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**RESTATED DEVELOPMENT AGREEMENT  
FOR THE BELLA VISTA SUBDIVISION PROJECT**

by and between

**COUNTY OF MENDOCINO**

and

**RANCHO YOKAYO, LP**

**RESTATED DEVELOPMENT AGREEMENT FOR BELLA VISTA SUBDIVISION  
TABLE OF CONTENTS**

TABLE OF CONTENTS ..... ii

RECITALS ..... 1

A. Authorization ..... 1

B. Property ..... 1

C. Project ..... 1

D. Public Hearings ..... 2

E. Environmental Review ..... 2

F. Project Approvals ..... 3

G. Modified Project Approvals ..... 3

H. Development Agreement ..... 3

I. Consistency with General Plan ..... 4

ARTICLE 1. DEFINITIONS ..... 5

1.1. "Amended Vesting Tentative Subdivision Map" ..... 5

1.2. "County" ..... 5

1.3. "County Laws" ..... 5

1.4. "Declaration of Environmental and Land Covenants" ..... 5

1.5. "Director of Planning" ..... 5

1.6. "EIR" ..... 5

1.7. "Exactions" ..... 5

1.8. "Existing County Laws" ..... 5

1.9. "Final Subdivision Map" ..... 65

1.10. "Final Revised Findings and Conditions of Approval" ..... 6

1.11. "Landowner" ..... 6

1.12. "Master Building Design Plan" ..... 6

1.13. "Master Declaration of Covenants" ..... 6

1.14. "Mitigation Monitoring & Reporting Program" ..... 6

1.15. "Permitted Uses" ..... 6

1.16. "Processing Fee" ..... 6

1.17. "Modified Project Approvals" ..... 6

1.18. "Project Design Guidelines" ..... 76

1.19. "Project Landscaping Plan" ..... 7

1.20. "Project Phasing Plan" ..... 7

1.21. "Project Site Plan" ..... 7

1.22. "Property" ..... 7

1.23. "Subdivision Improvement Plans" ..... 7

1.24. "Subsequent Approvals" ..... 7

1.25. "Term" ..... 7

ARTICLE 2. BASICS OF AGREEMENT ..... 7

2.1. Incorporation of Recitals ..... 7

2.2. Description of Property ..... 7

2.3. Relationship of County and Landowner ..... 7

ARTICLE 3. FINDINGS ..... 7

3.1. Findings ..... 7

ARTICLE 4. EFFECTIVE DATE AND TERM ..... 8

4.1. Effective Date ..... 8

4.2. Term ..... 8

4.3. Right to Extend ..... 8

ARTICLE 5. USE OF PROPERTY ..... 9

5.1	Right to Develop .....	9
5.2	Permitted Uses .....	9
5.3	Moratorium, Quotas, Restrictions, or Other Growth Limitations .....	9
5.4	Subsequent Projects .....	10
5.5	Review and Processing of County Approvals .....	10
5.6	Extension of Approvals .....	10
ARTICLE 6. APPLICABLE RULES, REGULATIONS, FEES AND OFFICIAL POLICIES. ....		11
6.1	Rules Regarding Permitted Uses .....	11
6.2	Rules Regarding Construction .....	11
6.3	Changes in State or Federal Law .....	11
6.4	Uniform Codes Applicable .....	11
6.5	Processing Fees .....	11
6.6	Subsequent Environmental Review .....	12
6.7	Declaration of Environmental and Land Covenants .....	1342
6.8	Application of New County Laws .....	1342
6.9	Conflicting Laws .....	13
ARTICLE 7. SUBSEQUENTLY ENACTED FEES, DEDICATIONS, ASSESSMENTS AND TAXES. <u>1413</u>		
7.1	Plan Check, Building Permit, and Related Fees and Charges .....	1413
7.2	Parkland In-Lieu Fees .....	1413
7.3	Traffic Impact Fees – Off-Site Traffic – Project Contribution .....	14
7.4	School Impact Fees .....	1514
7.5	Water District Fees .....	1514
7.6	No Further Exactions .....	1514
ARTICLE 8. ADDITIONAL CONDITIONS .....		15
8.1	Project Development Plan .....	15
8.2	Subdivision Improvement Plans (SIP) .....	15
8.3	Phasing of Project .....	15
8.4	Recordation of Final Maps .....	16
8.5	Map Act Requirements .....	16
8.6	Future Tentative Maps .....	1746
8.7	Master Declaration of Covenants – Final Map Requirement .....	17
8.8	Timing of Development .....	17
8.9	Storm Sewer Management Program .....	18
8.10	Subsequent Approvals .....	18
8.11	Construction of Off-Site Improvements .....	18
8.12	Development Standards .....	19
8.13	Affordable Housing Requirement .....	19
8.14	Insurance .....	20
8.15	Permitted Delays; Superseded by Subsequent Laws .....	20
8.16	Dedication of Access Improvements .....	21
ARTICLE 9. AMENDMENT OR CANCELLATION .....		21
9.1	Modification Because of Conflict with State or Federal Laws .....	21
9.2	Amendment by Mutual Consent .....	21
9.3	Amendment of Modified Project Approvals .....	21
9.4	Cancellation by Mutual Consent .....	21
ARTICLE 10. ANNUAL REVIEW .....		22
10.1	Review Date .....	22
10.2	Initiation of Review .....	22
10.3	Staff Reports .....	22
10.4	Costs .....	22
10.5	Non-compliance with Agreement; Hearing .....	22
10.6	Appeal of Determination .....	22
ARTICLE 11. DEFAULT .....		22

