

*(02/27/23 - AMENDED)*

**Planning Commission Resolution 2023-xx**

**A RESOLUTION OF THE PLANNING COMMISSION OF  
THE CITY OF HEALDSBURG RECOMMENDING THAT  
THE CITY COUNCIL APPROVE A DEVELOPMENT  
AGREEMENT (DA 2023-01) FOR THE SAGGIO HILLS  
AFFORDABLE HOUSING PROJECT LOCATED AT 450  
PARKLAND FARMS BOULEVARD**

**WHEREAS**, in 2010 and 2011, the Healdsburg City Council approved entitlements for the Saggio Hills Development Project as follows:

1. On January 31, 2011, the Saggio Hills Area Plan was adopted by Resolution No. 17-2011;
2. On January 31, 2011, Ordinance No. 1071 establishing pre-zoning designations for the Saggio Hills planning area was confirmed and ratified by Resolution No. 19-2011;
3. On January 31, 2011, a Tentative Subdivision Map was approved for the Saggio Hills Development Project by Resolution 18-2011;
4. Effective April 11, 2011, the City of Healdsburg and Sonoma Luxury Resort, LLC entered into a Development Agreement for the Saggio Hills Project (Ordinance No. 1107); and

**WHEREAS**, prior to the City Council's approval of the Saggio Hills Project entitlements, an Environmental Impact Report ("Saggio Hills Project EIR") was prepared pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000, et seq.) ("CEQA"), (State Clearinghouse No. 2003062025), which analyzed the environmental impacts of development of the Saggio Hills Project. The Saggio Hills Project EIR is comprised of the 2007 Draft EIR (August 2007), the 2007 Final EIR (October 2007), the Responses to Late Comments (April 2008), the Errata (April 2008), the Draft Partial Revision (August 2010), and the Final Partial Revision (December 2010). The Saggio Hills Project EIR was certified by the City Council on January 31, 2011 and a Mitigation Monitoring and Reporting Program ("MMRP") was adopted by Resolution No. 15-2011; and

**WHEREAS**, the First Final Map for the Saggio Hills Project created two parcels of real property in the City of Healdsburg which are owned by Sonoma Luxury Resort, LLC ("SLR") and legally described as Parcels 5 and 6 of Saggio Hills per Map recorded May 23, 2018 in Book 795, Pages 31-40 as Instrument No. 2018-037508, of Official Records, in the City of Healdsburg, County of Sonoma, State of California, APNs 091-310-005 & 091-310-006, which are collectively known as the "Affordable Housing Land"; and

**WHEREAS**, the City of Healdsburg ("City") and SLR are parties to a Development Agreement dated April 11, 2011, as evidenced by a Memorandum of Development Agreement recorded in the Official Records of Sonoma on April 27, 2011, as Instrument No. 2011037227; as amended on April 5, 2016, pursuant to an Insubstantial Amendment To The Development Agreement Between The City Of Healdsburg And Sonoma Luxury Resort, LLC, Dated April 11, 2011; as amended on May 30, 2019, pursuant to a Second Insubstantial Amendment To Development Agreement, as evidenced by a Memorandum of Second Insubstantial Amendment

to Development Agreement, recorded in the Official Records on August 5, 2019, as Instrument No. 2019053988; as amended on January 19, 2021, pursuant to a Third Amendment to Development Agreement, as evidenced by a Memorandum of Development Agreement recorded in the Official Records on March 4, 2021, as Instrument No. 2021025567 (collectively, the "Development Agreement"); and

**WHEREAS**, pursuant to the Development Agreement, SLR has completed its obligations to perform mass grading of the Affordable Housing Land, to implement wetlands mitigation for the removal of wetlands on the Affordable Housing Land, to construct the Parkland Farms Boulevard roadway and utility improvements adjoining the Affordable Housing Land and to convey the Affordable Housing Land to the City respectively; and

**WHEREAS**, pursuant to the Development Agreement, the City is responsible for making arrangements for the development and construction of up to 150 units of affordable housing on the Affordable Housing Land; and

**WHEREAS**, on February 16, 2021, the City entered into an Exclusive Negotiating Rights Agreement ("ENA") with Freebird Development Company, LLC ("Developer") which establishes procedures and standards for the negotiation of a Disposition and Development Agreement ("DDA"); and that, during the Negotiation Period, the Developer will conduct community outreach, complete schematic design, and secure entitlements and any required environmental review; and

**WHEREAS**, Developer has submitted applications to the City seeking approval of the following entitlements for the Saggio Hills Affordable Housing Project (the "Project"):

1. Tentative Subdivision Map to establish 15 lots (Lots 1-15) and two "Common Area" parcels (Parcels A and B) on the 12.36-acre Affordable Housing Land. The Tentative Map also identifies 18 "air space condominiums" on one of the lots (Lot 15).
2. Concessions under State Density Bonus Law ("SDBL") to allow for the reduction in the required number of parking spaces. The City's parking regulations would require 230 off-street parking spaces (assuming the 18 condominium units on Lot 15 are for-sale units) Under SDBL regulations, 152 parking spaces are required (1 space for every studio and one-bedroom unit; 2-spaces for every two- and three-bedroom unit). The Developer proposes to provide a total of 173 off-street parking spaces plus 36 on-street spaces.
3. Design Review to authorize development of a mixed income/mixed tenure affordable housing project with a total of 118 residential units including: 10 two-story townhouse units on individual lots (Area 4); 42 apartment units in three-story walk-up buildings (Area 3); 48 apartment units in a three-story corridor building (Area 5); and 18 apartment units in three-story walk-up buildings (Area 6). A one-story community building with a community room, teen room and property management offices is located on Area 2, along with an outdoor amphitheater and children's play area. The Project includes onsite parking for 173 vehicles, a network of trails and open space, a community garden area, and other amenities; and

**WHEREAS**, on March 8, 2022, at a properly noticed public workshop, the Healdsburg Planning Commission reviewed the Tentative Map and conceptual plans for the Saggio Hills Affordable Housing Project, and provided feedback to the Developer regarding the plans for the Project; and

**WHEREAS**, on November 8, 2022, at a properly noticed public hearing, the Planning Commission approved Major Design Review DR 2022-05, approved the requested concessions under SDBL, and recommended that the City Council approve Tentative Map TM 2022-02; and

**WHEREAS**, City and Developer have negotiated a development agreement for the Saggio Hills Affordable Housing Project ("Saggio Hills Affordable Housing Project DA") in order to extend the terms of project approvals to facilitate the timely construction of the Project; and

**WHEREAS**, Sections 65864 through 65869.5 of the California Government Code and Chapter 17.20 of the Healdsburg Municipal Code ("Development Agreement Law") authorize the City to establish procedures to enter into binding development agreements with persons having legal or equitable interests in real property located within the City for the development of property; and

**WHEREAS**, the City of Healdsburg has established and codified such procedures as Chapter 17.20 of the Healdsburg Municipal Code; and

**WHEREAS**, on February 28, 2023, at a properly noticed public hearing, the Planning Commission reviewed written and oral staff reports, conducted a public hearing on the proposed Saggio Hills Affordable Housing Project DA and took testimony; and received into the record all pertinent documents related to the Saggio Hills Affordable Housing Project DA.

**NOW THEREFORE BE IT RESOLVED**, that the Healdsburg Planning Commission hereby recommends to the City Council that the Saggio Hills Affordable Housing Project Development Agreement DA 2023-01 be approved as presented in Exhibit A to this resolution and based upon the facts and findings as set forth below:

1. The Saggio Hills Affordable Housing Project DA is consistent with the Healdsburg 2030 General Plan, and the Saggio Hills Area Plan, and the Land Use Code. The Saggio Affordable Housing Project is consistent with the Medium High Density Residential (MHR) land use classification in the General Plan and the Special Purposes of the R-1-3,500 zoning district. The Project implements Housing Element policies calling for affordable housing and housing which meets special housing needs, including those for residents with developmental disabilities. It complies with policies addressing energy-efficiency performance, multi-modal transportation needs, and development within the wildland urban interface. The Project is consistent with the design guidelines established in the Saggio Hills Area Plan. The Project's proposed bicycle and pedestrian facilities implement Open Space and Recreation and Circulation policies of the Saggio Hills Area Plan. The Project's Vegetation Management Plan addresses fire safety policies in the Public Facilities & Services chapter of the Saggio Hills Area Plan. The Project's environmentally-sensitive siting of development, preservation of open space, design features, and the landscaping plans address the design-related policies of the Saggio Hills Area Plan. The Project received a parking incentive and a waiver of minimum lot size and width requirements in accordance with State Density Bonus Law. The Project is consistent with all other Land Use Code requirements including those for design and lighting of parking areas, bicycle parking, transit access, refuse and recycling storage, setbacks, building height, and site coverage.

2. The Saggio Hills Affordable Housing Project DA will provide Healdsburg with tangible benefits including 118 units of affordable housing and associated amenities and site improvements.
3. The Saggio Affordable Housing Project is addressed in the Final Environmental Impact Report for the Saggio Hills Planned Development Project (State Clearinghouse No. 2003062025) which was certified by the Healdsburg City Council through the adoption of Resolution No. 15-2011. Certain components of development on the site (extension of Parkland Farms Boulevard and related utilities; rough grading of Project site; filling of wetlands and establishment of mitigation wetlands; creek restoration) were addressed at a project-level in the Saggio Hills Project EIR. The Saggio Hills Project EIR addressed the development of up to 150 units of affordable housing on the site at a programmatic level. An Initial Study/Environmental Checklist was prepared for the Saggio Hills Affordable Housing Project and, based on the analysis contained therein, the Community Development Director determined that an Addendum to the Saggio Hills Project EIR is the appropriate environmental document for the Project. Based upon substantial evidence demonstrated by the analysis included in the Addendum, none of the conditions described in Sections 15162 or 15163 of the CEQA Guidelines calling for the preparation of a subsequent or supplemental EIR or negative declaration have occurred, specifically:
  - (a) There have not been any substantial changes in the Project that require major revisions of the Saggio Hills Project EIR because of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
  - (b) There have not been any substantial changes with respect to the circumstances under which the Project is undertaken that require major revisions of the Saggio Hills Project EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
  - (c) There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Saggio Hills Project EIR was certified, that shows any of the following:
    - i. the Project will have one or more significant effects not discussed in the Saggio Hills Project EIR;
    - ii. significant effects previously examined will be substantially more severe than shown in the Saggio Hills Project EIR;
    - iii. mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the project proponents decline to adopt the mitigation measure or alternative; or
    - iv. mitigation measures or alternatives which are considerably different from those analyzed in the Saggio Hills Project EIR would substantially reduce one or more significant effects on the environment, but the Project proponents decline to adopt the mitigation measure or alternative.

