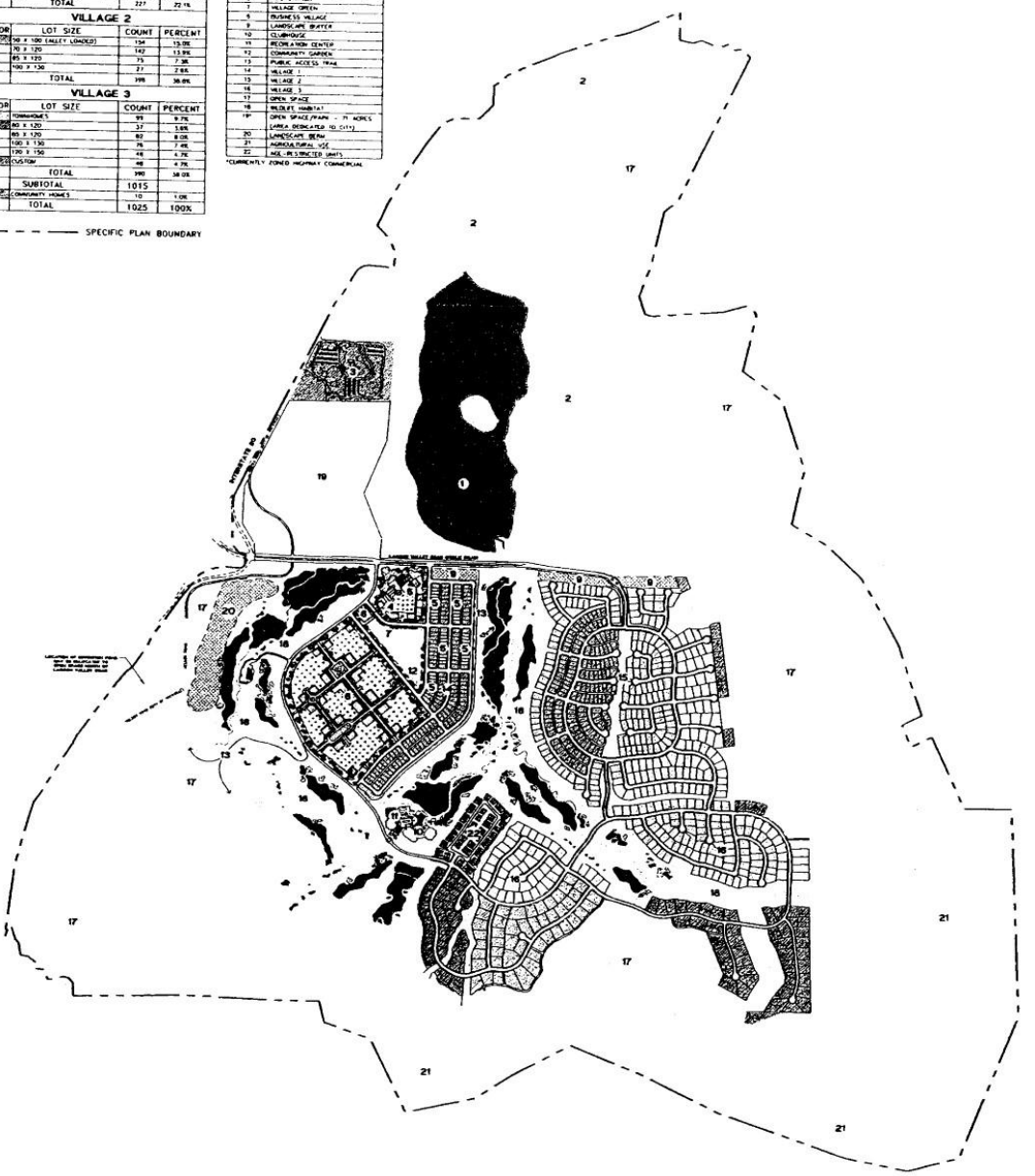
COLOR	LOT SIZE	COUNT	PERCENT
VILLAGE 1			
	40 x 100 (ALLEY LOADED)	33	3.2%
	40 x 100 (ALLEY) AFFORDABLE	24	2.3%
	50 x 100 (ALLEY LOADED)	119	11.6%
	TOWN CENTER AFFORDABLE UNITS	51	5.0%
	TOTAL	227	22.1%
VILLAGE 2			
	50 x 100 (ALLEY LOADED)	154	15.0%
	70 x 120	142	13.9%
	85 x 120	75	7.3%
	100 x 130	27	2.6%
	TOTAL	398	38.8%
VILLAGE 3			
	TOWNHOMES	99	9.7%
	80 x 120	37	3.6%
	85 x 120	82	8.0%
	100 x 130	76	7.4%
	120 x 150	48	4.7%
	CUSTOM	48	4.7%
	TOTAL	390	38.0%
	SUBTOTAL	1015	
	COMMUNITY HOMES	10	1.0%
	TOTAL	1025	100%