11.1	Default.....	22
11.2	Procedure Regarding Defaults .....	23
11.3	Legal Proceedings .....	23
11.4	Standards for Termination – Procedures for Termination .....	24
11.5	Default by County .....	26
11.6	Limitations on Actions.....	26
11.7	Estoppel Certificate.....	26
	<b>ARTICLE 12. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE. ....</b>	<b><u>26</u></b>
12.1	Mortgagee Protection .....	27
12.2	Mortgagee Not Obligated.....	27
12.3	Notice of Default to Mortgagee and Extension of Right to Cure.....	27
	<b>ARTICLE 13. MISCELLANEOUS PROVISIONS .....</b>	<b>27</b>
13.1	Negotiated Contract.....	27
13.2	Severability .....	27
13.3	Full or Partial Invalidity or Unenforceability .....	28
13.4	Applicable Law.....	28
13.5	Attorneys' Fees and Costs in Legal Actions by Parties to the Agreement .....	28
13.6	Attorneys' Fees and Costs in Legal Actions by Third Parties to the Agreement.....	28
13.7	Transfers and Assignments.....	28
13.8	Agreement Runs with the Land .....	28
13.9	Bankruptcy.....	29
13.10	Indemnification.....	29
13.11	Notices .....	29
13.12	Reimbursement for Agreement Expense of County.....	29
13.13	Third Party Legal Challenge. ....	30
13.14	Further Assurances.....	30
13.15	Private Undertaking .....	30
13.16	Third Party Beneficiaries.....	30
13.17	Form of Agreement; Recordation; Exhibits.....	31

**RESTATED DEVELOPMENT AGREEMENT  
FOR THE BELLA VISTA SUBDIVISION PROJECT  
by and between  
COUNTY OF MENDOCINO  
and  
RANCHO YOKAYO, LP**

This Restated Development Agreement is the Second Amendment to the Garden's Gate Development Agreement and is entered into as of \_\_\_\_\_, 2023, by and between the COUNTY OF MENDOCINO, a political subdivision of the State of California ("County"), and RANCHO YOKAYO, LP, a California limited partnership company ("Landowner"). County and Landowner are hereinafter collectively referred to as the "Parties" and singularly as "Party". The Restated Development Agreement supersedes the previous Development Agreement and First Amendment, except as it pertains to the portion of the project known as "Tract 261" or "Oak Knoll, Unit One" (hereinafter referred to as "Tract 261") for which a Parcel Map has been recorded.

**RECITALS**

**A. Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864, et seq. (the "Development Agreement Statute"), which authorizes County and any person having a legal or equitable interest in the real property to enter into a development agreement, establishing certain development rights in the Property which is the subject of the development project application.

**B. Property.** The predecessor in interest to the Landowner was Ukiah Land, LLC, a California limited liability company ("Predecessor in Interest to Landowner"). Landowner holds a legal or equitable interest in certain real property located in Mendocino County, State of California, more particularly described in **Exhibit "A"** [Legal Description of the Property] and depicted on **Exhibit "B"** [Project Site Plan] attached hereto (the "Property").

**C. Project.** The Predecessor in Interest to Landowner has obtained various approvals from County (described in more detail in Recital F, below), including approval for a tentative subdivision map for a project known as Garden's Gate, hereinafter referred to as the "Original Project", to be located on the Property. As reflected in the approved "Vesting Tentative Subdivision Map" (as defined herein), the Original Project was planned for 197 dwelling units (including those dwelling units established for affordable housing and those dwelling units permitted under the State Density Bonus Law) on a 46.1-acre site with 33 acres established for residential lots, including streets, parks and common areas. The overall development was programmed for 123 single family lots and 74 townhome lots. The plan for the Original Project included 2.3 acres of open space and park areas, with a Neighborhood Park of 0.9 acre and a Community Park of 1.4 acres. The Original Project was to include 36 units for affordable (moderate-income) housing to be constructed, phased and marketed simultaneously with market rate units pursuant to the Inclusionary Housing Agreement, entered into between Landowner and County. The Predecessor in Interest to Landowner was to develop the Original Project in phases and stages as set forth on the approved Project Phasing Plan

that is attached as **Exhibit "C"** to this Development Agreement. The Landowner has completed the first phase of the Original Project with the recordation of a Final Map for the subdivision of a 1.68-acre portion of the Original Project to create four parcels ("Tract 261") and that acreage is not included in the Property that is subject to this Restated Development Agreement.

The Landowner has requested modifications to the Original Project, which is now known as the Bella Vista Subdivision, hereinafter referred to as the "Modified Project", to be located on the Property. As reflected in the "Amended Vesting Tentative Subdivision Map" (as defined herein) dated August 31, 2022, the Modified Project will include 171 dwelling units on 48.8-acre site, divided into residential lots, including streets, parks and private and common areas. The overall development is programmed for 132 single family lots and 39 age-restricted lots. The Modified Project includes 2.81 acres of open space and park areas, with a Neighborhood Park of 1.99 acres, a Linear Park of 0.58 acres, and a Cottage Park of 0.24 acres. The Landowner will develop the Modified Project in phases and stages as set forth on the Project Phasing Plan that is attached as **Exhibit "C"** to this Restated Development Agreement. The Modified Project will include 39 units of age-restricted housing as defined by Civil Code Section 51.3. The age-restricted housing will be constructed in Phases 1 and 2 of the Modified Project. The Modified Project also includes an Inclusionary Housing Plan that restricts 10% of the residential units in the non-age-restricted portion of the development for sale to moderate-income households. The moderate-income units will be constructed in Phases 3, 4, 5, and 6, pursuant to the Inclusionary Housing Agreement, a form of which is attached hereto as **Exhibit "D"** and incorporated into this Agreement.

**D. Public Hearings.** On July 2, 2009, the Planning Commission of the County, serving as County's planning agency for purposes of development agreement review pursuant to Government Code Section 65867, considered the Garden's Gate Development Agreement and recommended approval of the Development Agreement to County Board of Supervisors. On October 20, 2009, the County Board of Supervisors approved the Garden's Gate Development Agreement by Ordinance 4229. The Board subsequently approved a First Amendment to the Garden's Gate Development Agreement on April 27, 2010, by adoption of Ordinance 4264.

On March 9, 2023, the Planning Commmission of the County, considered this Restated Development Agreement and recommended approval of this Restated Development Agreement to the County Board of Supervisors. On \_\_\_\_\_, 2023, the County Board of Supervisors approved this Restated Development Agreement by Ordinance \_\_\_\_.