**DULY AND REGULARLY ADOPTED** by the Healdsburg Planning Commission on the 28th day of February, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Approved:

Attest:

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Phil Luks, Chair

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Scott Duiven, Secretary

Exhibits:

A. Saggio Hills Affordable Housing Project Development Agreement

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City of Healdsburg  
401 Grove Street  
Healdsburg, CA 95448  
Attention: City Clerk

*Space Above This Line Reserved for Recorder's Use  
Exempt from Recording Fee Per Government Code Sections 6103 and 27383*

## **DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**CITY OF HEALDSBURG,  
a California municipal corporation**

**AND**

**FREEBIRD DEVELOPMENT COMPANY, LLC,  
a California limited liability company**

**FOR**

**SAGGIO HILLS AFFORDABLE HOUSING PROJECT**

**DATED \_\_\_\_\_, 2023**

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## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) dated for reference purposes as of \_\_\_\_\_, 2023 (“**Date of Agreement**”), is entered into by and between FREEBIRD DEVELOPMENT COMPANY, LLC, a California limited liability company (“**Developer**”), and the CITY OF HEALDSBURG, a California municipal corporation (“**City**”). Developer and City are sometimes referred to individually herein as a “**Party**” and collectively as “**Parties.**”

### RECITALS

The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 1.1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 et seq. of the Government Code (“**Development Agreement Statute**”), which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property. In accordance with the Development Agreement Statute, the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are codified in Chapter 17.20 of Title 17 of the Healdsburg Municipal Code (“**Development Agreement Regulations**”). The provisions of the Development Agreement Statute and the City’s Development Agreement Regulations are collectively referred to herein as the “**Development Agreement Law.**”) This Agreement has been drafted and processed pursuant to the Development Agreement Law.

B. On April 11, 2011, under the authority of Ordinance No. 1107, the City and Sonoma Luxury Resort, LLC, a Delaware limited liability company (“**SLR**”), entered into a Development Agreement By and Between The City of Healdsburg and Sonoma Luxury Resort LLC, as evidenced by a Memorandum of Development Agreement recorded in the Official Records of Sonoma County (“**Official Records**”) on April 27, 2011 as Instrument No. 2011037227; as amended on April 5, 2016 by that certain Insubstantial Amendment To The Development Agreement By and Between The City Of Healdsburg And Sonoma Luxury Resort, LLC, Dated April 11, 2011, by and between City and SLR; as amended on May 30, 2019 by that certain Second Insubstantial Amendment To Development Agreement by and between City and SLR, as evidenced by a Memorandum of Second Insubstantial Amendment to Development Agreement, of same date, recorded in the Official Records on August 5, 2019, at Instrument No. 2019053988; as amended on January 19, 2021 by that certain Third Amendment to Development Agreement, by and between City and SLR and a Memorandum of Third Amendment to Development Agreement recorded in the Official Records on March 4, 2021 as Instrument No. 2021025567; and as affected by that certain Partial Assignment And Assumption Of Developer’s Interest Under Development Agreement Between The City of Healdsburg and Sonoma Luxury Resort LLC, by and between SLR and Oaks & Olives and consented to by the City, and recorded in the Official Records on April 22, 2021 as Instrument No. 2021049954 in connection with the sale of Parcel 1, Parcel 4 and Parcel 7 of first final map filed for record in the Official Records on May 23, 2018, in Book 795 of Maps at Pages 31-40,

Document No. 2018-037508 (“**FM-1**”), from SLR to Oaks & Olives (collectively, the “**SLR Development Agreement**”).

C. The SLR Development Agreement governs, among other matters, the dedication by SLR to the City of two legal parcels described as Parcels 5 and 6 of FM-1, as amended by the Parcel 5, 6 and 11 Lot Line Adjustment, approved by the City on May 12, 2022, pursuant to LLA 2021-05, and described in the legal description attached to this Agreement as **Exhibit A** and depicted in the Site Map attached to this Agreement as **Exhibit B**, both of which are incorporated herein by this reference (“**Property**”), for development of up to 150 affordable housing units.

D. On February 16, 2021, City and Developer entered into an Exclusive Negotiation Rights Agreement (“**ENA**”), which established procedures and standards for the submittal and processing of applications for land use entitlements needed to develop the Property and the negotiation by the City and the Developer of an agreement pursuant to which the City will convey the Property to the Developer on the condition that certain specified development activities will be undertaken by Developer on the Property, consistent with the terms of the SLR Development Agreement governing the dedication of the Property.

E. Pursuant to the ENA, Developer has submitted applications to the City for approval of design review (“**DR 2022-05**”) and a tentative map (“**TM 2022-02**”) to secure the land use entitlements necessary to develop the Project, as defined in Section 4.1 of this Agreement, on the Property.

F. The City has taken numerous actions in connection with the development of the Project on the Property. These include:

(1) Planning Commission and City Council consideration of the Final Environmental Impact Report for the Saggio Hills Project (“**Saggio Hills FEIR**”), certified as adequate and complete for the Saggio Hills Project pursuant to the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) (“**CEQA**”) by City Council Resolution No. 15-2011, and an Addendum to the Saggio Hills FEIR for the Project, dated September 2022, as reflected in the findings of the DR Resolution and TM Resolution, respectively, referenced below (“**CEQA Determination**”);

(2) Planning Commission approval of DR 2022-05 for the Project, as evidenced by Planning Commission Resolution No. 2022-18, adopted on November 8, 2022 (“**DR Resolution**”); and

(3) City Council approval of TM 2022-02 for the Project, as evidenced by City Council Resolution No. \_\_\_\_\_, adopted on \_\_\_\_\_, 2023 (“**TM Resolution**”).

The approvals and development policies described in this Recital E are collectively referred to herein as the “**Existing Approvals**”.

G. City desires to advance the socioeconomic and environmental interests of the City and its residents by encouraging quality development of affordable housing that serves to meet local and regional demand for housing, while also enhancing the ability of persons employed locally to reside closer to their place of employment and reduce impacts to local and regional

transportation networks, greenhouse gas emissions and air quality; promoting development of public recreational infrastructure to serve the needs of residents of the Project and those living in proximity to the Project; and expanding the City’s property tax base.

H. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Existing Approvals and Subsequent Project Approvals, thereby encouraging planning for, investment in, and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial public benefits to the City, and will contribute to the provision of needed affordable housing in the City, thereby achieving the goals and purposes for which the Development Agreement Law was enacted and for which the City has elected to enter into this Development Agreement.

I. The terms and conditions of this Agreement have undergone review by City staff, its Planning Commission, and its City Council at publicly noticed meetings and have been found to be fair, just, and reasonable and in conformance with the goals, policies, standards, and land use designations specified in the City’s General Plan and Zoning Ordinance, will provide tangible benefits to the City of Healdsburg beyond those that may be required by conditions of approval and, further, the City Council finds that the economic interests of the citizens of the City of Healdsburg and the public health, safety, and welfare will be best served by entering into this Agreement.

J. This Agreement between the City and Developer sets forth the applicable City standards and requirements that apply to Developer’s development of the Project and provides Developer with a vested right to develop the Project in accordance with the Existing Approvals and the Applicable Law.

K. Pursuant to the terms of the SLR Development Agreement, the Property was conveyed by SLR to the City pursuant to Grant Deed dated \_\_\_\_\_, 2023, and recorded in Official Records on February \_\_\_\_, 2023, as Instrument No. 2023-\_\_\_\_\_.

L. On February 28, 2023, the City of Healdsburg Planning Commission, the initial hearing body for purposes of development agreement review, considered and adopted Resolution No. 2023-\_\_\_\_\_ recommending that the City Council approve this Agreement. On \_\_\_\_\_, 2023, the City Council of the City of Healdsburg adopted Ordinance No. 2023-\_\_\_ approving this Agreement. The Ordinance took effect on \_\_\_\_\_, 2023 (the “**Effective Date**”).

### **AGREEMENT**

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

## ARTICLE 1 DEFINITIONS

### Section 1.1    Definitions.

“*Adjusted for family size appropriate to the unit*” shall have the meaning set forth in Section 50052.5 of the California Health and Safety Code, as amended or any successor statute thereto, subject to the application of federal rules and regulations, if applicable to financing sources for all or a portion of the Project, including applicable federal and TCAC regulations.

“*Affiliate of Developer*” means either: 1) an entity or entities in which Developer retains more than fifty percent (50%) in the aggregate, directly or indirectly, of the ownership or beneficial interest and retains full management and control of the day-to-day affairs of the transferee entity or entities, either directly or indirectly through another entity, subject only to certain major events requiring the consent or approval of the other owners of such entity; or 2) a limited partnership formed to own and finance those improvements to be constructed as part of Phase 1 Improvements, Phase 2 Improvements or Phase 3 Improvements to be rented to lower income households, of which the Developer, either directly or through a single-member LLC of which Developer is the sole member/manager, is a general partner or a co-general partner and will retain the management and control, together with any co-general partner, of the day-to-day affairs of the limited partnership, subject only to certain major events requiring the consent or approval of the other owners of such entity.