— — — — SPECIFIC PLAN BOUNDARY

LAND USE TABLE

NUMBER	DESIGNATION
1	LAGOON VALLEY LAKE
2	LAGOON VALLEY REGIONAL PARK
3	CHURCH (PARCEL)
4	MIXED USE TOWN CENTER
5	AFF(ORDABLE HOUSING)
6	FIRE STATION
7	VILLAGE GREEN
8	BUSINESS VILLAGE
9	LANDSCAPE BUFFER
10	CLUBHOUSE
11	RECREATION CENTER
12	COMMUNITY GARDEN
13	PUBLIC ACCESS TRAIL
14	VILLAGE 1
15	VILLAGE 2
16	VILLAGE 3
17	OPEN SPACE
18	WILDLIFE HABITAT
19*	OPEN SPACE/PARK – 71 ACRES (AREA DEDICATED TO CITY)
20	LANDSCAPE BERM
21	AGRICULTURAL USE
22	AGE-RESTRICTED UNITS

*CURRENTLY ZONED HIGHWAY COMMERCIAL



LAGOON VALLEY

ALTERNATE VTM/SETTLEMENT PLAN

CITY OF VACAVILLE SOLANO COUNTY CALIFORNIA

Exhibit B

Urban Planning Area

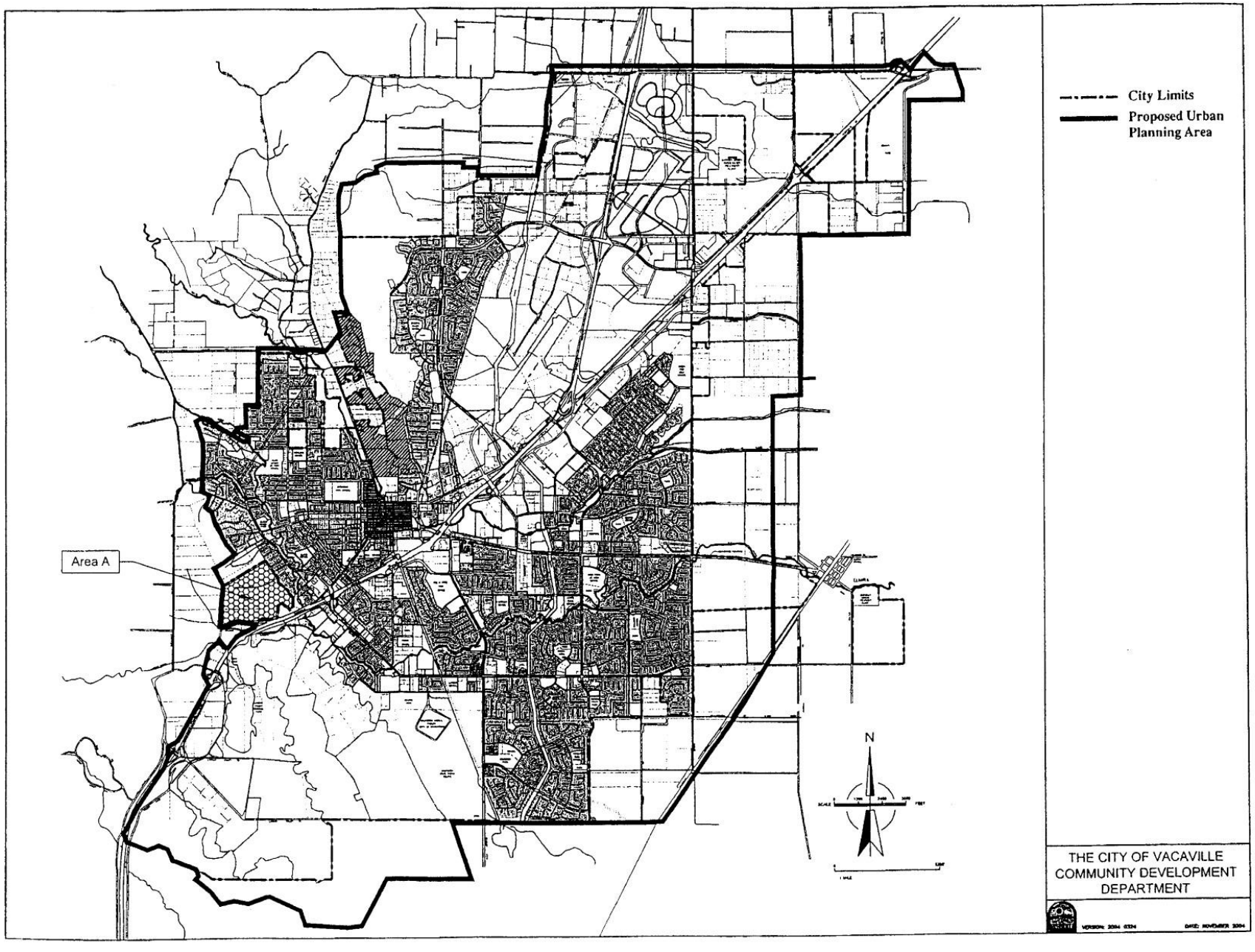

City Limits
Proposed Urban Planning Area
Area A
N
THE CITY OF VACAVILLE
COMMUNITY DEVELOPMENT
DEPARTMENT

Exhibit C

Fee Obligations of Developer Upon Approval of Revised Project

FEE PER DWELLING UNIT				
Fee Type	Standard	Senior	Townhouse	Comments
Water Connection	$ 6,136	$ 6,136	$ 6,136	
Sewer Connection	$ 8,501	$ 8,501	$ 8,501	Fee varies by number of bedrooms; assumes 4-bedroom house
Park & Recreation	$ 3,207	$ 2,206	$ 2,206	See note below
Greenbelt	$ -	$ -	$ -	No fee due to open space dedication. Fee credit due per Settlement Agreement.
General Facilities	$ 543	$ 336	$ 336	
Police	$ 548	$ 477	$ 477	
Fire	$ -	$ -	$ -	No fee due to developer construction of fire station
Traffic	$ 7,020	$ 4,914	$ 4,352	
Drainage Detention	$ -	$ -	$ -	No fee due to developer construction of detention basins
Drainage Conveyance	$ 139	$ 139	$ 139	
County	$ 4,720	$ 4,720	$ 4,466	
School	$ 10,800	$ 660	$ 10,800	Assumes average 2,000 square foot house for senior units
Total	$ 41,614	$ 28,089	$ 37,413	

