

RESOLUTION NO. 16-148

RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EL PASO DE ROBLES APPROVING AND AUTHORIZING EXECUTION OF A
DEDICATION AND PARK IMPACT FEE CREDIT AGREEMENT
(RIVER OAKS II / ESTELLA ASSOCIATES)

WHEREAS, at its meeting of June 21, 2016, the City Council approved a Master Development Plan allowing for the development of River Oaks II, a 271-lot residential community located north of Clubhouse Drive and west of Buena Vista Drive; and

WHEREAS, as a condition of approval of the Master Development Plan, the property between N. River Road and the Salinas River is required to be dedicated to the City with a corresponding credit against the parks and recreation development impact fees that would otherwise be required to be paid for the 271 homes in the Plan; and

WHEREAS, at its meeting of September 27, 2016, the Planning Commission approved Tentative Tract 3097, a six-lot framework for future subdivisions that will comprise River Oaks II; and

WHEREAS, as a first step towards the development of River Oaks II, the developer has requested the City Council accept the recordation of Tract 3097; and

WHEREAS, as a condition of approval of Tract 3097, Lot 5 will be dedicated to the City for Parks and Open Space; and

WHEREAS, in accordance with Master Development Plan conditions, the City Attorney has drafted, and River Oaks II LLC has endorsed, a Dedication and Park Impact Fee Credit Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. All of the above recitals are true and correct and incorporated herein by reference.

Section 2. The City Council hereby approves the Dedication and Park Impact Fee Credit Agreement in substantially the form attached hereto as Exhibit "A", and incorporated herein by reference, and authorizes the City Manager to execute the Agreement, subject to any minor, technical, or non-substantive changes as approved by the City Manager and the City Attorney.

APPROVED this 6th day of December, 2016, by the following vote:

AYES: Strong, Hamon, Reed, Martin

NOES:

ABSENT:

ABSTAIN: Gregory


Steven W. Martin, Mayor

ATTEST:


Kristen L. Buxkemper, Deputy City Clerk

Exhibit A – Park Dedication and Park Impact Fee Credit Agreement

DEDICATION AND PARK IMPACT FEE CREDIT AGREEMENT

This Dedication and Park Impact Fee Credit Agreement (“Agreement”) is entered into on this ___ day of _____, 2016, between the City of El Paso de Robles, California a municipal corporation (“City”), and River Oaks II, LLC, a Delaware limited liability company (“Developer”). The City and Developer are sometimes referred to in this Agreement, individually, as a “Party” or collectively as the “Parties.” The Parties enter into this Agreement with reference to the following facts (each, a “Recital”):

RECITALS

WHEREAS, the Developer, through its manager, Estrella Associates II, LLC, a Delaware limited liability company, proposed the development of a project known as “River Oaks II Expansion (the “Project”) on approximately 130 acres owned by Developer located within the City of El Paso de Robles (the “Property”), as depicted on the “Map of the Property,” attached hereto as Exhibit A; and

WHEREAS, the City Council approved a Mitigated Negative Declaration, General Plan Amendment 13-002; Specific Plan Amendment 13-001, Master Development Plan, and Rezoning 13-001 in connection with the Project; and

WHEREAS, Condition No. 2 of the Conditions of Approval for the Project, as stated in City Council Resolution 16-084, requires the Developer, in accordance with the Recreation Element of the City’s General Plan, to dedicate certain property to the City concurrently with recordation of the first final map, in exchange for which Developer shall receive a credit in the full amount of the development impact fee for Parks and Recreation imposed by the City for each single-family unit developed as part of the Project, up to a maximum of 271 single-family units; and

WHEREAS, Section 22.04.090 of the City of El Paso de Robles Municipal Code allows the City to require the dedication of property or in-lieu fee payments for park and recreation purposes as a condition of approval of a final or parcel map; and

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions of the dedication of property by Developer to City and the development impact fee credit to be given to Developer.