“*Affordable housing cost*” is defined in Section 50052.5 of the California Health and Safety Code, as amended or any successor statute thereto.

“*Affordable rent*” shall mean rental rates no greater than that considered as affordable rent for extremely low income households to lower income households, adjusted for family size appropriate to the unit, determined in accordance with California Health and Safety Code section 50053, as amended, or any successor statute thereto; provided, however, that for lower income households with gross incomes that exceed 60 percent of the area median income adjusted for family size appropriate to the unit, rental rates may be established at a level not to exceed 30 percent of gross income of the household. Notwithstanding the foregoing, if applicable to financing sources for all or a portion of the Project, during the fifteen (15) year tax credit compliance period under Internal Revenue Code Section 42, or such longer term of the regulatory agreement to be executed by TCAC and Developer and recorded against the applicable portion of the Project, the City hereby permits Developer to use the occupancy standards and rent levels required by TCAC.

“*Agreement*” means this Development Agreement.

“*Applicable City Regulations*” means (a) all City policies, standards and specifications set forth in this Agreement and the Existing Approvals, including the specific conditions of approval adopted with respect to the Existing Approvals; (b) with respect to matters not addressed by this Agreement or the Existing Approvals but governing permitted uses of the Property; building locations, sizes, densities, intensities, design and heights; site design, setbacks, lot coverage and open space; and parking; those City ordinances, rules, regulations, official policies, standards and specifications in force and effect on the Effective Date; and (c) with respect

to all other matters, including building, plumbing, mechanical and electrical codes, those City ordinances, rules, regulations, official policies, standards and specifications in force and effect as may be enacted, adopted and amended from time to time, including New City Laws, except those in conflict with this Agreement.

“*Applicable Law*” means the Applicable City Regulations and all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time.

“*Area Median Income*” means the median household income (adjusted for family size appropriate to the unit) of the Metropolitan Statistical Area in which Sonoma County is located, as established pursuant to Section 50093 of the California Health and Safety Code, as amended or any successor statute thereto, or, as applicable, the median income for Sonoma County, California, adjusted for family size appropriate to the unit, as determined by TCAC regulations.

“*Assignee*” is defined in Section 10.1E.

“*CEQA*” is defined in Recital F.

“*CEQA Determination*” is defined in Recital F.

“*Changes in the Law*” is defined in Section 4.10.

“*City*” means the City of Healdsburg, a California municipal corporation.

“*City Parties*” means City and its elected and appointed officials, officers, agents, employees, contractors and representatives.

“*Claims*” means liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including attorneys’ fees and costs.

“*Connection Fees*” means those fees charged by City on a citywide basis or by a utility provider to utility users as a cost for connecting to water, sanitary sewer, gas, electric and other applicable utilities.

“*Construction of Phase 1 Improvements have commenced*” shall mean City has issued one or more building permits for the construction of residential building improvements on Lot 14 and Developer has undertaken substantial work on said Lot in reliance thereon.

“*Cure Period*” is defined in Section 11.1.

“*Date of Agreement*” is defined in the introductory paragraph preceding the Recitals of this Agreement.

“*DDA*” is defined in Section 2.1.

“*Default*” is defined in Section 11.2.

“*Developer*” means Freebird Development Company, LLC, a California limited liability company, and its permitted assignees and successors-in-interest under this Agreement.

“*Development Agreement Law*” is defined in Recital A.

“*Development Agreement Regulations*” is defined in Recital A.

“*Development Agreement Statute*” is defined in Recital A.

“*DR 2022-05*” is defined in Recital E.

“*DR Resolution*” is defined in Recital F.

“*Effective Date*” is defined in Recital L and Section 3.1.

“*ENA*” is defined in Recital D.

“*Exactions*” means exactions that may be imposed by the City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

“*Existing Approvals*” is defined in Recital F.

“*Extended Cure Period*” is defined in Section 11.1.

“*Extremely low income households*” is defined in Section 50106 of the California Health and Safety Code, as amended or any successor statute thereto.

“*FM-1*” is defined in Recital B.

“*Impact Fees*” means the monetary amount charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the development project or development of the public facilities related to the development project, including, any “fee” as that term is defined by Government Code section 66000(b), as amended or any successor statute thereto. For purposes of this Agreement, a fee that meets both the definitions of an Impact Fee and an Exaction, will be considered to be an Impact Fee.

“*Insubstantial Amendment*” is defined in Section 8.2.

“*Litigation Challenge*” is defined in Section 9.4.

“*Lot 1*” is defined in Section 4.1 A.

“*Lot 1 Improvements*” is defined in Section 4.1 D.

“*Lot 2*” is defined in Section 4.1 A.

“*Lot 2 Improvements*” is defined in Section 4.1 E.

“*Lot 3*” is defined in Section 4.1 A.

“*Lot 3 Improvements*” is defined in Section 4.1 F.

“*Lot 3 Ingress & Egress Easement*” is defined in Section 4.1 F.

“*Lot 14*” is defined in Section 4.1 A.

“*Lot 14 Improvements*” is defined in Section 4.1 H.

“*Lot 15*” is defined in Section 4.1 A.

“*Lot 15 Improvements*” is defined in Section 4.1 I.

“*Lot 15 Owner-Occupied Option*” is defined in Section 4.1 I.

“*Lot 15 Rental Option*” is defined in Section 4.1 I.

“*Lower income households*” is defined in Section 50079.5 of the California Health and Safety Code, as amended or any successor statute thereto.

“*Mortgage*” is defined in Section 7.1.

“*Mortgagee*” is defined in Section 7.1.

“*New City Laws*” means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through their power of initiative or otherwise) after the Effective Date.

“*Official Records*” is defined in Recital B.

“*Other Agency Subsequent Project Approvals*” means Subsequent Project Approvals to be obtained from entities other than City.

“*Owner Occupied Affordable Housing Covenant*” is defined in Section 4.1 G. and I.

“*Parcel A*” is defined in Section 4.1 A.

“*Parcel A Improvements*” is defined in Section 4.1 B.

“*Parcel A Public Access Easement*” is defined in Section 4.1 B.

“*Parcel B*” is defined in Section 4.1 A.

“*Parcel B Improvements*” is defined in Section 4.1 C.

“*Party/Parties*” is defined in the introductory paragraph preceding the Recitals of this Agreement.

“*Permitted Transfer*” is defined in Section 10.1D.

“*Persons and families of moderate income*” is defined in Section 50093 of the California Health and Safety Code, as amended or any successor statute thereto.

“*Phase 1 Improvements*” is defined in Section 4.2.

“*Phase 2 Improvements*” is defined in Section 4.2.

“*Phase 3 Improvements*” is defined in Section 4.2.

“*Phase 4 Improvements*” is defined in Section 4.2.

“*Planning Commission*” means the Planning Commission of the City of Healdsburg.

“*Private Improvements*” means the Phase 1 Improvements, Phase 2 Improvements, Phase 3 Improvements and Phase 4 Improvements, excluding the Public Improvements.

“*Processing Fees*” means all fees for processing development project applications, including any required supplemental or other further environmental review, plan checking (time and materials) and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

“*Project*” is defined in Section 4.1.

“*Project Approvals*” means the Existing Approvals and the Subsequent Project Approvals.

“*Property*” is defined in Recital C and is legally described in the legal description attached to this Agreement as **Exhibit A** and depicted in the Site Map attached to this Agreement as **Exhibit B**.

“*Public Improvements*” is defined in Section 4.1 J.

“*Rental Affordable Housing Covenant*” is defined in Section 4.1 F., H. and I.

“*Saggio Hills FEIR*” is defined in Recital F.

“*Site Map*” means the map of the Property attached hereto as **Exhibit B**.

“*SLR*” and “SLR Development Agreement” are defined in Recital B.

“*Subsequent Project Approvals*” is defined in Section 9.1.

“*TCAC*” means the California Tax Credit Allocation Committee.

“*Term*” is defined in Section 3.2.

“*Townhome Lots*” is defined in Section 4.1 A.

“*Townhome Lot Improvements*” is defined in Section 4.1 G.

“*TM 2022-02*” is defined in Recital E.

“*TM Resolution*” is defined in Recital F.

“*Very low income households*” is defined in Section 50105 of the California Health and Safety Code, as amended or any successor statute thereto.

## **ARTICLE 2 GENERAL PROVISIONS**

**Section 2.1** **Ownership of Property.** The Parties hereby acknowledge that, as of the Effective Date, City owns fee title to the Property. Developer has a legal and equitable interest in the Property by virtue of the Disposition and Development Agreement (“**DDA**”) entered into by and between the City and Developer dated \_\_\_\_\_, 2023, and approved by the City of Healdsburg City Council pursuant to Resolution No. \_\_\_\_\_ on \_\_\_\_\_, 2023, governing the terms and conditions of transfer of fee title to the Property, excluding Parcel B, from City to Developer for the development and construction of the Project

## **ARTICLE 3 EFFECTIVE DATE AND TERM**

**Section 3.1** **Effective Date.** This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective (“**Effective Date**”).

**Section 3.2** **Term.** The term of this Agreement (“**Term**”) shall commence upon the Effective Date and expire on the first to occur of: (i) completion of development of the Phase 1 Improvements, Phase 2 Improvements, Phase 3 Improvements and Phase 4 Improvement as evidenced by City’s issuance of a certificate of occupancy for each phase, and satisfaction of all of Developer’s obligations in connection therewith, (ii) the tenth (10<sup>th</sup>) anniversary of the Effective Date if construction of Phase 1 Improvements have commenced on or before the date which is five (5) years after the Effective Date, or (iii) the fifth (5<sup>th</sup>) anniversary of the Effective Date if construction of Phase 1 Improvements have not commenced on or before the date which is five (5) years after the Effective Date. Upon expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 11.7.

