

**Planning Commission Resolution 2022-04**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HEALDSBURG RECOMMENDING THAT THE CITY COUNCIL APPROVE THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE NORTH VILLAGE PROJECT (DA 2020-01.02)**

**WHEREAS**, the City of Healdsburg, a California municipal corporation (the “City”) and CCS Healdsburg, LLC, a Delaware limited liability company (“Developer”) are Parties to that certain Development Agreement, dated May 6, 2020; a Memorandum of Development Agreement was recorded in the Official Records of Sonoma County on June 1, 2020, as Document No. 2020041464 (“Development Agreement”); and

**WHEREAS**, City staff and Developer have prepared a proposed Second Amendment to the Development Agreement (“Second Amendment”) for consideration by the Healdsburg Planning Commission and the Healdsburg City Council; and

**WHEREAS**, the Second Amendment is intended to provide for efficient and cost-effective completion of construction of the Healdsburg Fire Substation project; and

**WHEREAS**, in accordance with Sections 65864 through 65869.5 of the California Government Code (“State Development Agreement Law”), the City adopted Ordinance No. 1097 to add Chapter 17.20 to the Healdsburg Municipal Code authorizing the use of, and imposing additional requirements on, development agreements; and

**WHEREAS**, Chapter 17.20.060 requires the Planning Commission to conduct a public hearing on an amendment to a development agreement; and

**WHEREAS**, pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000, et seq.) (“CEQA”), the City prepared and, on May 20, 2019, the City Council certified the Final Environmental Impact Report (“EIR”) for the North Entry Area Plan (State Clearinghouse No. 2018062041) and adopted related findings, a Mitigation Monitoring and Reporting Program, and a Statement of Overriding Considerations which can be found in the Planning Department’s files for the North Village Project at 401 Grove Street, Healdsburg, CA 95448; and

**WHEREAS**, the Planning Commission held a noticed public hearing on February 23, 2022, for the purpose of receiving oral testimony on the proposed Second Amendment, reviewed written and oral staff reports, and received into the record all pertinent documents related to the Second Amendment, before making its decision.

**NOW, THEREFORE BE IT RESOLVED** that the Healdsburg Planning Commission hereby recommends to the City Council that the Second Amendment to the Development Agreement by and between the City of Healdsburg and CCS Healdsburg LLC (DA 2020-01.02) be approved as presented in Attachment A to this resolution based upon the facts and findings as set forth below:

1. The Development Agreement and its Second Amendment are consistent with the Healdsburg 2030 General Plan, the North Entry Area Plan, and the Land Use Code. The City Council made findings of consistency in its action to adopt Ordinance No. 1202,

approving the Development Agreement and the Second Amendment does not modify the Development Agreement in any way that would conflict with the goals and policies of the Healdsburg 2030 General Plan and the North Entry Area Plan, and requirements of the City's Land Use Code.

2. The Development Agreement and its Second Amendment will provide Healdsburg with tangible benefits including: 105 units of Affordable and Middle Income Housing; a \$2,000,000 contribution for construction of a Fire Substation; contribution of \$250,000 to the City for connectivity improvements; annual payments to the City of approximately \$334,000 per year from the Senior Living Community for lost tax revenue and increased demands for services; remittance of a 1/2% Hotel Add-On Fee (beginning 10 years after issuance of a certificate of occupancy for the hotel); and other improvements.
3. Any environmental impacts related to the Development Agreement have been reviewed and considered in accordance with the provisions of the California Environmental Quality Act. On May 20, 2019, the City Council certified the Final Environmental Impact Report ("EIR") for the North Entry Area Plan (State Clearinghouse No. 2018062041) and adopted related findings, a Mitigation Monitoring and Reporting Program, and a Statement of Overriding Considerations which can be found in the Planning Department's files for the North Village Project at 401 Grove Street, Healdsburg, CA 95448. In accordance with the California Environment Quality Act (CEQA) Guidelines Section 15162, no further environmental review is required for the Second Amendment because (i) there are no changes involving new significant environmental effects or a substantial increase in the severity of previously identified significant effects/impacts, (ii) there are no changes with respect to the circumstances under which the project is taken which will require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects/impacts, and (iii) there is no new information of substantial importance that was not known at the time the EIR was certified which shows (a) the project will have one or more significant effects not discussed in the EIR, (b) significant impacts/effects will be substantially more severe than shown in the EIR, (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects/impacts, or (d) mitigation measures or alternatives which are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects/impacts on the environment.