TERMS

NOW, THEREFORE, in furtherance of the Recitals set forth above, the City and the Developer agree that:

1. Incorporation of Recitals. The City and Developer agree that the above recitals are true and correct and are hereby incorporated herein by reference.
2. Conveyance of Donated Property. Concurrently with the recordation of the first final map for the Project, Developer shall execute an Irrevocable Offer of Dedication, in the form

attached hereto as Exhibit B and incorporated herein by reference, of approximately 19.45 acres, (the “Dedicated Property”), as more particularly described in Exhibit C, the Legal Description of the Dedicated Property, which is incorporated herein by reference.

3. Park Impact Fee Credit. In exchange for, and subject to, the Developer’s execution of the Irrevocable Offer of Dedication for the Dedicated Property, the City hereby agrees that Developer shall be entitled to receive credits against the payment of the City’s Parks and Recreation Development Impact Fee (the “Parks Fee”) as follows:

(a) Upon issuance by City of a building permit for the construction of a single-family residential building located within the Project, Developer shall receive a credit in the amount of 100% of the Parks Fee otherwise required to be paid for such single-family residential unit (the “Fee Credit”).

(b) Developer may receive Fee Credit for a maximum of 271 single-family residential units in the Project. Developer shall not be entitled to receive any Fee Credit other than as specified in this Agreement.

4. Assignment. Developer’s right to any Fee Credit provided herein is assignable, in whole or in part, by Developer to another entity constructing residential single-family units as part of the Project. In no event shall any Fee Credit apply toward any other development impact fee or to any other building construction other than single-family residential units within the Project.

(a) In connection with any such assignment pursuant to the authority of this Section 4, Developer shall provide the City with a written assignment agreement that irrevocably assigns Developer’s right, in whole or in part, to the Fee Credit(s) provided hereunder to another entity. Such written assignment agreement shall clearly identify the assignee, the number of single-family units for which the Fee Credit is being assigned, and the location of the single-family unit(s) for which the Fee Credit(s) are being assigned. The City shall be entitled to unconditionally rely on such written notice of assignment in connection with the award of any Fee Credit(s). Upon Developer’s request, the City agrees to confirm to any such assignee the availability to such assignee of the Fee Credit(s).

5. Waiver. The City’s and/or Developer’s failure to insist on performance of any of the terms or conditions of this Agreement or to exercise any right, remedy or privilege, or City’s and/or Developer’s waiver of any breach hereunder, shall not thereafter be deemed a subsequent waiver of any other terms, conditions, or rights, remedies or privileges, whether of the same or similar type. No party will be deemed to have waived any rights under this Agreement unless the waiver is made in writing and signed by the waiving party’s duly authorized representative. All rights and remedies provided under this Agreement are cumulative.

6. Cooperation. The Parties agree to cooperate with each other in furthering the purposes of this Agreement. The Parties hereby agree to take such other actions and execute such other reasonable documents as are consistent with this Agreement and as are reasonably necessary to effectuate this Agreement; provided, however, that the foregoing shall not require the City to take any legislative act or exercise its discretion in any particular manner.

7. Entire Agreement, Integration, Amendments. This Agreement constitutes a single, integrated contract expressing the entire agreement between the Parties relative to the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party hereto, except as specifically set forth in this Agreement. All prior discussions, negotiations and understandings have been and are merged and integrated into, and are superseded by, this Agreement. No changes, modifications, alternation or variation of the terms of this Agreement shall be valid unless made in writing and signed by all the Parties.

8. Attorney's Fees. In the event that any action or proceeding is commenced between the City and Developer concerning any term of this Agreement, the prevailing Party in such action or proceeding, in addition to all other relief to which it may be entitled, shall be entitled to recover from the other Party the prevailing Party's costs of suit and reasonable attorney's fees. The prevailing Party shall be as determined by the court in accordance with Code of Civil Procedure section 1032. The attorney's costs and expert fees recoverable pursuant to this Section 7 include, without limitation, attorney's costs and expert fees incurred on appeal and those incurred in enforcing any judgment rendered. Attorney's costs and fees may be recovered as an element of costs in the underlying action or proceeding or in a separate recovery action.

9. Jurisdiction and Venue. This Agreement is to be construed under the laws of the State of California. The Parties agree to the jurisdiction and venue of the appropriate courts in the County of San Luis Obispo, State of California.