**E. Environmental Review.** On October 6, 2009, the County Board of Supervisors certified as adequate and complete, an environmental impact report ("EIR") for the Original Project. The County of Mendocino Department of Planning reviewed the Modified Project and, on the basis of the whole record before it, determined that there is no substantial evidence that the Modified Project would have a significant effect on the environment beyond that which was evaluated in the certified EIR. A supplemental or subsequent EIR is not required pursuant to the California Environmental Quality Act of 1970 (Section 21000, et seq., Public Resources Code of the State of California) and an Addendum to the EIR was prepared for the Modified Project. Mitigation measures were required in the EIR, and additions and revisions to mitigation measures were made in the EIR Addendum. The applicant has agreed to incorporate the amended mitigation

measures into the Modified Project as set forth in the Amended Mitigation Monitoring and Reporting Program (**Exhibit "E"**) and into the terms and conditions of this Restated Development Agreement, as reflected by the findings adopted by County Board of Supervisors concurrently with this Restated Development Agreement.

**F. Project Approvals.** The following land use approvals (collectively, the "Original Project Approvals") have been granted by the County for the Property:

- (1) Vesting Tentative Subdivision Map approval on October 6, 2009.
- (2) Garden's Gate Final EIR approval and certification on October 6, 2009, by Resolution No. 09-230.
- (3) Project Site Plan approval on October 6, 2009.
- (4) Project Phasing Plan approval on October 6, 2009.
- (5) Master Building Plan approval on October 6, 2009.
- (6) Inclusionary Housing Agreement approval on October 6, 2009.
- (7) Garden's Gate Development Agreement as adopted by Ordinance No. 4229 by the County, on October 20, 2009, and amended on April 27, 2010 by Ordinance No. 4264.
- (8) The Project Design Review Guidelines as approved by the Planning Commission with the filing of the Vesting Tentative Map.
- (9) Declaration of Environmental and Land Covenants.
- (10) Final Findings and Conditions of Approval adopted by Board of Supervisors on October 6, 2009.

**G. Modified Project Approvals:**

Following adoption of the Original Project Approvals, Landowner requested modifications and the County granted the following entitlements ("Modified Project Approvals") for the Property, which entitlements are subject to this Restated Development Agreement:

- (1) Amended Vesting Tentative Subdivision Map approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_, including:
  - (a) Project Site Plan approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_
  - (b) Project Phasing Plan approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_
- (2) Inclusionary Housing Plan approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_
- (3) Restated Development Agreement adopted on \_\_\_\_\_, by Ordinance No. \_\_\_\_\_
- (4) Project Design Guidelines, approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_
- (5) Addendum to the Garden's Gate EIR and Amended Mitigation Monitoring & Reporting Program approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_
- (6) Final Findings and Conditions of Approval adopted by the Board of Supervisors on \_\_\_\_\_, by Resolution No. \_\_\_\_\_

**H. Development Agreement Statute.** County and Landowner have taken all actions mandated by, and fulfilled all requirements set forth in, the Development Agreement Statute.

**I. Consistency with General Plan.** Having duly examined and considered this Restated Development Agreement and having held properly noticed public hearings hereon, in County Ordinance No. \_\_\_\_\_, the County Board of Supervisors finds that this Restated Development Agreement is consistent with the Mendocino County General Plan.

**NOW, THEREFORE,** in consideration of the mutual promises, conditions and covenants hereinafter set forth, the Parties agree as follows:



**ARTICLE 1. DEFINITIONS.**

**1.1. "Amended Vesting Tentative Subdivision Map"** shall mean the vesting tentative subdivision map dated August 31, 2022, filed by Landowner with the County for the Modified Project, as approved by the County Board of Supervisors.

**1.2. "County"** shall mean and refer to the County of Mendocino, a political subdivision of the State of California, in its governmental capacity.

**1.3. "County Laws"** shall mean and refer to the ordinances, resolutions, codes, rules, regulations, and official policies of the County governing the permitted uses of land, density, design, improvement, and construction standards and specifications applicable to the development of the Property and property upon which required off-site public improvements are to be constructed. Specifically, but without limiting the generality of the foregoing, County Laws shall include the County's General Plan, any of the County's Specific Plans, County zoning ordinances, and the County's subdivision ordinance.

**1.4. "Declaration of Environmental and Land Covenants"** shall mean and refer to those covenants imposed on Lots 121, 122, 123 and 124 described in Section 6.7 and recorded to implement required environmental protections mandated in the EIR, EIR Addendum, and Mitigation Monitoring & Reporting Program approved by the County.

**1.5. "Director of Planning"** shall mean and refer to the County Director of Planning and Building Services.

**1.6. "EIR"** shall mean and refer to the certified Environmental Impact Report for the Garden's Gate Subdivision Project and the Addendum to the Garden's Gate Environmental Impact Report approved by the County.

**1.7. "Exactions"** shall mean and refer to all exactions, costs, fees, in-lieu fees or payments, charges, assessments, dedications or other monetary or non-monetary requirement charged or imposed by County or by County through an assessment district (or similar entity) in connection with the development of, construction on, or use of real property, including but not limited to transportation improvement fees, child care in-lieu fees, art fees, affordable housing fees, dedication or reservation requirements, facility fees, obligations for on- or off-site improvements or construction requirements for public improvements, services or other conditions for approval called for in connection with the development of or construction of the Modified Project under the Existing County Laws, whether such exactions constitute public improvements, mitigation measures in connection with environmental review of the Modified Project Approvals, or impositions made under applicable County Laws or in order to make an Approval consistent with applicable County Laws. Exactions shall not include Processing Fees or those items stated in Sections 6.2 through 6.7 in this Restated Development Agreement.

**1.8. "Existing County Laws"** shall mean those County Laws that are in effect as of the Effective Date.

**1.9. "Final Subdivision Map"** shall mean the final subdivision map(s) to be filed by Landowner with the County for the Modified Project pursuant to the Modified Project Approvals and this Restated Development Agreement.