Section 3.3 City Representations and Warranties. City represents and warrants to Developer that, as of the Effective Date:

A. City is a municipal corporation, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

C. This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

During the Term of this Agreement, City shall, upon learning of any fact or condition that would cause any of the warranties and representations in this Section 3.3 not to be true, immediately give written notice of such fact or condition to Developer.

Section 3.4 Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date:

A. Developer is duly organized and validly existing under the laws of the State of California, and is in good standing and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate action.

C. This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

D. Developer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

During the Term of this Agreement, Developer shall, upon learning of any fact or condition that would cause any of the warranties and representations in this Section 3.4 not to be true, immediately give written notice of such fact or condition to City.

#### **ARTICLE 4 DEVELOPMENT OF PROPERTY**

Section 4.1 The Project. Consistent with the Existing Approvals, the Project is defined to mean all of the following:

A. Subdivision of the Property into a total of 17 parcels, comprised of two parcels for open space (“**Parcel A**” and “**Parcel B**”), one parcel for outdoor amenities (“**Lot 1**”), one parcel for a community building (“**Lot 2**”), one parcel for 42 residential housing units (“**Lot 3**”), ten parcels for a townhome residence on each parcel (“**Townhome Lots**”), one parcel for 48 residential housing units (“**Lot 14**”), and one parcel for 18 residential housing units (“**Lot 15**”), as said parcels and lots are shown on TM 2022-02.

B. Parcel A shall remain as open space and improved with pedestrian trails (“**Parcel A Improvements**”) to be constructed and maintained by Developer, and subject to a non-exclusive public easement in favor of the City for public access on, over and across Parcel A as necessary to access the Parcel A Improvements, in perpetuity, as more particularly set forth in the “**Parcel A Public Access Easement**” attached to the DDA.

C. Parcel B shall remain as open space and improved with a multi-use trail (“**Parcel B Improvements**”) to be constructed and maintained by City, and fee title to Parcel B shall be retained by City.

D. Lot 1 shall be improved with outdoor amenities such as community gardens, picnic areas and/or a small farm (“**Lot 1 Improvements**”), to be constructed by Developer, maintained by the Owners, and available for use by residents of Lot 3, Townhome Lots, Lot 14 and Lot 15.

E. Lot 2 shall be improved with a one-story community building of approximately 3,067 square feet, 4 surface parking spaces and associated hardscape and landscaping improvements (“**Lot 2 Improvements**”), to be constructed by Developer, maintained by the Owners, and available for use by residents of Lot 3, Townhome Lots, Lot 14 and Lot 15.

F. Lot 3 shall be improved with four, three-story residential buildings of a height not to exceed 35 feet, containing 42 residential units totaling approximately 45,299 square feet and comprised of one (1) studio unit, nineteen (19) one-bedroom units, eleven (11) two-bedroom units, and eleven (11) three-bedroom units, 64 surface parking spaces and associated hardscape and landscaping improvements (“**Lot 3 Improvements**”), which residential units shall be restricted for rental to and occupancy by lower income households, inclusive of very low income households and extremely low income households, at an affordable rent, for a minimum period of 55 years, as more particularly set forth in the “**Rental Affordable Housing Covenant**” attached to the DDA. Further, Lot 3 shall be subject to a non-exclusive public easement in favor of the City for ingress and egress from Parkland Farms Boulevard on, over and across Lot 3 to the planned parking lot serving the Healdsburg Ridge Open Space Reserve to be located adjacent to and east of Lot 3, in perpetuity, as more particularly set forth in the “**Lot 3 Ingress & Egress Easement**” attached to the DDA.

G. The ten (10) Townhome Lots shall be improved with a two-story, three-bedroom townhome residence on each parcel of a height not to exceed 28 feet, and 1,766 square feet, and associated surface parking and hardscaping and landscaping improvements (“**Townhome Lot Improvements**”), which townhome residences shall be restricted for sale to and occupancy by persons and families of moderate income, at an affordable housing cost, for a minimum period

of 45 years, as more particularly set forth in the “**Owner-Occupied Affordable Housing Covenant**” attached to the DDA.

H. Lot 14 shall be improved with one, three-story residential building of a height not to exceed 35 feet, containing 48 residential units totaling approximately 59,531 square feet and comprised of thirteen (13) studio units, eleven (11) one-bedroom units, twelve (12) two-bedroom units, and twelve (12) three-bedroom units, 60 surface parking spaces and associated hardscape and landscaping improvements (“**Lot 14 Improvements**”), which residential units shall be restricted for rental to and occupancy by lower income households, inclusive of very low income households and extremely low income households, at an affordable rent, for a minimum period of 55 years, as more particularly set forth in the “**Rental Affordable Housing Covenant**” attached to the DDA.

I. Lot 15 shall be improved with two, three-story residential buildings of a height not to exceed 35 feet, containing 18 residential units totaling approximately 20,077 square feet and comprised of one (1) studio unit, six (6) one-bedroom units, six (6) two-bedroom units, and five (5) three-bedroom units, 29 surface parking spaces and associated hardscape and landscaping improvements (“**Lot 15 Improvements**”), which residential units shall be restricted either (i) for rental to and occupancy by lower income households, inclusive of very low income households and extremely low income households, at an affordable rent, for a minimum period of 55 years, as more particularly set forth in the “**Rental Affordable Housing Covenant**” attached to the DDA (“**Lot 15 Rental Option**”), or (ii) for sale to and occupancy by persons and families of moderate income, at an affordable housing cost, for a minimum period of 45 years, as more particularly set forth in the “**Owner-Occupied Affordable Housing Covenant**” attached to the DDA (“**Lot 15 Owner-Occupied Option**”).

J. Public improvements shall include (i) construction of sidewalks and streetlights along Passalacqua Drive and Parkland Farms Boulevard fronting the Property, (ii) striping of that portion of Passalacqua Drive and Parkland Farms Boulevard fronting the Property, (iii) installation and construction of a Rectangular Rapid Flashing Beacon at the crossing of Parkland Farms Boulevard located between Parcel B and Lot 2, and (iv) the Parcel A Improvements (“**Public Improvements**”).

Section 4.2 Project Phasing. The Project is intended to be constructed in no more than four phases by Developer. The first phase of the Project will consist of the construction and completion thereof of the Parcel A Improvements, Lot 2 Improvements, Lot 14 Improvements, and the Public Improvements in accordance with the Existing Approvals (“**Phase 1 Improvements**”). The Parcel B Improvements will be designed and constructed by City, at its sole cost and expense, either before or concurrently with the construction of the Phase 1 Improvements by Developer. The second phase of the Project will consist of the construction and completion thereof of the Lot 1 Improvements and Lot 3 Improvements in accordance with the Existing Approvals (“**Phase 2 Improvements**”). The third phase of the Project will consist of the construction and completion thereof of the Lot 15 Improvements in accordance with the Existing Approvals (“**Phase 3 Improvements**”). The fourth phase of the Project will consist of the construction and completion thereof of the Townhome Lot Improvements in accordance with the Existing Approvals (“**Phase 4 Improvements**”). Phase 2 Improvements may be combined with the Phase 1 Improvements. Further, if Developer elects to develop and construct the Lot 15

Improvements pursuant to the Lot 15 Rental Option, then said Lot 15 Improvements may be constructed and completed as part of Phase 2 Improvements and/or the Phase 1 Improvements; however, if Developer elects to develop and construct the Lot 15 Improvements pursuant to the Lot 15 Owner-Occupied Option, then said Lot 15 Improvements shall be constructed and completed as the Phase 3 Improvements, which may be combined with the Phase 4 Improvements.

Section 4.3 Vested Rights. Subject to the fulfillment of the provisions of this Agreement and the obligations required by the Project Approvals, the City hereby grants to Developer the present vested right to develop and construct on the Property all the improvements authorized by the Project Approvals and this Agreement. To the extent permitted by Applicable Law, and except as otherwise provided herein, no future modification of the City's General Plan, Municipal Code, ordinances, policies or regulations shall apply to the Property that purports to: (i) limit the permitted uses of the Property, the density and intensity of use (including but not limited to floor area ratios of commercial/retail buildings), or the maximum height and size of proposed buildings; (ii) impose requirements for reservation or dedication of land for public purposes or requirements for infrastructure, public improvements, or public utilities, other than as provided in the Project Approvals or pursuant to this Agreement; (iii) impose conditions upon development of the Property other than as permitted by the Applicable City Regulations, Changes in the Law, the Project Approvals and this Agreement; (iv) limit the timing, phasing or rate of development of the Property; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting any land use ordinances, policies, regulations or amendments permitted herein; or (v) limit the location of building sites, grading or other improvements on the Property in a manner that is inconsistent with or substantially more restrictive than the limitations included in this Agreement or the Project Approvals.

Section 4.4 Reservations of Authority. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract. This Agreement shall be construed to reserve to City all such power and authority which cannot be restricted by contract. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Project:

A. Processing Fees, Impact Fees, Connection Fees and other fees of every kind and nature imposed by the City that are in force and effect at the time land use or development permits, building permits, approvals or entitlements are applied for or issued on any or all portions of the Project, and any increase or modification to those fees that are in force and effect at the time land use or development permits, building permits, approvals or entitlements are issued on any or all portions of the Project.

B. Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure then applicable in City at the time of permit application.

C. Regulations governing construction standards and specifications, including City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in City at the time of permit issuance.

D. New City Laws applicable to the Property or Project that do not conflict with this Agreement.

E. New City Laws that may be in conflict with this Agreement but that are necessary to protect persons or property from dangerous or hazardous conditions that create a threat to the public health or safety or create a physical risk, based on findings by the City Council identifying the dangerous or hazardous conditions requiring such changes in the law, why there are no feasible alternatives to the imposition of such changes, and how such changes would alleviate the dangerous or hazardous condition.