10. Rules of Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against, either the City or Developer. Section headings in this Agreement are for convenience only and are not to be considered as part of this Agreement or in any way limiting or amplifying the provisions hereof. All provisions and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identification of the person or persons, firm or firms, corporation or corporations may require. This Agreement is the product of mutual negotiation and drafting efforts. Accordingly, the judicial rule of construction that ambiguities in a document are to be construed against the drafter of that document including, but not limited to, California Civil Code section 1654, shall have no application to the interpretation or enforcement of this Agreement. The above Recitals and all Exhibits are incorporated into this Agreement.

11. Binding on Successors. The City and Developer, its successors in interest and assigns shall be bound by all of the provisions contained in this Agreement, and all of the Parties shall be liable hereunder.

12. Notices. All notices, demands or other communications (collectively, "Notices") required or allowed by this Agreement shall be in writing and shall be considered given: (i) when delivered in person to the recipient named below, or (ii) three (3) business days after deposit in the United States mail, postage prepaid, addressed to the recipient named below; or (iii) on the date of delivery by facsimile transmission to the recipient named below. All Notices shall be addressed as follows:

Exhibit A

To City: City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446
Attention: City Manager

With a copy to: Iris P. Yang
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814

To Developer: Dick Willhoit
Estrella Associates II, LLC
P.O. Box 4280
Paso Robles, CA 93447-4280

With a copy to: Joseph W. Diehl, Jr.
Diehl & Rodewald
1043 Pacific Street
San Luis Obispo, CA 93401

13. Severability. The provisions of this Agreement are specifically made severable. If any clause, provision, rights and/or remedy provided for herein is unlawful or unenforceable, the remainder of this Agreement shall remain in effect and be enforced as if such clause, provision, right and/or remedy were not contained herein, except that in no event shall Developer receive any Fee Credits unless and until it has irrevocably offered to dedicate the Dedicated Property to the City.

14. Execution/Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all such counterparts together shall constitute the entire Agreement of the parties hereto.

[signatures on following page]

SIGNATURE PAGE TO
DEDICATION AND PARK IMPACT FEE CREDIT AGREEMENT

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly-authorized officers on the date and year set forth below.