Note: This is a fee estimate based on the assumptions noted above. City Council periodically adjusts the amount and type of development impact fees. In accordance with the Vacaville Municipal Code, developer shall pay those fees in effect at the time of building permit issuance.

Fee credit shall be given for improvements to Village Green, assuming it is built as a public park. Amount of the fee credit to be determined.

Exhibit D

Service District and Community Association Cost Allocation Upon Approval of the Revised Project

Annual Payment	*Description (at build-out)*	*Residential (1,025 units) (per unit/month)*	*Commercial (54 acres) (per month)*
$1,000,000	1) Public Safety District	$65.04	$16,667
$550,000	a) Fire Protection Services	$35.77	$9,167
	b) Police Protection Services		
$250,000	2) Park/Open Space District	$16.26	$4,167
	(assumes 25% expense offset from user fees)		
$792,234	3) Master Community Association*	$16.80	$11,705
	a) Arterial Landscape and Lighting	$16.80	
	b) Street Maintenance (private)	$6.46	
	c) Surface Drainage (all underground utilities - public)	$5.60	
	d) Neighborhood Parks	$5.86	
	e) Pena Adobe Pump Station (if constructed)		$1,500
$1,550,567	4) Village Community Association)*	$111.06	
	a) Village I (227 homes x $64.00 x 12 = $174,336)		
	i) Streets, Lighting and Landscaping		
	b) Village II (398 homes x $102.54 x 12 = $489,731)		
	i) Streets, Lighting and Landscaping		
	c) Village III (390 homes x $150.00 x 12 = $702,000)		
	i) Largest Lots including Streets, Lighting and Landscaping		
	d) Community Center (1025 homes x $15.00 x 12 = $184,500)	$15.00	
$4,142,801	**Total**	$294.65	$43,206

* **NOTE:** Items 3 and 4 above are for informational purposes only. The City of Vacaville shall not be a party to the Community Association nor shall it have any power or obligation to enforce the rules and restrictions that may be approved or adopted by the Community Association.