F. Exactions required by this Agreement and the Existing Approvals.

Section 4.5 Regulation by Other Public Agencies. City and Developer acknowledge and agree that other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Developer shall, at the time required by Developer in accordance with Developer's construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. Developer shall also pay all required fees when due to such public agencies. Developer acknowledges that City does not control the amount of any such fees. City shall reasonably cooperate with Developer in Developer's effort to obtain such permits and approvals; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement, or to amend any City policy, regulation or ordinance in connection therewith.

Section 4.6 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals.

Section 4.7 Initiatives. If any New City Law is enacted or imposed by a citizen-sponsored initiative or referendum, which New City Law would conflict with the Project Approvals or this Agreement or reduce the development rights or assurances provided by this Agreement, such New City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. Without limiting the generality of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, use permits, building permits or other entitlements to use that are approved or to be approved, issued or granted by City shall apply to the Property or Project. Developer agrees and understands that City does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project. City shall reasonably cooperate with Developer and, at Developer's expense, shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot and fulfill any legal responsibility to defend a ballot measure passed by its voters, shall not support, adopt or enact any New City Law, or take any other action that would violate the express provisions or spirit and intent of this Agreement.

Section 4.8 Timing of Development. Developer shall have the vested right to develop the Project in such order, at such rate and at such times as Developer deems appropriate in the exercise of its business judgment. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the Parties hereto to avoid that result. Notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except as otherwise provided for in this Agreement, Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment, provided, however, Developer agrees that the Phase 1 Improvements shall be constructed before or at the same time as the Phase 2 Improvements, Phase 3 Improvements or Phase 4 Improvements, and the Public Improvements shall be constructed at the same time as the Phase 1 Improvements.

Section 4.9 No Conflicting Enactments. Except as otherwise provided in this Agreement, City shall not impose on the Project (whether by action of the City Council or by initiative, referendum or other means) any New City Law that is in conflict with this Agreement or the Existing Approvals. Without limiting the generality of the foregoing, City shall not (i) apply to the Property any change in land use designation or permitted use of the Property; (ii) limit or control the ability to obtain public utilities, services, or facilities (provided, however, nothing herein shall be deemed to exempt the Project or the Property from any water use rationing requirements that may be imposed from time to time in the future or be construed as a reservation of any existing sanitary sewer or potable water capacity); (iii) limit or control the uses; building setbacks, square footage, dimensions, floor plates, height, intensity and design; location of buildings and structures; or spacing between buildings in a manner that is inconsistent with or more restrictive than the limitations included in the Existing Approvals or this Agreement; or (iv) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project.

Section 4.10 Changes in the Law. As provided in section 65869.5 of the Development Agreement Law, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than the City, created or operating pursuant to the laws of the State of California ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and City and Developer shall agree to such action as may be reasonably required. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such Changes in the Law.

## ARTICLE 5 DEVELOPMENT STANDARDS AND FEES

Section 5.1 Compliance With Laws. Developer, at its sole cost and expense, shall comply with the requirements of, and obtain all permits and approvals required by local, State and Federal agencies having jurisdiction over the Project. Furthermore, Developer shall carry out the Project work in conformity with all Applicable Law, including City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City of Healdsburg Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

Section 5.2 Construction Progress Meetings. City and Developer shall have regular meetings during the Term of this Agreement to discuss the progress of the development and construction of the Project. Such meetings shall be attended by representatives of the Parties with experience and expertise in the relevant disciplines to the stage of the development and construction process.

Section 5.3 City of Healdsburg Business License. Developer or its successor, at its expense, shall obtain and maintain a business license issued by the City of Healdsburg at all time during the Term.

Section 5.4 Developer to Pay All Applicable Fees. Developer agrees to pay when due any existing, increased or modified fees, or new fees of general application to development within the City, including Processing Fees, Connection Fees and Impact Fees at the rates then in effect at the time land use or development permits, approvals or entitlements are applied for or issued on any or all portions of the Project. In addition, City may impose and Developer shall comply with those Exactions required by this Agreement and the Project Approvals.

## ARTICLE 6 ANNUAL REVIEW

### Section 6.1 Periodic Review.

A. The City Manager or designee shall on an annual basis and at any other time that the City Manager reasonably determines to be appropriate (but not more than once in any 12-month period), review the extent of Developer's good faith substantial compliance with the terms and conditions of this Agreement in accordance with Government Code Section 65865.1. All City costs related to City's review pursuant to this Section 6.1 shall be borne by Developer.

B. The annual review shall be conducted as provided herein:

(1) The City Manager shall provide thirty (30) days written notice of City's review of Developer's good faith substantial compliance with the terms and conditions of this Agreement pursuant to this Section 6.1. Such notice shall require Developer to demonstrate good faith substantial compliance with such terms and conditions, complete and submit to City an Annual Review Form in the form attached hereto as Exhibit C and provide such other information

as may be reasonably requested by the City Manager. Such notice shall also advise Developer that the review may result in amendment or termination of this Agreement.

(2) If, following his or her review of Developer's submission, the City Manager is not satisfied that Developer has demonstrated good faith substantial compliance with the terms and conditions of this Agreement, or for any other reason, the City Manager may refer the matter along with his or her recommendation to the City Council, which shall at the first available agenda following the City Manager's referral conduct a public hearing on Developer's good faith substantial compliance with the terms and conditions of this Agreement. The City Council's hearing of the matter shall be de novo.

(3) If the City Council finds and determines, based on substantial evidence in the record, that the Developer has failed to substantially comply in good faith with the terms and conditions of this Agreement, the City Council may terminate or modify this Agreement. Developer's failure to accept modification of this Agreement as provided in this Section 6.1 shall result in termination of the Agreement. Termination of this Agreement shall not relieve Developer of any obligation to comply with the terms and conditions of any applicable zoning, specific plans, special permit, subdivision map or other land use entitlement approval, nor shall it relieve Developer of any obligation to comply with any covenants which by the terms of this Agreement survive termination.

C. A finding by the City Manager or the City Council of good faith substantial compliance by Developer with the terms and conditions of this Agreement shall conclusively determine the issue up to and including the date of such review.

D. Failure of City to conduct a periodic review as provided in this Section 6.1 shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

## ARTICLE 7 MORTGAGEE PROTECTION

Section 7.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording of this Agreement, including the lien of any deed of trust or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

Section 7.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 7.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of the Project, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals and this Agreement nor to construct any

improvements thereon or institute any uses other than those uses and improvements provided for or authorized by this Agreement and the Project Approvals.

Section 7.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City agrees to deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an event of default; and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice. If a Mortgagee shall be required to obtain possession in order to cure any default, then vis-à-vis the Mortgagee, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed one hundred eighty (180) days from the City's notice (or, if applicable, one hundred eighty (180) days following relief from any automatic stay applicable in connection with any bankruptcy proceedings affecting Developer or the Project or any restraining order or injunction issued in connection with any foreclosure proceedings initiated by a Mortgagee).

Section 7.4 No Supersedure. Nothing in this Article 7 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 7 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 7.3.

## **ARTICLE 8 AMENDMENT OF AGREEMENT AND EXISTING APPROVALS**

Section 8.1 Amendment of Agreement By Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto or their successors-in-interest or assigns. Extension of the Term of this Agreement pursuant to Section 11.5 shall be considered Insubstantial Amendments and shall be processed under Section 8.2.

Section 8.2 Insubstantial Amendments to Agreement. Any amendment to this Agreement which, in the context of the overall Project contemplated by this Agreement, does not substantially affect (i) the Term of this Agreement (except as otherwise provided in Section 8.1), (ii) permitted uses of the Property, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Property or the maximum height or size of proposed buildings, (vi) monetary contributions by Developer, (vii) the nature, timing of delivery, or scope of the Private Improvements or Public Improvements, or (viii) the phasing of the Phase 1 Improvements and Phase 2 Improvements, shall be deemed an "**Insubstantial Amendment**" and shall not, except to the extent otherwise required by law, require notice or public hearing before the Parties may execute an amendment hereto. The City Manager shall have the authority to execute an Insubstantial Amendment or, in his or her discretion, seek approval of an Insubstantial Amendment by resolution of the City Council.

Section 8.3 Major Amendments. Any amendment to this Agreement other than an Insubstantial Amendment shall be deemed a “Major Amendment” and shall be subject to approval by the City Council by ordinance following duly noticed public hearing before the Planning Commission and City Council consistent with Government Code sections 65867, 65867.5 and 65868.

Section 8.4 Requirement for Writing. No modification, amendment, or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that refers expressly to this Agreement and is signed by duly authorized representatives of both Parties or their successors. A copy of any change shall be provided to the City Council within thirty (30) days of its execution.

Section 8.5 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the date of execution of this Agreement. No amendment or addition to those provisions that would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement, unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected by same unless the parties mutually agree in writing to amend this Agreement to permit such applicability.

## **ARTICLE 9 COOPERATION AND IMPLEMENTATION**

Section 9.1 Subsequent Project Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals, will be necessary or desirable for implementation of the Project (“**Subsequent Project Approvals**”). The Subsequent Project Approvals may include, without limitation, the following: amendments of the Existing Approvals, grading permits, building permits, sewer and water connection permits, certificates of occupancy, final maps, lot line adjustments, parcel maps and/or subdivision maps, and any amendments to, or repealing of, any of the foregoing. Except as otherwise expressly provided herein, the City shall not impose requirements or conditions upon Project development and construction that are inconsistent with the Existing Approvals and the terms and conditions of this Agreement. Further, except as expressly provided herein, the City shall not exercise discretion in determining whether or how to grant Subsequent Project Approvals in a manner that would prevent development of the Project for the uses and to the maximum intensity of development set forth in the Existing Approvals.

### Section 9.2 Processing Applications for Subsequent Project Approvals.

A. Developer acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer’s planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under

Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Project Approvals.