CITY OF EL PASO DE ROBLES

DATE: _____

By: _____
Steven Martin, Mayor
El Paso de Robles City Council

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Iris P. Yang, City Attorney

RIVER OAKS II, LLC,
a Delaware limited liability company

DATE: 11/18/2016

Estrella Associates II, LLC, a Delaware
limited liability company, its manager

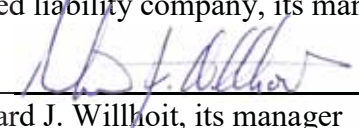
By: 
Richard J. Willhoit, its manager

EXHIBIT A
MAP OF THE PROPERTY

Exhibit A

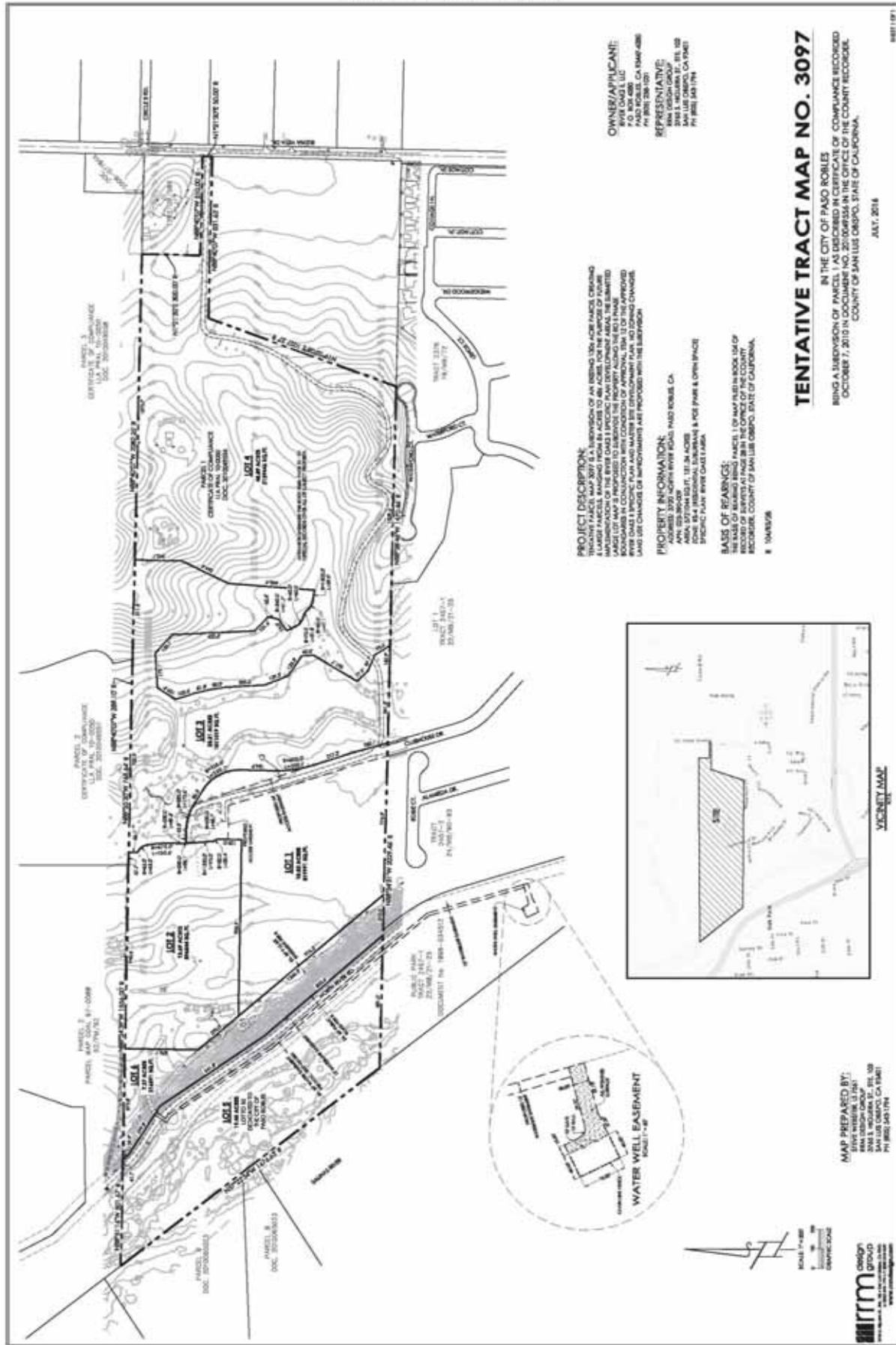


EXHIBIT B

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of El Paso de Robles
Attn: Dick McKinley, Public Works Director
1000 Spring Street
Paso Robles, California 93446

Exempt from recording fee pursuant to Gov't Code § 27383
Exempt from documentary transfer tax pursuant to Rev. & Tax. Code § 11922

IRREVOCABLE OFFER OF DEDICATION

This IRREVOCABLE OFFER OF DEDICATION (“**IOD**”) dated _____, 2016 (“**Effective Date**”), is made and entered into by and between RIVER OAKS II, LLC, a Delaware limited liability company (“**Offeror**”) and the CITY OF EL PASO DE ROBLES, a municipal corporation (“**City**”) with reference to the following:

RECITALS

A. California Government Code section 7050 provides that, with the consent of the City, an irrevocable offer of dedication may be granted for any public purpose, and that the dedication may be made by instrument executed, acknowledged and recorded in the same manner as a conveyance of real property.

B. Offeror is the legal owner of the fee estate in that certain real property located in the City of Paso Robles, State of California, as more particularly described in Exhibit 1 attached to this IOD and made a part of this IOD (“**Property**”).

C. Pursuant to the terms and conditions of this IOD, Offeror now desires to make and record this IOD for the irrevocable dedication of fee title to the Property to City, subject to the reservations set forth in this Agreement.

NOW, THEREFORE, in consideration of the above Recitals, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Offeror hereby irrevocably offers fee title to the Property for dedication to City in accordance with Government Code Section 7050, subject to the following conditions:

1. **Irrevocable Offer of Dedication.** This offer to dedicate fee title, subject to the reservations set forth in Section 2., below, to the Property to City is irrevocable and shall be binding on Offeror, its successors and assigns, and shall continue in effect until City accepts or terminates this IOD in accordance with the provisions of Section 3.