Exhibit E

Obligations Agreement

Agenda Item No. 9a
December 7, 2004

MEMO TO: Honorable Mayor and City Council Members
Attn: David J. Van Kirk, City Manager

FROM: Ronald R. Rowland, Deputy City Manager/Director of Community Development
Melinda C. H. Stewart, Assistant City Attorney

SUBJECT: CONSIDERATION OF ALTERNATIVES REGARDING SETTLEMENT OF LAGOON VALLEY LITIGATION AND MARCH 8, 2005 REFERENDA ELECTION:

ALTERNATIVE 1:

1. APPROVE AGREEMENT TO SETTLE LITIGATION REGARDING LOWER LAGOON VALLEY; AND

2. INTRODUCE AND ADOPT URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE REPEALING ORDINANCE NO. 1718 RELATING TO ADOPTION OF THE LOWER LAGOON VALLEY SPECIFIC PLAN; AND

3. APPROVE RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VACAVILLE:

   A. REPEALING PARAGRAPH 2 OF RESOLUTION NO. 2004-49 RELATING TO APPROVAL OF GENERAL PLAN AMENDMENTS, WITH A SPECIAL PERFORMANCE OPTION, TO THE LAND USE ELEMENT, PARKS AND RECREATION ELEMENT, PUBLIC FACILITIES, INSTITUTIONS AND UTILITIES ELEMENT OF THE CITY OF VACAVILLE'S GENERAL PLAN RELATED TO THE LOWER LAGOON VALLEY SPECIFIC PLAN PROJECT PROPOSAL;

   B. WITHDRAWING THE ORDERS SETTING THE MARCH 8, 2005 SPECIAL ELECTION;

   C. REPEALING RESOLUTION NO. 2004-74 AND RESOLUTION NO. 2004-80 CALLING AND GIVING NOTICE OF A SPECIAL ELECTION TO BE HELD ON MARCH 8, 2005; AND

   D. AUTHORIZING THE CITY CLERK OR HER/HIS DULY AUTHORIZED OFFICERS AND AGENTS TO CARRY OUT ALL NECESSARY PROCEDURES TO CANCEL THE MARCH 8, 2005 SPECIAL ELECTION

ALTERNATIVE 2:

1. DISAPPROVAL OF THE SETTLEMENT AGREEMENT; AND

2. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VACAVILLE APPROVING THE BALLOT MEASURE LANGUAGE FOR THE LOWER LAGOON VALLEY GENERAL PLAN AMENDMENTS AND SPECIFIC PLAN REFERENDA MEASURES

ALTERNATIVE 3:

1. CONTINUE DELIBERATION REGARDING THE SETTLEMENT AGREEMENT; AND

2. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VACAVILLE AMENDING RESOLUTION NO. 2004-74 POSTPONING THE SPECIAL ELECTION DATE FROM MARCH 8, 2005 TO JUNE 7, 2005 REGARDING THE REFERENDUM MEASURE TO APPROVE AMENDMENTS TO THE CITY OF VACAVILLE'S GENERAL PLAN RELATED TO THE LOWER LAGOON VALLEY SPECIFIC PLAN PROJECT APPROVAL

3. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VACAVILLE AMENDING RESOLUTION NO. 2004-80 POSTPONING THE SPECIAL ELECTION DATE FROM MARCH 8, 2005 TO JUNE 7, 2005 REGARDING THE REFERENDUM MEASURE TO APPROVE THE ORDINANCE APPROVING THE LOWER LAGOON VALLEY SPECIFIC PLAN

4. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VACAVILLE APPROVING THE BALLOT MEASURE LANGUAGE FOR THE LOWER LAGOON VALLEY GENERAL PLAN AMENDMENTS AND SPECIFIC PLAN REFERENDA MEASURES

DISCUSSION:

During June, 2004, the City Council granted certain planning approvals to Triad Communities, Inc. ("Triad") regarding development in Lower Lagoon Valley. Those approvals included General Plan amendments, Specific Plan, Development Agreement and Design Standards ("June 2004 approvals"). The June 2004 approvals would allow development of 1,325 dwelling units, an 18-hole golf course, and one million square feet of office development. At that same time, the City Council also certified an Environmental Impact Report regarding the project.

In July, 2004, Greenbelt Alliance ("Greenbelt") filed a lawsuit, alleging that: (1) the Environmental Impact Report ("EIR") certified by the City did not comply with the California Environmental Quality Act and (2) City's planning approvals were not consistent with State Planning and Zoning Law and the City's Land Use and Development Code. Greenbelt is seeking a court order setting aside the EIR certification and related permits and project approvals including the General Plan amendment, zoning changes, the development agreement and specific plan.