**1.10. "Final Revised Findings and Conditions of Approval"** shall mean and refer to those Final Findings and Conditions of Approval of Subdivision as adopted by the Board of Supervisors by Resolution No. \_\_\_\_\_ on \_\_\_\_\_, 2023.

**1.11. "Landowner"** shall mean and refer to Rancho Yokayo, a California limited partnership, and its successors and assigns.

**1.12. "Master Building Design Plan"** shall mean and refer to the Master Building Plan for each phase of the Modified Project that is to be submitted in conjunction with each subsequent Final Map and is subject to review and approval by the Director of Planning.

**1.13. "Master Declaration of Covenants"** shall mean and refer to the Master Declaration of Covenants, Conditions and Restrictions and Easements for for the Modified Project as approved by the County as set forth in Section 8.6 of this Restated Development Agreement.

**1.14. "Mitigation Monitoring & Reporting Program"** shall mean and refer to the Mitigation Monitoring & Reporting Program adopted by the County for the Modified Project pursuant to the EIR and EIR Addendum, and which is attached to this Restated Development Agreement as **Exhibit "E"**.

**1.15. "Permitted Uses"** are defined in Section 5.2.

**1.16. "Processing Fee"** shall mean and refer to a fee generally imposed by the County for processing applications for land use, development, construction, building permits and other such applications and approvals that are payable upon the submission of an application for a permit or approval, and which are not solely applicable to the Modified Project and cover only the estimated actual costs to the County of processing that application, in accordance with and as provided under Government Code section 66014.

**1.17. "Modified Project Approvals"** shall mean and refer to:

- A. Amended Vesting Tentative Subdivision Map approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_
- B. Project Site Plan approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_
- C. Project Phasing Plan approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_
- D. Inclusionary Housing Plan approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_
- E. Restated Development Agreement, including Inclusionary Housing Agreement, adopted on \_\_\_\_\_, by Ordinance No. \_\_\_\_\_
- F. Project Design Guidelines, approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_.
- G. Addendum to the Garden's Gate EIR and Amended Mitigation Monitoring & Reporting Program as approved on \_\_\_\_\_, by Resolution No. \_\_\_\_\_,
- H. Final Findings and Conditions of Approval as adopted by the Board of Supervisors on \_\_\_\_\_, by Resolution No. \_\_\_\_\_.

**1.18. "Project Design Guidelines"** shall mean and refer to the Bella Vista Design Manual dated January 16, 2023, as reviewed by the Planning Commission and approved concurrently with the Amended Vesting Tentative Subdivision Map.

**1.19. "Project Landscaping Plan"** shall mean and refer to the amended Project Landscaping Plan dated November 12, 2020, as approved by the County as part of the Modified Project Approvals.

**1.20. "Project Phasing Plan"** shall mean and refer to the amended Project Phasing Plan approved by the County as part of the Modified Project Approvals, as shown on sheet 3 of 10 of the Amended Vesting Tentative Subdivision Map dated August 31, 2022 and attached hereto as **Exhibit "C"**.

**1.21. "Project Site Plan"** shall mean and refer to the amended Project Site Plan approved by the County as part of the Modified Project Approvals, shown on sheets 4 of 10 of the Amended Vesting Subdivision Tentative Map dated August 31, 2022, and attached hereto as **Exhibit "B"**.

**1.22. "Property"** shall mean and refer to the real property located in County of Mendocino, more particularly described in **Exhibit "A"** and depicted on **Exhibit "B"** attached hereto.

**1.23. "Subdivision Improvement Plans"** shall mean and refer to the plans for all offsite and onsite improvements as defined in Section 8.2 of this Restated Development Agreement.

**1.24. "Subsequent Approvals"** shall mean those approvals for the Modified Project for the design, construction, and building of improvements within the Modified Project that are submitted to and approved by the County subsequent to the Modified Project Approvals that are defined in this Restated Development Agreement.

**1.25. "Term"** is defined and described in Section 4.2.

## **ARTICLE 2. BASICS OF AGREEMENT.**

**2.1. Incorporation of Recitals.** The Preamble, the Recitals and all defined terms set forth in both are hereby incorporated into this Restated Development Agreement as if set forth herein in full.

**2.2. Description of Property.** The Property as defined in Section 1.22 shall be subject to this Restated Development Agreement.

**2.3. Relationship of County and Landowner.** It is understood that this Restated Development Agreement is a contract that has been negotiated and voluntarily entered into by County and Landowner and that Landowner is not an agent of County. County and Landowner hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making County and Landowner joint venturers or partners.

## **ARTICLE 3. FINDINGS.**

**3.1. Findings.** The County Board of Supervisors finds, pursuant to Government Code section 65867.5(b), that this Restated Development Agreement and

the provisions thereof are consistent with the general plan of the County. County has determined that the Modified Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the County's land use planning for the Property and secure orderly development of the Modified Project and shall assure progressive installation of necessary improvements and mitigation appropriate to each stage or phase of development of the Modified Project, insure attainment of the maximum effective utilization of resources within the County at the least economic cost to its citizens, secure public improvements and amenities that could not otherwise be obtained, and otherwise achieve the goals and purposes for which the Restated Development Agreement was enacted by the County.

#### **ARTICLE 4. EFFECTIVE DATE AND TERM.**

**4.1. Effective Date.** The effective date of this Restated Development Agreement ("Effective Date") is \_\_\_\_\_, 2023, which is the effective date of Ordinance No. \_\_\_\_\_, adopting this Restated Development Agreement.

**4.2. Term.** Upon execution, the term of this Restated Development Agreement shall commence on the Effective Date and shall extend for a period of ten (10) years, unless said term is terminated, modified or extended by circumstances set forth in this Restated Development Agreement. Following the expiration of the term, this Restated Development Agreement shall be deemed terminated and of no further force and effect. Said termination of the Agreement shall not be deemed to terminate any of the Modified Project Approvals or Subsequent Approvals (except to the extent the terms of any such approvals have been extended by virtue of this Agreement) or affect any right or duty created by County approvals for the Property adopted prior to, concurrently with, or subsequent to the approval of this Restated Development Agreement prior to such termination. As to a single residential lot within the Project, upon the final building inspection and the conveyance of such lot to a bona fide good faith purchaser, this Agreement shall be deemed terminated and of no further effect. Such termination shall be automatic without any further action by either party or the need to record any further documents.