2. **Conditions of Title; Reservation of Easement.** Except as specified in the following sentence, Offeror warrants that there are no oral or written leases, contracts, agreements,

easements or liens on all or any portion of the Property. Offeror reserves the existing water line easement on the Property in substantially the location indicated on Exhibit 2 in Lot 5, and the right to access the Property to repair, maintain, replace, or improve the waterlines within the waterline easement as may be reasonably necessary for the use of the waterlines, subject to the conditions set forth in Condition 15 of the Project Conditions of Approval, which provides as follows:

“When recycled water becomes available, the applicant shall connect all irrigated lands to the City recycled water system and utilize recycled water as an irrigation supply. Per City Ordinance No. 1021 N.S., the City’s Public Works Director will allow the existing well(s) to remain in service to meet demands suitable for the landscape and irrigation of the continuous and long-term maintenance of all areas to be irrigated. The applicant and/or its successors shall have the right to blend its existing river underflow well water with reclaimed water as necessary to meet its desired project water quality goals subject to a minimum percentage of 25% recycled water with a target of 50% recycled water. Connection to the City recycled water system shall be subject to the cost parameters pursuant to the terms and conditions set forth in Section 4 (4.1) of the ‘Corrective Deeds and Agreement re Offer to Dedicate’ dated 5/28/2003 and recorded as Doc. 2003056981. Concurrently, the applicant will void the quality parameters pursuant to the terms and conditions set forth in Section 4 (4.2 & 4.3) of the ‘Corrective Deeds and Agreement Re Offer to Dedicate’ dated 5/28/2003 and recorded as Doc. 2003056981.

Notwithstanding the foregoing, the City will comply with the minimum standards for disinfected tertiary recycled water, as stated in Title 22 of the California Code of Regulations.”

City further agrees that City’s use of the Property, if any, shall not unreasonably interfere with such reserved easement. Offeror agrees to hold City harmless and reimburse City for any and all of its losses and expenses, including attorney’s fees, occasioned by reason of any undisclosed leases, easements, or liens on the Property.

3. **Time and Manner of Acceptance.**

(a) *City Acceptance.* The offer of dedication of the Property contained in this IOD may be accepted in any manner the City so chooses, in compliance with state and local laws. Such acceptance may be, but is not limited to, acceptance by a person designated by City or through adoption of Resolution of the City Council of City. Any purported acceptance of the offer of dedication of the Property contained in this IOD by or on behalf of City other than the manner the City so chooses shall be null and void and of no force or effect.

(b) *Duration and Termination.* In accordance with Government Code Section 7050, the offer of dedication of the Property contained in this IOD shall remain in effect until accepted by City or terminated in accordance with the provisions of this IOD. This IOD may not be terminated or the right to accept the offer of dedication of the Property contained in this IOD abandoned, except by Resolution of the City Council of City in the same manner as prescribed

for vacation of streets or highways by Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code.

(c) *Delivery of Acceptance.* Upon acceptance of the offer of dedication of the Property contained in this IOD, City shall notify the Offeror in accordance with Section 5 of this IOD.

4. **Use of Property Prior to Acceptance of Offer.**

(a) *No City Liability.* City shall incur no liability with respect to this IOD and shall not assume or incur any responsibility or liability for the Property or any improvements to the Property, until acceptance of the offer of dedication of the Property contained in this IOD.

(b) *Offeror Agreements Regarding Use of Property.* Before City's lawful acceptance of the offer of dedication of the Property contained in this IOD, Offeror agrees that Offeror will not use the Property in any way that will interfere with the future use of the Property by City, including through construction of improvements in, under or upon the Property.