Additionally, in June, 2004, the Friends of Lagoon Valley circulated two referenda petitions challenging certain of the June 2004 approvals. One petition challenges the General Plan amendment and the other petition challenges the Specific Plan approval. A sufficient number of valid signatures were collected for each petition to qualify the referenda for an election. The City Council has set March 8, 2005 as the date for the election on the referenda. If the referenda are successful, the June 2004 approvals would be nullified. However, the existing zoning and General Plan designations for Lower Lagoon Valley would remain in effect. Triad would have the right to develop the property consistent with the 1990 Policy Plan.

Settlement Summary

As a result of the lawsuit, Greenbelt, Triad and the City have engaged in significant and exhaustive discussions attempting to address and resolve Greenbelt's concerns regarding development in Lower Lagoon Valley. The result of the negotiations is a proposed Settlement Agreement. A summary of the key points of the Settlement Agreement include the following:

- Greenbelt dismisses the litigation.
- City repeals specific items of the June 2004 approvals.
- Greenbelt and Triad circulate an initiative petition to adopt an ordinance establishing an Urban Planning Area. This would define where urban development could occur for the next 20 years.
- If the Urban Planning Area ordinance is not adopted, Triad would be obligated to acquire 1400 acres to conserve as permanent agricultural land.
- Triad agrees to revise the Project as follows:
    - 71 acres between Lagoon Valley Lake and I-80, currently zoned for highway commercial development, would be dedicated as open space and included as part of the park.
    - Amount of residential development would decrease from 1325 to 1025 dwelling units.
    - There would be a component of senior housing (100 dwelling units) and affordable housing (75 units).
    - The amount of office development would decrease from 1,000,000 square feet to 700,000 square feet of floor area.
    - Prohibition on "big box" retail development.
    - Elementary school site would be eliminated; due to the revisions in the Project there would be substantially fewer students.
- Triad agrees to provide certain public benefits to the City, including $4.5 million payment for Lagoon Valley Park improvements, $3 million payment for a new fire station and equipment, payment of ongoing police ($550,000/year) and fire ($1 million/year) services, payment for maintenance of Lagoon Valley Park ($250,000/year).

The proposed Settlement Agreement has been signed by Triad and Greenbelt Alliance.

Evaluation of Options

This agenda item has been structured to provide the City Council with three options:

1. Approve the Settlement Agreement, Repeal Specific June 2004 Approvals, and Cancel the March 8, 2005 Special Election

The City Council may decide to approve the proposed Settlement Agreement. As part of this action, the City Council would repeal its June 2004 approvals of the General Plan amendment and Specific Plan. This would mean that the referenda election would be cancelled. At a later meeting, the City Council would repeal its approval of the June 2004 Development Agreement. Triad would move forward in the planning process with the Revised Project, consistent with the 1990 Policy Plan for Lower Lagoon Valley. Triad has submitted an application to the City for development of Lower Lagoon Valley subject to the 1990 Policy Plan. That application would be amended such that it is consistent with the description in the Settlement Agreement. Public hearings by the Planning Commission and City Council are expected to occur early in 2005.

Staff recommends that the City Council select this option and approve the Settlement Agreement. The benefits of the Settlement Agreement are as follows:

- The Revised Project would achieve the City Council's planning goals for development in Lower Lagoon Valley, including executive housing, championship-style golf course, and high-quality business park.
- The Agreement provides for substantial financial benefits to the City including $4.5 million for Lagoon Valley Park improvements, $3 million for a new fire station and equipment, ongoing funding for police, fire, and park maintenance services.
- The Urban Planning Area includes sufficient land to accommodate the City's housing needs for the next 20 years, consistent with the City's Planned Growth Ordinance and State-mandated Housing Element.
- The Urban Planning Area also includes sufficient land for planned employment growth along I-80, easterly to Midway Road, allowing the City to improve its jobs-housing balance.

2. Reject the Settlement Agreement and approve impartial analysis

If the City Council rejects the Settlement Agreement and chooses not to repeal the June 2004 planning approvals, then the referenda election would proceed. Unless the City Council chooses to extend the date of the special election (see below), the City Council would need to approve the impartial analysis for the ballot measure, as prepared by the City Attorney's office. Regardless of the outcome of the election, Triad would have the right to develop the property consistent with the 1990 Policy Plan and subject to the City's planning process.