B. Upon submission by Developer of all appropriate applications and Processing Fees for any pending Subsequent Project Approval, City shall, to the full extent allowed by Applicable Law, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer's currently pending Subsequent Project Approval applications including: (i) providing at Developer's expense and subject to Developer's request and prior approval, reasonable overtime staff assistance, additional staff and/or staff consultants for concurrent, expedited planning and processing of each pending Subsequent Project Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such pending Subsequent Project Approval application.

Section 9.3 Other Agency Subsequent Project Approvals; Authority of City. City shall cooperate with Developer, to the extent appropriate and as permitted by law, in Developer's efforts to obtain, as may be required, Other Agency Subsequent Project Approvals. Notwithstanding the issuance to Developer of Other Agency Subsequent Project Approvals, Developer agrees that City shall have the right to review, modify, approve and/or reject any and all submissions subject to the Other Agency Subsequent Project Approvals which, but for the authority of the other governmental or quasi-governmental entities issuing the Other Agency Subsequent Project Approvals, would otherwise require City approval. Developer agrees that City may review, modify, approve and/or reject any such materials or applications to ensure consistency with this Agreement and the Project Approvals and Developer shall incorporate any and all changes required by City prior to submitting such materials and applications to the other governmental or quasi-governmental entities for review and/or approval.

Section 9.4 Cooperation in the Event of Legal Challenge. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the Project Approvals ("**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. To the extent Developer desires to contest or defend such Litigation Challenge, (i) Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice; (ii) City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice in any such action or proceeding, with the reasonable costs of such representation to be paid by Developer; (iii) Developer shall reimburse City, within thirty (30) business days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable out of pocket costs incurred by City in connection with the Litigation Challenge; and (iv) Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation. Any proposed settlement of a Litigation Challenge shall be subject to City's approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any

Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so.

## ARTICLE 10 ASSIGNMENT, TRANSFER AND NOTICE

### Section 10.1 Assignment.

A. The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein.

B. Except as otherwise provided below with respect to a Permitted Transfer in connection with the conveyance by City to Developer of Parcel A, Lot 1, Lot 2, Lot 3, Townhome Lots, Lot 14 or Lot 15 in accordance with the terms of the DDA, Developer shall not assign or transfer this Agreement or any interest therein without the prior written approval of City. Developer shall notify City of any proposed transfer or assignment promptly upon commencement of negotiations in connection with such event (or at such later time as such negotiations are not confidential in nature) and in any event at least sixty (60) days prior to completing any transfer or assignment. City shall approve or disapprove any such proposed transfer or assignment within sixty (60) days after receipt of a written request for approval thereof from Developer, together with such documentation as may be reasonably required by City. The documentation to be provided by Developer to City may include all financial and other documentation which City determines is reasonably necessary to evaluate the proposed transaction and the proposed assignee's/transferee's experience, reputation and qualifications.

C. Prior to consideration by City of any proposed assignment, including a Permitted Transfer, Developer shall deliver to City the form of a proposed written assignment and assumption agreement in which the assignee expressly agrees to assume all rights and obligations of Developer under this Agreement arising after the effective date of the assignment with respect to the parcel or parcels or other portion of the Property transferred or assigned, and in which the assignee agrees to assume all performance and obligations of Developer arising after the effective date of the assignment applicable to such parcel or parcels or other portion of the Property. The assignment and assumption agreement shall be in substantially the same form attached hereto as Exhibit D. City shall not unreasonably withhold its approval of a transfer or assignment to a proposed transferee/assignee who, in the reasonable opinion of City, is financially capable and has the development and operational qualifications and experience to perform the duties and obligations of Developer hereunder. No later than the date the assignment becomes effective, Developer shall deliver to City a fully executed counterpart of the assignment and assumption agreement.

D. Any of the following transfers or assignments shall be a “**Permitted Transfer**”:

- (1) Any assignment or transfer to an Affiliate of Developer; or

(2) A transfer which, when combined with any and all previous or simultaneous transfers, represents less than fifty percent (50%) of the equity or beneficial interest of Developer, provided such transfer does not cause a material change in the rights to manage and control Developer.

Developer shall give at least sixty (60) days prior written notice to City of a Permitted Transfer. In addition, City shall be entitled to review such documentation as it may reasonably require to establish that the proposed assignment or transfer is a Permitted Transfer.

E. Any assignee under this Section 10.1 (“Assignee”) shall succeed to the rights, duties and obligations of Developer only with respect to the parcel or parcels or other portion of the Property so transferred or assigned, and Developer shall continue to be obligated under this Agreement with respect to all portions of the Property retained by Developer.

## ARTICLE 11 DEFAULT; REMEDIES; TERMINATION

Section 11.1 Breach. Subject to extensions of time under Section 11.5 or by mutual consent in writing, the failure or delay by either Party to perform any term or provision of this Agreement shall constitute a breach of this Agreement. In the event of alleged breach of this Agreement, the Party alleging such breach shall give the other Party notice in writing specifying the nature of the breach and the manner in which said breach may be satisfactorily cured, and the Party in breach shall have sixty (60) days following such notice (“**Cure Period**”) to cure such breach, except that in the event of a breach of an obligation to make a payment, the Party in breach shall have ten (10) days to cure the breach after receipt of notice thereof. If the breach is of a type that cannot be cured within sixty (60) days, the breaching Party shall, within a thirty (30) day period following notice to the non-breaching Party, notify the non-breaching Party of the time it will take to cure such breach which shall be a reasonable period under the circumstances (“**Extended Cure Period**”); commence to cure such breach within said 30-day period; and be proceeding diligently to cure such breach. Subject to the provisions of Section 11.5, the Extended Cure Period shall in no event exceed one hundred eighty (180) days unless otherwise agreed by the Parties. During the Cure Period or Extended Cure Period, the Party charged shall not be considered in Default for purposes of termination or institution of legal proceedings; but the City’s right to refuse to issue a permit or Subsequent Project Approval, under Section 11.3, shall not be limited by this provision. The failure of any Party to give notice of any breach shall not be deemed to be a waiver of that Party’s right to allege any other breach at any other time.

Section 11.2 Default. If the breaching Party has not cured such breach within the Cure Period or the Extended Cure Period, if any, such Party shall be in default (“**Default**”), and the non-breaching Party, at its option, may terminate this Agreement, institute legal proceedings pursuant to this Agreement and shall have such remedies as are set forth in Section 11.4 below.

Section 11.3 Withholding of Permits. In the event of a Default by Developer, or following notice of breach to Developer and during the Cure Period or Extended Cure Period, City shall have the right to refuse to issue any permit or other Subsequent Project Approvals to which Developer would otherwise have been entitled pursuant to this Agreement. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

Section 11.4 Remedies.

A. In the event of a Default by City or Developer, the non-defaulting Party shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code Section 65868 and regulations of City implementing such section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867 and City regulations implementing said section. Following consideration of the evidence presented in said review before the City Council, either Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 11.7 hereof.

B. If City issues a Project Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

C. In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose of this Agreement. Any such legal action shall be brought in the Superior Court for Alameda County, California, or in the Federal District Court for the Northern District of the State of California. Neither Party shall have the right to recover any consequential, punitive or special damages.

Section 11.5 Enforced Delay; Extension of Time of Performance. Subject to the limitations set forth below, performance by either Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other Party; or acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause (but in any event shall not exceed a cumulative total of two (2) years), if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. The Parties agree that the commencement of any litigation concerning this Agreement, the Ordinance approving this Agreement or any of the Existing Approvals shall constitute cause for an extension of time for performance of obligations under this Agreement up to a maximum of two (2) years, and that the Term of this Agreement shall be automatically extended for the period such litigation is pending (subject, however, to the 2 year maximum extension).

Section 11.6 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with designated representatives of City promptly following City's request. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing

in this Section 11.6 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to by the parties to such meetings.

Section 11.7 Surviving Provisions. Following the termination of this Agreement, neither Party shall have any further rights or obligations hereunder, except for those obligations of Developer set forth in Section 9.8 (Cooperation in the Event of Legal Challenge) and Section 12.1 (Indemnity and Hold Harmless).

## **ARTICLE 12 INDEMNITY AND INSURANCE**

Section 12.1 Indemnity and Hold Harmless. Developer shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City Parties from and against any and all Claims, including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from the development or construction of the Project by or on behalf of Developer, and/or from any other acts or omissions of Developer under this Agreement, whether such acts or omissions are by Developer or any of Developer's contractors, subcontractors, agents or employees, except to the extent such Claims arise from the sole active negligence or willful misconduct of City or City Parties.

Section 12.2 Insurance Requirements. Developer shall procure and maintain, or cause its contractor(s) to procure and maintain, once construction of Phase 1 Improvements have commenced and for the duration of this Agreement, a commercial general liability policy in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) combined single limit, including contractual liability, a comprehensive automobile liability policy in the amount of One Million Dollars (\$1,000,000), combined single limit, and an excess liability policy in an amount not less than Five Million Dollars (\$5,000,000). Such policy or policies shall be written on an occurrence form, so long as such form of policy is then commonly available in the commercial insurance marketplace. Developers' insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-:VII or a rating otherwise approved by the City in its reasonable discretion. Developer shall furnish at City's request appropriate certificate(s) of insurance evidencing the insurance coverage required by City hereunder, and the City Parties shall be named as additional insured parties under the policies required hereunder. Coverage provided hereunder by Developer shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City.

Section 12.3 Workers' Compensation Insurance. Developer shall also provide, or cause to be provided, Workers' Compensation insurance as required by law, covering employees of Developer and employees of any contractor, subcontractor, agent or representative of Developer.