**4.3. Right to Extend.** This Restated Development Agreement may be extended by the County and Landowner on the following conditions:

- A. Landowner shall have made and submitted to the Director of Planning a written application for extension of the Term no later than the date that is six months prior to the date that the Term of the Agreement is scheduled to expire.
- B. The Modified Project shall have met one of the following benchmarks:
  - (1) Landowner has constructed all Age-Restricted Homes and no less than fifty percent (50%) of the Moderate-Income Qualifying Homes.
  - (2) Landowner has commenced construction upon no less than fifty percent (50%) of all dwelling units shown on the Amended Vesting Tentative Subdivision map. Commencement of construction shall mean that the foundation for a dwelling unit has been constructed pursuant to a validly issued permit from the County.

- C. Upon the Director of Planning finding that Landowner has made timely written application for an extension of the Term and has undertaken the required development as stated in subparagraph B, above, the Planning Director shall grant an extension of no more than an additional five (5) years based upon its findings that the Modified Project has met specified benchmarks.
- D. After an initial five (5) year extension of the Term has been granted in accordance with subsection (A), an additional three (3) year extension may be requested by Landowner based on a written application for extension of Term submitted no later than the date that is six months prior to the date that the initial extension of the Term is scheduled to expire. This additional extension may only be approved by the Planning Commission based on a finding that substantial progress towards completion of the Modified Project is continuing to occur.

#### **ARTICLE 5. USE OF PROPERTY.**

**5.1 Right to Develop.** Except as otherwise specifically provided in this Agreement, Landowner shall have the vested right to develop the Modified Project in accordance with the terms and conditions of the Modified Project Approvals, including this Restated Development Agreement, the Project Design Guidelines and those rules, regulations, and official policies of the County in force at the time of the Effective Date, and any amendments to the Modified Project Approvals, including this Restated Development Agreement, as shall, from time to time, be approved pursuant to the provisions of this Restated Development Agreement. Landowner's vested right to develop the Property shall be subject to Subsequent Approvals for building and improvement design and construction; provided however, that any conditions, terms, restrictions and requirements for such Subsequent Approvals shall be consistent with the Modified Project Approvals including this Restated Development Agreement, and the Project Design Guidelines, and shall not prevent development of the Property for the uses provided under the Project Approvals, including this Restated Development Agreement ("Permitted Uses").

**5.2 Permitted Uses.** The Permitted Uses of the Property, including the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, location and maintenance of on-site and off-site improvements, location of public utilities and other terms and conditions of development applicable to the Property, shall be those set forth in this Restated Development Agreement, the Modified Project Approvals, the Project Design Guidelines and any amendments to this Restated Development Agreement or the Modified Project Approvals.

**5.3 Moratorium, Quotas, Restrictions, or Other Growth Limitations.** Landowner and County intend that, except as otherwise provided in this Restated Development Agreement, this Restated Development Agreement shall vest the Modified Project Approvals against subsequent County resolutions, ordinances and initiatives that conflict with the Modified Project Approvals including this Restated Development Agreement. In the event of any development moratorium that affects the construction of improvements within the Modified Project as defined in Government Code section 66452.6, subsection (f) and Government Code section 65858, the Term of this Restated Development Agreement, and the vested rights afforded Landowner under this Restated

Development Agreement shall be extended for an additional period of time commensurate with the duration of any such moratorium.

**5.4 Subsequent Projects.** Landowner is concerned that County may approve other projects that place a burden on County's infrastructure without considering the prior approval of the Modified Project. Therefore, County agrees that during the Term of this Restated Development Agreement, Landowner's right to build out and occupy all buildings in the Modified Project shall not be diminished despite the burden of future development upon public facilities including, without limitation, roads, roadways, storm sewers, traffic signals, curb gutters, sidewalks, parks, amenities, recreation areas, and other off-site improvements which are of benefit to the Modified Project and other properties in the area. Landowner agrees however to pay Landowner's fair share of AB 1600 Traffic Impact fees allocated to the Modified Project as provided for in Paragraph 7.3 below.

**5.5 Review and Processing of County Approvals.** County shall accept, process, and review applications for Subsequent Approvals in a reasonably expeditious manner which complies with, and is consistent with, the Modified Project Approvals, including this Restated Development Agreement, and the Project Design Guidelines. Subsequent Approvals shall be reviewed by the County for consistency with, in all material respects, the Modified Project Approvals, including this Restated Development Agreement and the Project Design Guidelines. County retains the rights to review and approve of Subsequent Approvals, provided however that County shall exercise County's rights of review and approval in a good faith and reasonable manner as required by California Government Code Section 65865.2, which will not prevent the development of the Modified Project for the uses, and with the heights, densities, setbacks and intensities specified in the Modified Project Approvals and the Project Design Guidelines or with the rate of development, if any, as specified in the Modified Project Approvals, including this Restated Development Agreement. Landowner, in a timely manner, shall provide County with all fees, charges, documents, applications, plans and other information necessary for County to carry out its obligations and cause its planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. All applications for Approvals shall be filed in the manner required under the applicable County Laws, except that such applications shall contain the caption "SUBJECT TO THE RESTATED BELLA VISTA DEVELOPMENT AGREEMENT" on the front sheet of such applications (provided that a failure to include such caption shall not have any legal effect). The Parties expressly intend to cooperate with one another in a reasonable manner to implement all land use and building approvals for development of the Modified Project in accordance with the Modified Project Approvals and the Project Design Guidelines.

**5.6 Extension of Approvals.** Upon approval of the Amended Vesting Tentative Subdivision Map, pursuant to California Government Code section 66452.6(a), the term of the Amended Vesting Tentative Subdivision Map shall be extended until the termination of this Restated Development Agreement notwithstanding any other County Law.