3. Extend the election date.

This is the last meeting date for the City Council to repeal the 2004 project approvals and cancel the special election set for March 8, 2005. If the City Council chooses not to approve the Settlement Agreement at this time, but wishes to continue negotiations with Triad and Greenbelt Alliance, the City Council could take action to extend the Special Election from March 8, 2005 to June 7, 2005. This would allow additional time to resolve any issues the City Council may have with the proposed Settlement Agreement.

RECOMMENDATION:

1. By simple motion, to approve the Settlement Agreement.

2. By title only, to introduce and adopt the urgency ordinance repealing Ordinance No. 1718 relating to adoption of the Lower Lagoon Valley Specific Plan, to be effective immediately.

3. By simple motion, to approve the resolution set forth in Alternative 1, above.

RESOLUTION NO. 2004-125

RESOLUTION REPEALING PARAGRAPH 2 OF RESOLUTION NO. 2004-49 RELATING TO APPROVAL OF AMENDMENTS, WITH A SPECIAL PERFORMANCE OPTION, TO THE LAND USE ELEMENT, PARKS AND RECREATION ELEMENT, PUBLIC FACILITIES, INSTITUTIONS AND UTILITIES ELEMENT OF THE CITY OF VACAVILLE'S GENERAL PLAN RELATED TO THE LOWER LAGOON VALLEY SPECIFIC PLAN PROJECT PROPOSAL; AND WITHDRAWING THE ORDER SETTING THE MARCH 8, 2005 SPECIAL ELECTION PURSUANT TO RESOLUTION NO. 2004-74 AND RESOLUTION NO. 2004-80; AND REPEALING RESOLUTION NO. 2004-74 AND 2004-80 CALLING AND GIVING NOTICE OF A SPECIAL ELECTION TO BE HELD ON MARCH 8, 2005; AND AUTHORIZING THE CITY CLERK OR HER/HIS DULY AUTHORIZED OFFICERS AND AGENTS TO CARRY OUT ALL NECESSARY PROCEDURES TO CANCEL THE MARCH 8, 2005 SPECIAL ELECTION

WHEREAS, during June, 2004, the City Council granted certain planning approvals regarding development in that area of the City generally known and described as Lower Lagoon Valley. Particularly, on June 8, 2004, the City Council adopted Resolution No. 2004-49, which included approval of a General Plan amendment. Further, on June 22, 2004, the City Council adopted Ordinance No. 1717, approving zone changes within the Lower Lagoon Valley Specific Plan area, Ordinance No. 1718, adopting the Lower Lagoon Valley Specific Plan, and Ordinance No. 1719 approving a development agreement for proposed development in the Lower Lagoon Valley Specific Plan area; and

WHEREAS, subsequently, the City of Vacaville received certificates from the County of Solano Registrar of Voters certifying the results of the Registrar's examination of the numbers of signatures and verification of the signatures affixed to certain petitions for (1) a referendum measure to repeal the amendments, with a Special Performance Option, to the Land Use Element, Parks and Recreation Element, Public Facilities, Institutions and Utilities Element of the City of Vacaville's General Plan (City of Vacaville Resolution No. 2004-49, Paragraph 2), related to Lower Lagoon Valley Specific Plan Project Proposal ("General Plan Amendment Measure") and (2) a referendum to repeal Ordinance No. 1718 regarding the approval of the Lower Lagoon Valley Specific Plan ("Lower Lagoon Valley Specific Plan Referendum Measure"); and

WHEREAS, the petition regarding the General Plan Amendment Measure contained a request that Paragraph 2 of Resolution No. 2004-49 be rescinded or the General Plan Amendment Measure be submitted to a vote of the people at a special election; and

WHEREAS, the petition regarding the Lower Lagoon Valley Specific Plan Referendum Measure contained a request that Section 2 of Ordinance No. 1718 be repealed or that the Lower Lagoon Valley Referendum Measure be submitted to a vote of the people as a special election; and

WHEREAS, California Elections Code §9241 requires the legislative body to either repeal the action against which the petition is filed or submit the action to the voters either at the next regular municipal election or at a special election called for that purpose, provided such municipal or special election is not less than 88 days away. Pursuant thereto the City Council adopted Resolution No. 2004-74 and Resolution No. 2004-80 calling and giving notice of the holding of a special election on the General Plan Amendment measure and the Lower Lagoon Valley Referendum Measure, respectively, to be held on March 8, 2005; and