Section 12.4 No Supersedure. The provisions of this Article 12 relating to indemnity and insurance shall not supersede and shall be in addition to any requirements contained in any Project Approval or any other land use entitlement pertaining to the Property; provided, however, that such provisions of this Article 12 or any such other Project Approval or any other land use

entitlement pertaining to the Property shall not supersede or replace in any way the indemnity and insurance requirements set forth in any lease or easement agreement provided for in or to be entered into pursuant to the Public Improvements Funding Agreement.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

Section 13.1 Incorporation of Recitals, Exhibits and Introductory Paragraph. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals and the Exhibits attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

Section 13.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, the Party adversely affected may terminate this Agreement by providing written notice of such termination to the other Party.

Section 13.3 Construction. Each reference herein to this Agreement or any of the Existing Approvals or Subsequent Project Approvals shall be deemed to refer to the Agreement, Existing Approval or Subsequent Project Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (iv) “or” is not exclusive; (v) “include,” “includes” and “including” are not limiting and shall be construed as if followed by the words “without limitation,” and (vi) “days” means calendar days unless specifically provided otherwise.

Section 13.4 Covenants Running with the Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

Section 13.5 Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given upon actual receipt (or refusal to accept

delivery) by any of the addressees designated below as the party to whom notices are to be sent. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

To City: City of Healdsburg  
401 Grove Street  
Healdsburg, California 95448  
Attention: City Manager

With a copy to: Burke, Williams & Sorensen, LLP  
1 California Street, Suite 3050  
San Francisco, California 94111-5432  
Attention: Samantha Zutler, City  
Attorney

To Developer: Freebird Development Company, LLC  
1111 Broadway  
Oakland, California 94607  
Attention: Robin Zimble

With a copy to: Miller Starr Regalia  
1331 N. California Blvd.  
Walnut Creek, CA 94596  
Attn: Bryan Wenter

Section 13.6 Counterparts and Exhibits; Entire Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original. This Agreement, together with the Existing Approvals and attached Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

Section 13.7 Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of Alameda.

Section 13.8 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any public improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Existing Approvals or Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this

Agreement, Existing Approvals, Subsequent Project Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 13.9 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by another Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

Section 13.10 California Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of Sonoma or the US District Court, Northern California District.

Section 13.11 City Approvals and Actions. Whenever reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

Section 13.12 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

*[REMAINDER OF PAGE LEFT BLANK]*

**CITY:**

CITY OF HEALDSBURG, a California  
municipal corporation

By: \_\_\_\_\_  
Jeffrey Kay, City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Samantha Zutler, City Attorney

ATTEST:

By: \_\_\_\_\_  
Raina Allan, City Clerk

**DEVELOPER:**

FREEBIRD DEVELOPMENT COMPANY,  
LLC, a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT A

**LEGAL DESCRIPTION OF PROPERTY**

THE PROPERTY REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF HEALDSBURG, COUNTY OF SONOMA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE-A:**

Lying within the City of Healdsburg, County of Sonoma, State of California, and being portions of Parcels 5, 6 and 11 of the Lands of Sonoma Luxury Resort LLC as shown on that Final Map titled Saggio Hills, filed for record, May 23, 2018 in Book 795 of Maps at pages 31-40, Sonoma County Records, and being more particularly described as follows:

Beginning at a 1/2" iron pipe tagged PLS 5143 marking the northwest corner of Parcel 5 as shown on said map of Saggio Hills; thence along the northerly, easterly and southerly line of Parcel 5, on a curve to the right, from a tangent that bears North 20°32' 11" West, radius of 20.00 feet, length of 33.08 feet, central angle of 94°46'43"; thence on a compound curve to the right, radius of 156.00 feet, length of 54.53 feet, central angle of 20°01' 42"; thence on a reverse curve to the left radius of 228.00 feet, length of 330.47 feet, central angle of 83°02'47"; thence North 11°09'15" East, 69.68 feet; thence South 12°48'06" East, 261.00 feet; thence South 46°32'14" West, 94.60 feet; thence South 14°18'21" West, 73.62 feet; thence South 22°09'28" East, 408.32; thence on a curve to the right from a tangent that bears South 41°31'14" West, radius of 1750.00 feet, length of 586.91 feet, central angle of 19°12'56"; thence on a reverse curve to the left, radius of 150.00 feet, length of 71.25 feet, central angle of 27°12'56"; thence a curve to the right, radius of 450.00 feet, length of 179.87 feet, central angle of 22° 54'08" to the southwest corner of said Parcel 5; thence along the westerly line of Parcel 5, North 0°29'37" East, 30.60 feet to the southerly line of said Parcel 11; thence along the common line of said Parcels 5 and 11, on a curve to the left, from a tangent that bears North 54°06' 42" East, a radius of 425.00 feet, a length of 376.97, central angle of 50°49'15"; thence leaving said common line, on a compound curve to the left, a radius of 325.00, length of 179.02 feet, central angle of 31°33'38"; thence on a reverse curve to the right, radius of 225.00 feet, length of 222.62 feet, central angle of 56°41'24"; thence North 28°25' 12" East, 70.81 feet; thence on a curve to the left, radius of 275.00, length of 235.31 feet, central angle of 49°01' 35" to the Point of Beginning.

The parcel above is pursuant to Lot Line Adjustment Application File No. LLA 2021-04 on file in the Office of the City of Healdsburg Planning Department. It is the express intent of the signatories contained in the Grant Deed recorded 9/30/2022 [recording no. 2022063599](#) extinguishes any underlying parcels or portions of parcels.

Basis of bearings: Final Map of Saggio Hills, [Book 795 of Maps, Pages 31—40](#), Sonoma County Records. Being portions of [APN 091-310-005, 006, 011](#).

Containing 7.43 acres.

**PARCEL ONE-B:**

An Emergency Vehicle Access Easement as described in the Grant of Easement executed by the County of Sonoma, a political subdivision to Sonoma Luxury Resort, LLC, recorded October 29, 2008 as [Instrument No. 2008-98282](#), of [Official Records](#).

**PARCEL TWO-A:**

Lying within the City of Healdsburg, County of Sonoma, State of California, and being a portion of Parcel 6 of the Lands of Sonoma Luxury Resort LLC as shown on that Final Map titled Saggio Hills, filed for record, May 23, 2018, in [Book 795 of Maps at pages 31-40](#), Sonoma County Records, and being more particularly described as follows:

Beginning at a 1/2" iron pipe tagged PLS 5143 marking the northwest corner of Parcel 6 as shown on said map of Saggio Hills; thence along the northeasterly line of said Parcel 6, on a curve to the right, from a

tangent that bears South 78°37'43" East, radius of 275.00 feet, length of 68.41 feet, central angle of 14°15'13"; thence on a curve to the left, radius of 1025.00 feet, length of 79.06 feet, central angle of 4°25'09"; thence South 68°47'39" East, 163.00 feet; thence on a curve to the right, radius of 225.00 feet, length of 298.24 feet, central angle of 75°56'50"; thence leaving said northeasterly line of said Parcel 6, continuing along said curve to the right, radius of 225.00, length of 83.52 feet, central angle of 21°16'01"; thence South 28°25'12" West, 70.81 feet; thence on a curve to the left, radius of 275.00 feet, length of 272.09 feet, central angle of 56°41'24"; thence on a curve to the right, radius of 275.00 feet, length of 151.48 feet, central angle of 31°33'38" to the southeasterly line of said Parcel 6; thence along the southeasterly line of said Parcel 6, on a compound curve to the right, radius of 375.00 feet, length of 294.27 feet, central angle of 44°57'42" to the westerly line of said Parcel 6; thence along said westerly line North 0°29'37" East, 441.55 feet; thence South 89°36'07" West, 132.85 feet; thence North 0°37'45" West, 452.38 feet; thence North 54°09'32" West, 234.08 feet; thence North 16°45'34" West, 48.44 feet; thence North 36°05'09" East, 99.18 feet to the Point of Beginning.

The parcel above is pursuant to Lot Line Adjustment Application File No. LLA 2021-04 on file in the Office of the City of Healdsburg Planning Department. It is the express intent of the signatories contained in the Grant Deed recorded 9/30/2022 [recording no. 2022063600](#) extinguishes any underlying parcels or portions of parcels.

Basis of bearings: Final Map of Saggio Hills, [Book 795 of Maps, Pages 31—40](#), Sonoma County Records. Being a portion of [APN 091-310-006](#).

Containing 5.01 acres.

PARCEL TWO-B:

An Emergency Vehicle Access Easement as described in the Grant of Easement executed by the County of Sonoma, a political subdivision to Sonoma Luxury Resort, LLC, recorded October 29, 2008 as [Instrument No. 2008-98282](#), of [Official Records](#).



EXHIBIT C

**ANNUAL REVIEW FORM**

This Annual Review Evaluation Form is submitted to the City of Healdsburg (“**City**”) by Freebird Development Company, LLC, a California limited liability company (“**Developer**”), pursuant to the requirements of California Government Code section 65865.1 regarding Developer’s good faith substantial compliance with its obligations under the Development Agreement between the City and Developer having an Effective Date of \_\_\_\_\_ (“**Development Agreement**”). All terms not otherwise defined herein shall have the meanings assigned to them in the Development Agreement:

Annual Review Period: \_\_\_\_\_ to \_\_\_\_\_.

Specify whether Impact fees, Processing fees, Connection fees and/or other fees due and payable have been paid during this annual review period.

Describe whether other applicable Development Agreement obligations were completed during this annual review period and, if so, specifically identify such obligations.

Specify whether Developer has assigned the Development Agreement, in whole or in part, or otherwise conveyed the Property or any portion thereof during this annual review period.

The undersigned representative confirms that Developer is:

\_\_\_\_\_ In good faith substantial compliance with its obligations under the Development Agreement for this annual review period.

\_\_\_\_\_ Not in good faith substantial compliance with its obligations under the Development Agreement for this annual review period, in response to which Developer is taking the actions set forth in the attachment hereto.