**DULY AND REGULARLY ADOPTED** by the Healdsburg Planning Commission on the 23rd day of February 2022, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

APPROVED:

ATTEST:

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Jerry Eddinger, CHAIR

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Scott Duiven, SECRETARY

**ATTACHMENT A**

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (the “**Amendment**”) is made and entered into as of [the 30th day following final adoption of the ordinance approving it] (“**Second Amendment Effective Date**”) by and between the CITY OF HEALDSBURG, a California municipal corporation (“**City**”) and CCS HEALDSBURG, LLC, a Delaware limited liability company (“**Comstock**” or “**Developer**”). City and Developer may each be referred to as a “**Party**,” and collectively as the “**Parties**.”

RECITALS

A. On May 6, 2020, the Parties entered into that certain Development Agreement (“**Development Agreement**”) concerning the development of an approximately 32-acre parcel of land at 16977 Healdsburg Avenue in the City of Healdsburg, defined as the “**Property**” in the Development Agreement, and shown on Exhibit A attached thereto. The Development Agreement was recorded against Property on June 1, 2020 in the Official Records of Sonoma County as Document No. 2020041464.

B. The parties agree to modify the Development Agreement pursuant to Government Code Sections 65867 and 65868, and Healdsburg Municipal Code Section 17.20.060, in order to modify the terms related to the delivery of a new fire substation as provided below.

C. On \_\_\_\_\_, 2022, the Planning Commission, after duly noticed public hearing, recommended approval of this Second Amendment. On \_\_\_\_\_, after duly noticed public hearing, the City Council introduced its Ordinance \_\_\_\_\_ approving this Second Amendment and authorizing its execution and adopted that Ordinance \_\_\_\_\_ on \_\_\_\_\_. Ordinance \_\_\_\_\_ became effective on \_\_\_\_\_.

AGREEMENT

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants contained herein, Parties consent to this Second Amendment as follows:

1. Defined Terms. All capitalized terms used herein shall have the meanings given in the Development Agreement, except as expressly otherwise defined herein.

2. Enumeration of Specific Deletions and Amendments. The Development Agreement is hereby revised to incorporate the following amendments.

(a) Replace and restate Section 5.6 in its entirety as follows:

5.6(a) The Montage Healdsburg Development Agreement includes approximately 0.85 acres located within the boundaries of the Saggio Hills Area

Plan that is required to be used for the development of a Healdsburg Fire Department substation (“**Fire Substation**”) which site has been or will be conveyed to the City (the “**Fire Substation Site**”).

5.6(b) Developer will prepare construction drawings (the “**Fire Substation Construction Plans**”) for an approximately 4,162 square-foot Fire Substation on the Fire Substation Site, and shall submit the Fire Substation Construction Plans to the City for review and approval in accordance with the City's plan check process. Plans shall be revised, as necessary, until such time as the City has determined that the Fire Substation Construction Plans are ready for issuance of construction permits, such that it would be possible to obtain a building permit for the Fire Substation, but without Developer actually obtaining any building permits for the Fire Substation (“**Developer Fire Substation Design Completion**”). The Fire Substation Construction Plans shall be substantially consistent with the conceptual plans approved by the Planning Commission on April 24, 2018 (Design Review DR 2018-02), as amended by the Design Review Amendment approved by the Planning Commission on August 24, 2021 (Design Review DR 2021-11). Subject to the Developer Fire Substation Contribution limit as set forth below with respect to such costs and expenses, the Developer shall pay any and all amounts due with respect to design work for the Fire Substation Construction Plans, as contemplated by this Section 5.6 as and when they become due and payable.

5.6(c) The City shall cause the Fire Substation Construction Plans to be reviewed by City promptly, and provide comments and responses to the submittals made by Developer within 30 days after the City’s receipt of each submittal of a plan set by Developer. Upon any disapproval by the City of the Fire Substation Construction Plans, the Developer shall cause the architect selected by Developer to revise the Fire Substation Construction Plans and then submit the revised plans to the City for review and approval or disapproval until Developer Fire Substation Design Completion is obtained.

5.6(d) Developer shall complete the Fire Substation Construction Plans work as described above at its sole cost and expense (“**Developer’s Fire Substation Costs**”); provided, however, that Developer’s total out-of-pocket cost shall not exceed Two Million Seventy-Six Thousand Dollars (\$2,076,000) (“**Developer Fire Substation Contribution**”). On April 1, 2022, or as soon thereafter as the Index is available, the Developer Fire Substation Contribution shall be increased by a percentage equal to the percent increase of the Consumer Price Index for All Urban Consumers (CPI-U San Francisco-Oakland-Hayward) (the “**Index**”), or an equivalent index if the Index is no longer available, calculated from April of the previous year to April of the current year. If the Index shows a decrease for the year, the Developer Fire Substation Contribution will not change.