5. **Notices.** Any notices that either Offeror or City is required or may desire to give to the other regarding this IOD must be in writing and delivered to the address of the recipient as set forth below in this Section either by: (a) personal service; (b) delivery by a reputable delivery service, such as but not limited to, Federal Express, that provides a written record of the date and time of delivery; or (c) mailing through the United States Postal Service, certified mail, postage prepaid, return receipt requested. City or Offeror may designate any other address for delivery of notices regarding this IOD by written notice in accordance with this Section. As of the date of this IOD the notice addresses for City and Offeror are as follows:

To City: City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446
Attention: City Manager

With a copy to: Iris P. Yang
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814

To Offeror: Dick Willhoit
River Oaks II, LLC
P. O. Box 4280
Paso Robles, CA 93447-4280

With a copy to: Joseph W. Diehl, Jr.
Diehl & Rodewald
1042 Pacific Street
San Luis Obispo, CA 93401

6. **Offer Runs with Land.** The provisions of this IOD shall run with the land of the Property and inure to the benefit of and be binding upon Offeror and all other current or future owners of the Property and their heirs, successors or assigns, and any other person claiming an interest in the Property through them.

7. **Waiver of Compensation.** Offeror hereby expressly and unconditionally waives any and all right to claim, demand or receive any further compensation for this IOD that Offeror may claim or be eligible to receive under the California Relocation Assistance Act (Government Code §7260, et seq.), Article 1, §19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure §1230.010, et seq.), and/or the California Code of Regulations, Title 25, or any other applicable local, state or federal statute, ordinance, regulation, rule, or decisional law (collectively, “**Compensatory Laws**”), including, but not limited to, the fair market value of the Property, severance damages, loss of goodwill, loss of profits, relocation any benefits or assistance, claims for unreasonable pre-condemnation activities or inverse condemnation or any other compensation as a result of City’s acceptance of the offer of dedication of the Property contained in this IOD, as Offeror has received adequate and fair compensation for the making and giving of this IOD through the form of development fee credits. Furthermore, Offeror hereby expressly waives all claims against and releases City and its officials, officers, employees, representatives, successors and assigns, from any liability, responsibility or obligation to pay any further compensation to Offeror related to Offeror making this IOD or City’s acceptance of the offer of dedication of the Property contained in this IOD that Offeror may claim or be eligible to receive under or pursuant to the Compensatory Laws.

8. **Authority to Execute.** The person or persons executing this Offer on behalf of Offeror warrants and represents that he/she/they has/have the authority to execute this Offer on behalf of

Exhibit A

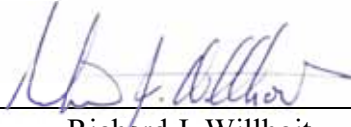
his/her/their corporation, partnership, or business entity and warrants and represents that he/she/they has/have the authority to bind Offeror to the performance of its obligations hereunder.

IN WITNESS WHEREOF, Offeror has caused this IOD to be signed by its duly authorized representative(s), as of the date first set forth above.

OFFEROR:

River Oaks II, LLC,
a Delaware limited liability company

Estrella Associates II, LLC, a Delaware limited liability company,
Its Manager

By: 
Name: Richard J. Willhoit
Its: Manager

**CITY OF EL PASO DE ROBLES
CERTIFICATE OF ACCEPTANCE FOR RECORDATION
OF
IRREVOCABLE OFFER OF DEDICATION OF REAL PROPERTY**

This is to certify the Irrevocable Offer of Dedication dated _____ 2016 from River Oaks II, a Delaware limited liability company, to the City of El Paso de Robles, a municipal corporation, is hereby accepted for recordation by the undersigned officers on behalf of the City of El Paso de Robles pursuant to authority granted by Resolution No. _____ of the Paso Robles City Council adopted on _____.

Date: _____

By: _____

Thomas Frutchey
City Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGEMENTS

State of California
County of _____

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

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing Section is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)
* * * * *

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGEMENTS

State of California
County of _____

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

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing Section is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

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ACKNOWLEDGEMENTS

State of California
County of _____

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

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing Section is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)
* * * * *

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGEMENTS

State of California
County of _____

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

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing Section is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**EXHIBIT 1
TO
IRREVOCABLE OFFER OF DEDICATION**

Legal Description of the Property

Lot 5 of Tract 3097 in the City of Paso robles, County of San Luis Obispo, State of California filed in Book _____ of Maps at Pages _____ through _____, inclusive, in the Office of the County Recorder, County of San Luis Obispo, State of California.