IN WITNESS WHEREOF, Developer has executed this Annual Review Form as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**DEVELOPER:**

FREEBIRD DEVELOPMENT COMPANY,  
LLC, a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT D

**FORM ASSIGNMENT AND ASSUMPTION AGREEMENT**

RECORDING REQUESTED BY	)
AND WHEN RECORDED MAIL TO:	)
	)
City of Healdsburg	)
401 Grove Street	)
Healdsburg, CA 95448	)
Attention: City Clerk	)

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*(Space Above This Line for Recorder's Use Only)*  
Exempt from Recording Fee per Government Code §27383

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“**Assignment Agreement**”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and among Freebird Development Company, LLC, a California limited liability company (“**Assignor**”), \_\_\_\_\_, a \_\_\_\_\_ (“**Assignee**”), and the City of Healdsburg, a California municipal corporation (“**City**”).

R E C I T A L S

A. Assignor has entered into a Development Agreement with City effective \_\_\_\_\_ (Recorder’s Document No. \_\_\_\_\_) (“**Development Agreement**”), to facilitate the development and use of certain real property consisting of approximately \_\_\_\_\_ acres within the City of Healdsburg, County of Sonoma, State of California, depicted and legally described in Attachment 1 attached hereto and incorporated herein (“**Property**”). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. Assignor desires to transfer its fee interest in the [*Property*] [*Townhome Lots **or** Townhome Lots and Lot 15*] [*Parcel A, Lot 1, Lot 2, Lot 3, Lot 14 and Lot 15 **or** Parcel A, Lot 1, Lot 2, Lot 3 and Lot 14*] to Assignee concurrently with execution of this Assignment Agreement and Assignee desires to so acquire such interest in the [*Property*] [*Townhome Lots **or** Townhome Lots and Lot 15*] [*Parcel A, Lot 1, Lot 2, Lot 3, Lot 14 and Lot 15 **or** Parcel A, Lot 1, Lot 2, Lot 3 and Lot 14*] from Assignor.

C. Article 10 of the Development Agreement provides that Assignor may assign its rights and obligations under the Development Agreement to another party, provided that the Assignor shall have provided to City at least sixty (60) days prior written notice and provided that the assignor and the assignee document the assignment in an agreement substantially in the form of this Assignment Agreement.

D. Assignor has provided the required written notice to City of its intent to enter into an assignment and assumption agreement as required by Section 10.1 of the Development Agreement.

E. Assignor desires to assign to Assignee and Assignee desires to assume all rights and obligations of Assignor under the Development Agreement. Upon execution of this Assignment Agreement and transfer to Assignee of legal title to the *[Property] [Townhome Lots or Townhome Lots and Lot 15] [Parcel A, Lot 1, Lot 2, Lot 3, Lot 14 and Lot 15 or Parcel A, Lot 1, Lot 2, Lot 3 and Lot 14]*, Assignor desires to be released from any and all obligations under the Development Agreement with respect to the *[Property] [Townhome Lots or Townhome Lots and Lot 15] [Parcel A, Lot 1, Lot 2, Lot 3, Lot 14 and Lot 15 or Parcel A, Lot 1, Lot 2, Lot 3 and Lot 14]*.

### A G R E E M E N T

NOW, THEREFORE, Assignor, Assignee and City hereby agree as follows:

1. Assignment by Assignor. Assignor hereby assigns, transfers and grants to Assignee, and its successors and assigns, all of Assignor's rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the Development Agreement with respect to the *[Property] [Townhome Lots or Townhome Lots and Lot 15] [Parcel A, Lot 1, Lot 2, Lot 3, Lot 14 and Lot 15 or Parcel A, Lot 1, Lot 2, Lot 3 and Lot 14]* (collectively, "**Rights and Obligations**").

2. Acceptance and Assumption by Assignee. Assignee, for itself and its successors and assigns, hereby accepts such assignment and assumes all such Rights and Obligations, accruing on or after the Assignment Agreement Effective Date (defined in Section 16 below). Assignee agrees, expressly for the benefit of City, to comply with, perform and execute all of the Rights and Obligations of Developer with respect to the *[Property] [Townhome Lots or Townhome Lots and Lot 15] [Parcel A, Lot 1, Lot 2, Lot 3, Lot 14 and Lot 15 or Parcel A, Lot 1, Lot 2, Lot 3 and Lot 14]* arising on or after the Effective Date from or under the Development Agreement.

3. Release of Assignor. Assignee and City hereby fully release Assignor from all Rights and Obligations. Both Assignor and Assignee acknowledge that this Assignment Agreement is intended to fully assign all of Assignor's Rights and Obligations to Assignee, and it is expressly understood that Assignor shall not retain any Rights and Obligations whatsoever with respect to the *[Property] [Townhome Lots or Townhome Lots and Lot 15] [Parcel A, Lot 1, Lot 2, Lot 3, Lot 14 and Lot 15 or Parcel A, Lot 1, Lot 2, Lot 3 and Lot 14]*.

4. Substitution of Assignor. Assignee hereafter shall be substituted for and replace Assignor in the Development Agreement with respect to the *[Property] [Townhome Lots or Townhome Lots and Lot 15] [Parcel A, Lot 1, Lot 2, Lot 3, Lot 14 and Lot 15 or Parcel A, Lot 1, Lot 2, Lot 3 and Lot 14]*. Whenever the term "**Developer**" appears in the Development Agreement, it shall hereafter mean Assignee.

5. Assignor and Assignee Agreements, Indemnifications and Waivers.

a. Assignee represents and warrants to City as follows:

(i) Assignee is a \_\_\_\_\_ duly formed within and in good standing under the laws of the State of \_\_\_\_\_. The copies of the documents evidencing the formation of Assignee, which have been delivered to City, are true and complete copies of the originals, as amended to the date of this Assignment Agreement. Assignee has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Assignment Agreement by Assignee has been fully authorized by all requisite actions on the part of Assignee.

(ii) Assignee's execution, delivery and performance of its obligations under this Assignment Agreement will not constitute a default or a breach under any contract, agreement or order to which Assignee is a party or by which it is bound.

(iii) Assignee has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Assignee's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Assignee's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Assignee's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

(iv) As of the Effective Date of this Assignment Agreement, Assignee will own fee simple title to the *[Property] [Townhome Lots or Townhome Lots and Lot 15] [Parcel A, Lot 1, Lot 2, Lot 3, Lot 14 and Lot 15 or Parcel A, Lot 1, Lot 2, Lot 3 and Lot 14]*.

b. Assignor and Assignee hereby acknowledge and agree that the City has not made, and will not make, any representation or warranty that the assignment and assumption of the Development Agreement provided for hereunder will have any particular tax implications for Assignor or Assignee.

c. Assignor and Assignee each hereby waives and releases and each hereby agrees to indemnify and hold City harmless from any and all damages, liabilities, causes of action, claims or potential claims against City (including reasonable attorneys' fees and costs) arising out of this Assignment Agreement or resulting from the assignment and assumption of the Rights and Obligations.

d. Assignor acknowledges and agrees that the Rights and Obligations have been fully assigned to Assignee by this Assignment Agreement and, accordingly, that Assignee shall have the exclusive right to assert any claims against City with respect to such Rights and Obligations. Accordingly, without limiting any claims of Assignee under the Development Agreement, Assignor hereby waives any claims or potential claims by Assignor against City to the extent arising solely out of the Rights and Obligations.

6. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the Development Agreement are hereby ratified and shall remain in full force and effect.

7. Recording. Assignor shall cause this Assignment Agreement to be recorded in the Official Records of Sonoma County, California, and shall promptly provide conformed copies of the recorded Assignment Agreement to Assignee and City.

8. Successors and Assigns. Subject to the restrictions on transfer set forth in the Development Agreement, all of the terms, covenants, conditions and provisions of this Assignment Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns, pursuant to Section 13.4 of the Development Agreement.

9. Assignee Address for Notices. The address of Assignee for the purpose of notices, demands and communications under Section 13.5 of the Development Agreement shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

10. Applicable Law/Venue. This Assignment Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to its choice of law provisions. Any legal actions under this Assignment Agreement shall be brought only in the Superior Court of the County of Sonoma, State of California or in the Federal District Court for the Northern District of the State of California.

11. Interpretation. All parties have been represented by counsel in the preparation and negotiation of this Assignment Agreement, and this Assignment Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Assignment Agreement. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (d) “or” is not exclusive; and (e) “includes” and “including” are not limiting.

12. Headings. Section headings in this Assignment Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Assignment Agreement.

13. Severability. Except as otherwise provided herein, if any provision(s) of this Assignment Agreement is (are) held invalid, the remainder of this Assignment Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

14. Counterparts. This Assignment Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Assignment Agreement had executed the same counterpart.

15. City Consent. City is executing this Assignment Agreement for the limited purpose of consenting to the assignment and assumption and clarifying that there is privity of contract between City on the one hand, and Assignee on the other, with respect to the Development Agreement.

16. Effective Date. The Effective Date of this Assignment Agreement shall be the date upon which Assignee obtains fee title to the Property and Assignor delivers evidence of the transfer to City (“**Assignment Agreement Effective Date**”). For the purposes of this Section, the evidence of transfer shall consist of a duly recorded deed, and title report.

*[SIGNATURES FOLLOW ON SEPARATE PAGES]*

IN WITNESS WHEREOF, Assignor, Assignee and City have entered into this Assignment Agreement as of the date first above written.

**ASSIGNOR:**

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
*[Signature must be notarized]*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
*[Signature must be notarized]*

**ASSIGNEE:**

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
*[Signature must be notarized]*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
*[Signature must be notarized]*

*[SIGNATURES CONTINUED ON NEXT PAGE]*

**CITY:**

CITY OF HEALDSBURG, a California municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager  
*[Signature must be notarized]*

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney

ATTACHMENT 1

**PROPERTY**

*[to be inserted]*