**ARTICLE 6. APPLICABLE RULES, REGULATIONS, FEES AND OFFICIAL POLICIES.**

**6.1 Rules Regarding Permitted Uses.** State law allows certain concessions and incentives when the Landowner agrees to construct affordable or senior units. For this Modified Project, the concessions that the Landowner selected were: 1) to reduce the minimum 6,000 square foot lot size and reduce or eliminate the front, rear and side setbacks required under the zoning ordinance for single-family dwellings. In addition, 2) the Landowner requested that the County waive certain subdivision requirements in order to make the project feasible (namely, the requirements regarding Double Lot frontage, Land Division Chapter Section 17-52(J); Flag Lot Access Strip, Section 17-52(L); and Access Easement Width, Section 17-53(B)). These concessions and incentives are provided for in the Modified Project Approvals, including this Restated Development Agreement. Except as provided in this Restated Development Agreement and the other Modified Project Approvals under the State Density Bonus Law, density and intensity of use, the rate, timing, and sequencing of development, the maximum height and size of proposed buildings, signage and provisions for reservation and dedication of land shall be those in force on the Effective Date of this Restated Development Agreement.

**6.2 Rules Regarding Construction.** Unless otherwise expressly provided in this Restated Development Agreement, all ordinances, resolutions, rules, regulations, and official policies governing improvement and construction standards and specifications applicable to the construction of improvements within the Modified Project and to public improvements to be constructed by Landowner shall be those in force and effect at the time the applicable permit approval is granted as are generally applied to such improvements in the County.

**6.3 Changes in State or Federal Law.** In the event that State or Federal laws or regulations, enacted after this Restated Development Agreement has been entered into, prevent or preclude compliance with one or more provisions of this Restated Development Agreement, such provisions of the Restated Development Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations. This Restated Development Agreement shall not preclude the application to development of the Property of changes in County laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations.

**6.4 Uniform Codes Applicable.** The Modified Project shall be constructed in accordance with the provisions of the California Building, Mechanical, Plumbing, Electrical and Fire Codes, County standard construction specifications, and Title 24 of the California Code of Regulations, relating to California Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Modified Project. If no permits are required for infrastructure improvements, such improvements will be constructed in accordance with the provisions of the California Building, Mechanical, Plumbing, Electrical and Fire Codes, County standard construction specifications, and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the start of construction of such infrastructure.

**6.5 Processing Fees.** County may charge a Processing Fee for a permit or Subsequent Approval submitted by Landowner, as the Processing Fee is in effect at the time of Landowner's application for that permit or approval with such Processing Fee to be in compliance with Government Code section 66014 and not greater than and

consistent with such Processing Fees charged at the time to all other projects and developments in the County.

**6.6 Subsequent Environmental Review.** Landowner agrees to comply with all mitigation measures contained in the EIR and EIR Addendum and that are adopted pursuant to Modified Project Approvals as set forth in the EIR and EIR Addendum and stated in the amended Mitigation Monitoring & Reporting Program. The Parties acknowledge, however, that the Environmental Impact Report for the Original Project ("EIR") contain a thorough analysis of the Original Project and Project alternatives and specifies the feasible mitigation measures available to eliminate or reduce to an acceptable level of adverse environmental impacts of the Original Project. The parties acknowledge that the County Board of Supervisors issued a statement of overriding considerations in connection with the Original Project Approvals, pursuant to 14 California Code of Regulations (CEQA Guidelines) Section 15093. The EIR Addendum was reviewed by the Board of Supervisors in conjunction with the Modified Project Approvals, and the Board of Supervisors determined that the EIR and EIR Addendum provide an adequate database and environmental analysis for the decision to proceed with the Modified Project embodied in the Modified Project Approvals and this Restated Development Agreement, and subsequent development of the Modified Project during the Term of this Agreement. The mitigation measures imposed are those appropriate for the implementation of proper planning goals and objectives and the formulation of Modified Project development guidelines and conditions of approval. For these reasons, no subsequent or supplemental EIR shall be required by County for any Subsequent Approvals implementing the Modified Project unless the provisions of Public Resources Code section 21166 apply. If the provisions of Public Resources Code section 21166 apply, it is understood that the County may adopt and apply such further mitigation measures as may be necessary to comply with CEQA under such circumstances.



**6.7 Declaration of Environmental and Land Covenants.** In order to implement the mitigation measures provided by the Garden's Gate EIR and EIR Addendum applicable to those Lots 121, 122, 123 and 124, as well as to establish a Riparian Enhancement Area, County and Landowners have agreed to record a Declaration of Environmental and Land Covenants, in a form subject to approval by the County Planning Director and County Counsel, that will be in force and effect as the date the Declaration is recorded designating a portion of the area shown as Lots 121, 122, 123 and 124 on the Amended Vesting Tentative Map as subject to the Riparian Enhancement Easement and conditions outlined therein. The Declaration of Environmental and Land Covenants and the Riparian Enhancement Easement over the area shown as Lots 121, 122, 123, 124 shall be recorded prior to or in conjunction with the Subsequent Final Map for the phase including the subject lots.

**6.8 Application of New County Laws.** Nothing stated in this Restated Development Agreement shall prevent County from applying the following to the Property:

- A. New County Laws which are specifically mandated or required by changes in State or Federal Laws;
- B. All laws that are applicable to procedural requirements for building and building occupancy permit application, submittal and issuance that are then generally applied by the County.
- C. Construction standards pursuant to all California Uniform Building Codes incorporated by the County Code that are then generally applied by the County;
- D. Engineering specifications for construction of any public improvements such as curbs, gutters and sidewalks, to the extent they do not conflict with the Modified Project Approvals and Existing County Laws;
- E. Any requirements applicable upon issuance of a building permit for which County acts as an administering agent for another governing agency that are then generally applied by the County.
- F. All County-wide fees, taxes and assessments will apply as will laws affecting public health and safety.