5.6(e) As of December 31, 2021, the Developer has incurred [\_\_\_\_\_] in out-of-pocket costs for the preparation of the Fire Substation Completion Plans,

which costs are a portion of Developer Fire Substation Contribution. Notwithstanding that Developer shall pay directly the additional Developer Fire Substation Costs incurred to the extent of the Developer Fire Substation Contribution as described immediately above. Within 60 days of satisfaction of the Developer Fire Substation Design Completion, Developer shall provide invoices and other evidence satisfactory to City to demonstrate the amount of Developer's Fire Substation Costs that have been incurred and that such work has been paid for by Developer, including bills, invoices, lien waivers and other supporting documentation submitted by the design professionals selected by Developer to complete the Fire Substation Construction Plans. Developer shall indemnify the City against any claims for payment of work to prepare the Fire Substation Construction Plans within the limit of the Developer Fire Substation Contribution by the design professionals selected by Developer and performed prior to the Developer Fire Substation Design Completion.

5.6(f) The City shall review and approve or disapprove the amount of the Developer's Fire Substation Costs already paid by Developer as set forth in the submission by Developer within 30 days following the City's receipt thereof, provided that such request includes the documentation described above in form and content satisfactory to City. Any failure by the City to give such a notice of approval or disapproval within 30-day period shall be deemed approval. Any disapproval shall include a statement setting forth the particular basis for the City's disapproval in reasonable detail.

5.6(g) Developer shall assign to City all contracts, plans, warranties, and other intangible property rights obtained with respect to the Fire Substation Plans (the "**Fire Substation Work Product**") and pay the City the balance of the Developer Fire Substation Contribution to the City within 30 days of City giving notice of approval of the Developer's Fire Substation Costs.

5.6(h) Notwithstanding anything to the contrary contained in this Agreement, if the Developer Fire Substation Design Completion has not occurred on or before the first to occur of December 31, 2022 or the date of issuance of the first certificate of occupancy by the City with respect to the Project, notwithstanding that Developer has submitted three sets of Fire Substation Plan sets to the City and responded to the City comments with revisions to each prior set of City comments, which have resulted in City approval as of the date set forth immediately above, then Developer may submit a final set of Fire Substation Construction Plans to City, together with notice to City that such plan set is the final plan set to be submitted to City pursuant to the requirements of this Agreement, and thereafter Developer shall assign to City all Fire Substation Work Product as of such date, and upon such assignment Developer shall be deemed to have satisfied all of its obligations under the provisions of the Development Agreement related to the Fire Substation, except for the accounting for costs already incurred and payment of the remaining balance of the Developer Fire Substation Contribution, as provided in Sections 5.6(e) through (g) above, which shall be completed as provided in those sections.

5.6(i) At Developer's sole option, for a period not to exceed ten (10) years after the issuance of a certificate of occupancy for the hotel, Developer may collect the Hotel Community Benefit Fee described in Section 5.9 of this Agreement and keep the proceeds to offset a portion of the Fire Substation costs.

(b) Exhibit D of the Agreement is hereby deleted in its entirety.

3. Interpretation. This Agreement shall be interpreted to give each of the provisions their plain and fair meaning. The Recitals set forth above are incorporated into this Agreement. The section headings used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since all have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its plain and fair meaning as a whole, as if all Parties had prepared it.

4. Integration. This Agreement contains the entire agreement between the Parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the Parties.

5. Inconsistencies. The Development Agreement shall be construed as having been modified by this Second Amendment. Except as expressly modified by this Second Amendment. The Development Agreement remains in full force and effect. In the case of conflict between the provisions hereof and the terms of the Development Agreement, the provisions of this Second Amendment shall control.

6. Severability. If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held by a court of competent jurisdiction, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law unless the rights and obligations of the Parties have been materially altered or abridged thereby.

7. Counterparts. This Agreement may be signed in counterparts by the Parties hereto and shall be the binding agreement of the Parties upon execution by each of them of one or more copies hereof.

8. Recording of Memorandum. Approximately concurrent with the Second Amendment Effective Date, the Parties shall execute, acknowledge and record a Memorandum of Agreement in the official records of Sonoma County.

9. Authority. Each of the persons signing this Agreement hereby represents and warrants that he or she is fully authorized to sign this Agreement on behalf of the Party for which he or she is signing.

*[signature page follows]*

IN WITNESS WHEREOF, this Amendment has been executed as of the date first written above.

**CITY**

**City of Healdsburg**, a California municipal corporation

By: \_\_\_\_\_

Jeff Kay  
City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_

Samantha Zutler, Esq. City Attorney

ATTEST:

By: \_\_\_\_\_

Raina Allan, City Clerk

**DEVELOPER**

**CCS Healdsburg, LLC, a**  
Delaware limited liability  
company

By:

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Robert Comstock  
Title:

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