EXHIBIT 2 TO IRREVOCABLE OFFER OF DEDICATION

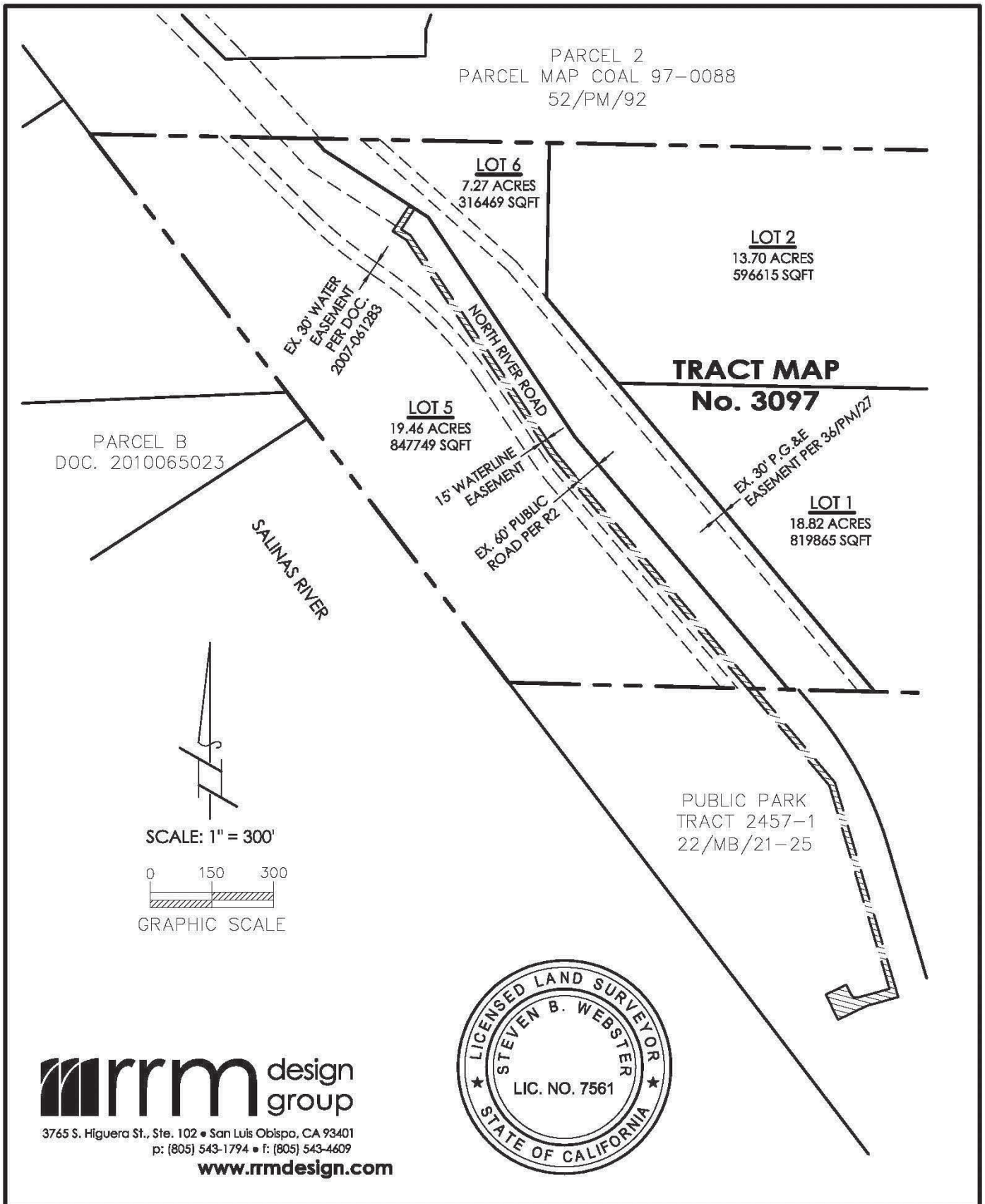


EXHIBIT C

**LEGAL DESCRIPTION OF DEDICATED PROPERTY
[TO BE INSERTED]**

Lot 5 of Tract 3097 in the City of Paso Robles, County of San Luis Obispo, State of California filed in Book _____ of Maps at Pages _____ through _____, inclusive, in the Office of the County Recorder, County of San Luis Obispo, State of California.