WHEREAS, in July 2004, the Greenbelt Alliance filed a lawsuit against the City of Vacaville and Triad Communities, Inc. (the developer of a project proposed for construction within Lower Lagoon Valley) challenging various approvals and certifications associated with the Lower Lagoon Valley Project Proposal ("Lawsuit"); and

WHEREAS, as a result of significant and exhaustive discussions between the parties to the Lawsuit, the parties reached a settlement of the Lawsuit on December 7, 2004. As part of the settlement agreement, Triad Communities, Inc., and the Greenbelt Alliance have requested that Ordinance No. 1718, Ordinance No. 1719, and paragraph 2 of Resolution No. 2004-49 approving amendments to City's General Plan, be repealed; and

WHEREAS, if paragraph 2 of Resolution No. 2004-49 approving amendments to City's General Plan, is repealed, the March 8, 2005 special election related to the General Plan Amendment Measure will be unnecessary as the action challenged by the General Plan Amendment Measure will no longer exist; and

WHEREAS, the City Council has or will take separate action on Urgency Ordinance No. ___, to repeal Ordinance No. 1718 approving the Lower Lagoon Valley Specific Plan, thereby making the March 8 special election related to the Lower Lagoon Valley Specific Plan Referendum Measure unnecessary as the action challenged by the referendum measure will no longer exist; and

WHEREAS, Repealing paragraph 2 of Resolution No. 2004-49 approving amendments to the City's General Plan, is in the best interest and general welfare of the City and its citizens because it will avoid the unnecessary and costly expense of holding an election regarding the subject general plan amendment and the Lower Lagoon Valley Specific Plan , as well as avoid the costly expense of litigation; and

WHEREAS, California Elections Code §9237 permits the legislative body of a city to reconsider the action that is the subject of a certified referendum petition; and

WHEREAS, California Elections Code §9605 allows withdrawal of an order of election not later than the 83rd day prior to the date set for the election. Hence, under such authority, the City Council may elect to repeal the actions that are the subject of the General Plan Amendment Measure and the Lower Lagoon Valley Specific Plan Referendum Measure and cancel the March 8, 2005 special election no later than December 14, 2004, which is the 83rd day before the March 8, 2005 special election; and

WHEREAS, repeal of Paragraph 2 Resolution No. 2004-49 which approved a General Plan amendment for Lower Lagoon Valley, would make the Lower Lagoon Valley Development Agreement adopted by Ordinance No. 1719 inconsistent with the existing General Plan, and therefore is deemed to be indirectly repealed, however the City Council recognizes that further action may be necessary to directly repeal Ordinance No. 1719, and the City Council is willing to take such further action; and

WHEREAS, the City Council finds that it is in the best interest and general welfare of the City of Vacaville and its citizens to (1) repeal paragraph 2 of Resolution No. 2004-49 approving a General Plan amendment for Lower Lagoon Valley, as originally requested by the proponents of the subject referendum and later by the Greenbelt Alliance and Triad Communities, Inc., and (2) to withdraw the orders setting the March 8, 2005 special election pursuant to Resolution 2004-74 and 2004-80.

NOW THEREFORE, BE IT RESOLVED, that the City Council does hereby:

1. Repeal paragraph 2, only, of Resolution No. 2004-49, which approved a General Plan amendment for Lower Lagoon Valley. The remaining provisions of Resolution No. 2004-49, including but not limited to the recitals related to and action in paragraph 1 certifying the EIR, adopting the Findings of Fact and Statement of Overriding Considerations and approval of the Mitigation Monitoring Program and the recitals related to and action in paragraph 3 approving the Lagoon Valley Design Guidelines shall remain in full force and effect and are not repealed or modified in any manner by this Resolution No 2004-125;

2. Withdraw the order of the March 8, 2005 special election issued pursuant to Resolution No. 2004-74 and repeal Resolution No. 2004-74 calling and giving notice of the holding of a special election on the General Plan Amendment Measure in its entirety.

3. Withdraw the order of the March 8, 2005 special election issued pursuant to Resolution No. 2004-80 and repeal Resolution No. 2004-80 calling and giving notice of the holding of a special election on the Lower Lagoon Valley Specific Plan Referendum Measure in its entirety.

4. Authorize and direct the City Clerk, including her/his duly authorized officers and agents to carry out all the necessary procedures to cancel the March 8, 2005 special election.