**6.9 Conflicting Laws.** Except as set forth in Section 6.8 above (Application of New County Laws), any action or proceeding of the County (whether enacted by the legislative body or the electorate) that has any of the following effects on the Modified Project shall be considered in conflict with this Restated Development Agreement and the Existing County Laws:

- A. Limiting or reducing the density or intensity of all or any part of the Modified Project, or otherwise requiring any reduction in the square footage or total number of developable blocks, residential units or other improvements;
- B. Limiting the timing or phasing of the Modified Project in any manner inconsistent with this Agreement or the Modified Project Approvals; or
- C. Limiting the location of structures, grading, streets or other improvements on the Property in a manner that is inconsistent with or more restrictive than the limitations included in the Modified Project Approvals or this Agreement.

- D. The above list of actions is not intended to be comprehensive but is illustrative of the types of actions that would conflict with this Agreement and the Existing County Laws.

**ARTICLE 7. SUBSEQUENTLY ENACTED FEES, DEDICATIONS, ASSESSMENTS AND TAXES.**

**7.1 Plan Check, Building Permit, and Related Fees and Charges.** For each of the respective Buildings, Landowner shall pay those plan check, building permit, and related fees and charges required by County in effect at the time such fees are due for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Landowner hereunder. Landowner shall pay plan check fees related to the review of each phased Subdivision Improvement Plan at the weighted hourly rates in effect at the time of the plan check. The amounts of such fees are annually adjusted by the County Board of Supervisors to reflect inflation, and the Landowner will pay such fees in the amount in effect at the time the fees are due.

Landowner proposes to utilize several "master residential building plans" throughout the Modified Project. After initial review and approval of the master residential building plans, County will waive the plan review fee for subsequent use of the approved master residential building plans. If there are revisions to the master residential building plans, County will charge the established hourly rate for such review.

**7.2 Parkland In-Lieu Fees.** The County, as of the Effective Date, does not require dedication of park land or payment of parkland in-lieu fees. The parties acknowledge that the Landowner has agreed to construct three parks on-site with a "Neighborhood Park" located on Parcel B along South State Street to be permitted for public use and maintained by the Homeowner's Association, or other oversight instrument has been formed, as approved by the County in its sole discretion. The Neighborhood Park shall be subject to ~~in accordance with~~ a recorded easement that is subject to approval by the County Counsel and the County Department of Transportation. This park will include an open field, walking paths, picnic area and other seating, and a children's play structure. A portion of it will also function as a stormwater detention facility. A private park for residents of the age-restricted portion of the Modified Project ("Cottage Park") will be located on Parcel G within the age-restricted portion of the Modified Project and will include landscaping, walking paths, seating and a covered pavilion that is a minimum of 585 square feet in size and includes an outdoor ceiling fan, electric space heater(s), lighting and a counter with a grill as well as moveable partitions so that the pavilion can be enclosed in inclement weather. If additional lots are placed within the Senior Neighborhood, the size of the covered pavilion shall be increased by 15 square feet per additional lot. A "linear park" that runs in an east-west fashion through the Modified Project on Parcels D, E and F will contain a ~~6' to 7'~~ paved walking path and adjacent landscaping. No other requirements as to the provision of park lands or payment of parkland in-lieu fees shall be required for the Modified Project.

**7.3 Traffic Impact Fees – Off-Site Traffic – Project Contribution.** If, pursuant to AB 1600, the County in the future adopts off-site area wide traffic mitigation fees payable by property owners generally in the Ukiah Valley area, the Landowner agrees to pay its fair share of such subsequently enacted area wide traffic impact fees to be applied prospectively to the phases of the Modified Project that have not been

developed, with the understanding that Landowner shall receive an appropriate credit for the costs of any off-site roadway or off-site traffic oriented improvements that Landowner has made because of the Modified Project for those portions of such off-site improvements that exceed those required because of the impacts of the Modified Project.

**7.4 School Impact Fees.** Landowner shall pay school impact fees for the residential units as developed in the Modified Project based on the standards and requirements for the determination and calculation of such school impact fees that are in force and effect at the time such fees are due. Payment of any such school impact fees for a Building in the Modified Project shall be required at the time of the issuance of the building permits.

**7.5 Emergency Medical Services Fees.** Landowner agrees to pay its proportionate share of any subsequently enacted emergency service fees required by the County to serve the Project Area that are adopted within five years of Effective Date of this Restated Development Agreement.

**7.6 Water District Fees.** Landowner agrees to pay a capital improvement fee to fund the Modified Project's share of the replacement and expansion of the Fircrest Drive water storage tank per Landowner's agreement with the Willow County Water District.

**7.6 No Further Exactions.** Except as provided in Sections 7.1-7.6, and without the intent of applying to actions taken by the County under Sections 6.2 - 6.7 as the application of New County Laws, the County shall not impose any further or additional Exactions upon the development of the Modified Project, whether through the exercise of the police power, the taxing power, design review or any other means, other than those set forth in the Modified Project Approvals and Existing County Laws and this Restated Development Agreement.

#### **ARTICLE 8. ADDITIONAL CONDITIONS.**

**8.1 Project Development Plan.** It is understood that the Modified Project is to be developed substantially in accordance with the Project Site Plan that is attached to this Development Agreement as **Exhibit "B"**. The Project Site Plan shall be subject to modifications that are submitted to and approved by the Director of Planning.

**8.2 Subdivision Improvement Plans (SIP).** Prior to recordation of the first Final Map and each subsequent Final Map for each phase of the Modified Project, Landowner shall submit a SIP for the phase for review and approval by the County Department of Transportation. Each SIP shall include at minimum: all onsite and offsite easements for roadways, drainage facilities, utilities, approximate lot elevations and detailed design for all improvements including those on and offsite, located within the existing and proposed public right of way and common areas. The design shall include all engineering reports to justify design, finished grades, cross sections, plan and profiles and details for all storm drain, sanitary sewer, water distribution systems, roadways, site access, emergency access, and roundabout improvements, as well as planmetric locations for all joint trench utilities.