I HEREBY CERTIFY that the foregoing resolution was introduced and passed at a special meeting of the City Council of the City of Vacaville, held on the 7th day of December 2004, by the following vote:

AYES: Council Members Hardy, Slade, Wilkins, Vice Mayor Clancy and Mayor Augustine

NOES: None

ABSENT: None

ATTEST:

Carol A. Yount, Deputy

Michelle Thornbrugh, City Clerk

ORDINANCE NO. 1728

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE REPEALING ORDINANCE NO. 1718 RELATING TO ADOPTION OF THE LOWER LAGOON VALLEY SPECIFIC PLAN

THE CITY COUNCIL OF THE CITY OF VACAVILLE DOES ORDAIN AS FOLLOWS:

Section 1. Urgency Findings.

1. During June, 2004, the City Council granted certain planning approvals regarding development in that area of the City generally known and described as Lower Lagoon Valley. Particularly, on June 22, 2004, the City Council adopted Ordinance No. 1718, adopting the Lower Lagoon Valley Specific Plan.

2. Subsequently, the City of Vacaville received a certificate from the County of Solano Registrar of Voters certifying the results of the Registrar's examination of the numbers of signatures and verification of the signatures affixed to the petition for a referendum to repeal Ordinance No. 1718 regarding the approval of the Lower Lagoon Valley Specific Plan ("Referendum Measure").

3. The petition regarding the Referendum Measure contained a request that Section 2 of Ordinance No. 1718 be repealed or that the Referendum Measure be submitted to a vote of the people..

4. California Elections Code §9241 requires the legislative body of a city to either repeal the action against which the referendum petition is filed or submit the action to the voters either at the next regular municipal election or at a special election called for that purpose, provided such municipal or special election is not less than eighty-eight (88) days away. Pursuant thereto, the City Council adopted Resolution No. 2004-80 calling and giving notice of the holding of a special election on the Referendum Measure to be held on March 8, 2005.

5. In July 2004, the Greenbelt Alliance filed a lawsuit against the City of Vacaville and Triad Communities, Inc. (the developer of a project proposed for construction within Lower Lagoon Valley) challenging various approvals and certifications associated with project proposal ("Lawsuit").

6. As a result of significant and exhaustive discussions between the parties to the Lawsuit, the parties reached a settlement of the Lawsuit on December 7, 2004. As part of the settlement agreement, Triad Communities, Inc., and the Greenbelt Alliance have requested that Ordinance No. 1718 be repealed.

7. If Ordinance No. 1718 is repealed, the March 8, 2005 special election relating to the Referendum Measure will be unnecessary as the action challenged by the Referendum Measure will no longer exist.

8. Repealing Ordinance No. 1718 is in the best interest and serves the general welfare of the City and its citizens because it will avoid the unnecessary and costly expense of an election regarding the Lower Lagoon Valley Specific Plan and avoid the costly expense and delay of litigation.

9. California Elections Code §9237 permits the legislative body of a city to reconsider the action that is the subject of a certified referendum petition.

10. California Elections Code §9605 allows withdrawal of an order of election not later than the eighty-third (83rd) day prior to the date set for the election Hence, under such authority, the City Council may elect to repeal the action that is the subject of the Referendum Measure and cancel the March 8, 2005 special election no later than December 14, 2004, which is the eighty-third (83rd)day before the March 8, 2005 special election.

11. Therefore, the City Council finds that this Urgency Ordinance relates specifically to the March 8, 2005 special election in that repeal of Ordinance No. 1718, as requested initially by the proponents of the subject referendum and later by the Greenbelt Alliance and Triad Communities, Inc., would make the March 8, 2004 special election unnecessary, and further, that for all of the reasons set forth above, this Urgency Ordinance is necessary to serve the best interests and general welfare of the citizens of the City of Vacaville.

Section 2. Repeal Ordinance No. 1718

Ordinance No. 1718 is hereby repealed in its entirety.

Section 3. Severability.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unenforceable, invalid, or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

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

Section 4. Effective Date.

This urgency ordinance shall take effect immediately after passage thereof.

Section 5. Publication.

This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

I HEREBY CERTIFY that this urgency ordinance was introduced, **ADOPTED AND PASSED** at a special meeting of the City Council of the City of Vacaville, held on the 7th day of December 2004, by the following vote:

AYES: Council Members Hardy, Slade, Wilkins, Vice Mayor Clancy, Mayor Augustine

NOES: None

ABSENT: None

ATTEST:

Carol J. Yount, Deputy
Michelle Thornbrugh, City Clerk

APPROVED:

Leonard J. Augustine
Leonard J. Augustine, Mayor