**8.3 Phasing of Project.** The Landowner will be developing the Modified Project in incremental stages as set forth on **Exhibit "C"** ("Project Phasing Plan") attached to this Restated Development Agreement. The Landowner will submit a Master Building

Design Plan and Landscape Plan for each phase of the Modified Project based upon the Project Site Plan and the Project Design Guidelines. The Master Building Design Plan and Landscape Plan for each phase of the Modified Project shall be subject to design review by the Director of Planning to confirm that the plans for such Phase are in material compliance with this Restated Development Agreement, the Project Site Plan and the Project Design Guidelines.

- A. The Landowner shall commence construction of the first phase(s) of the Modified Project on the east side of the project near South State Street and develop the project in an orderly east to west manner. The construction of more than one phase at a time may be permitted in accordance with approved SIPs and in compliance with the Inclusionary Housing Agreement, an approved SWPPP, the EIR Mitigation Measures, and Best Management Practices. Notwithstanding the foregoing easterly development, each phase of the Modified Project shall be so designed to provide for the ultimate development of all future phases of the Modified Project. All infrastructure to be developed shall be appropriately sized and located so as to be compatible with the SIPs for future phases. The County Director of Planning is authorized to approve amendments to the Phasing Plan for the Modified Project.
- B. The Neighborhood Park (i.e., park adjacent to South State Street) and the Interim Entrance (i.e., four-way intersection with new northbound left turn lane) shall be constructed and completed in conjunction with the first phase of the Modified Project. If the roundabout on South State Street at the project entry is constructed with the first phase instead of the "interim entrance" improvements, completion of improvements in the Neighborhood Park other than those required for the stormwater system may be deferred until the third phase of the Modified Project.
- C. The Project Phasing Plan is not intended to mandate the sequencing of Modified Project development except as to compliance with the SIP and is intended to set forth areas of the Modified Project that are established as appropriate for incremental stages of development, with the understanding that the sequencing of Modified Project development may vary based upon market and development conditions.

**8.4 Recordation of Final Maps.** Any subsequent Final Maps shall be in substantial compliance with the Amended Vesting Tentative Map and adopted Mitigation Measures and Conditions of Approval and shall be processed in accordance with the requirements of the County for subdivision maps that are in force and effect as of the Effective Date of this Restated Development Agreement. Final Maps may be filed for portions of the Modified Project, in increments in accordance with the current County ordinances and the provisions of Government Code section 66456.1 of the California Subdivision Map Act.

**8.5 Map Act Requirements.** Review and approval of each final subdivision map shall be made in accordance with the conditions and requirements of the Amended Vesting Tentative Map and other applicable conditions, Mitigation Measures and requirements that are stated in the Modified Project Approvals, including this Restated

Development Agreement. Conditions of each final subdivision map shall be consistent with those established under and by this Restated Development Agreement and the other Modified Project Approvals.

- A. The processing, review and approval of the Final Subdivision Maps shall be administered in accordance with Existing County Laws. Any Final Subdivision Map that is consistent with this Restated Development Agreement and the Amended Vesting Tentative Map shall be deemed consistent with the other requirements for findings of consistency under the Map Act and County ordinances for such maps.
- B. The Amended Vesting Tentative Map is subject to the requirements of Government Code section 66473.7, concerning water verifications, and written verification of the availability of a sufficient water supply to serve the Modified Project has been provided by Willow County Water District based on a water supply assessment..

**8.6 Future Tentative Maps.** Landowner shall have the right, at any time, to apply for one (1) or more future tentative subdivision maps ("Future Tentative Maps"), relating to the subdivision of the Remainder Parcel and Parcel A, as shown on the Amended Vesting Tentative Map, under the laws then in effect.

**8.7 Master Declaration of Covenants – Final Map Requirement.** The Landowner shall cause to be prepared and submitted to the County for review a Master Declaration of Covenants, Restrictions and Easements for the Properties that integrates the parcels established by the Amended Vesting Tentative Subdivision Map and Final Subdivision Maps, which shall be reviewed and approved by the County Counsel and Director of Transportation before and as a condition of approval for any Final Subdivision Map for the Modified Project by the County. The Master Declaration of Covenants, Restrictions and Easements shall include the Project Design Guidelines.

**8.8 Timing of Development.** In consideration of the significant benefits to the County of the development of the Modified Project, and in order to promote and encourage the development of the Modified Project in accordance with the Modified Project Approvals, County agrees that the timing, sequencing and phasing of the development of the Modified Project shall be as described in this Restated Development Agreement and the Project Phasing Plan. Notwithstanding any other provision of this Restated Development Agreement, nothing in this Restated Development Agreement shall be construed to impose an affirmative duty upon Landowner to proceed with the development of the Modified Project, or any portion thereof, if Landowner in its sole discretion decides not to proceed with the development of the Modified Project, or any portion thereof. The vested rights of Landowner shall include the right of Landowner to develop the Modified Project in accordance with the Project Phasing Plan. If development of the Modified Project is delayed for reasons beyond the control of Landowner (such as a material change in economic conditions for a prolonged period of time such that a reasonably prudent real estate developer would be unwilling to proceed with the development of all or a portion of the Modified Project) the Landowner shall not lose its development rights as herein established. Landowner shall have the right to make adjustments in the sequencing for the Modified Project if reasonably necessary for the orderly and economic development of the Modified Project, to accommodate the acceleration or deceleration of residential components of the Modified Project and/or the efficient and economical installation of infrastructure for the Modified Project, subject to approval by the Director of Planning. County is likewise not bound by the Landowner's

schedule based on delays outside its control. Notwithstanding the foregoing, if Landowner should cease development under this Restated Development Agreement and/or the other Modified Project Approvals, Landowner shall complete or cause to be completed all of those off-site and other Modified Project improvements for phases of development that have been commenced as of such time as are required to complete those utility and roadway systems and other such infrastructure improvements as are needed to assure the health and safety of occupants of the Modified Project and the general public for such commenced phases of the Modified Project, subject to the approval of the Director of Planning.

**8.9 Storm Sewer Management Program.** Pursuant to the Master Declaration of Covenants, a Homeowners Association ("HOA"), or other oversight instrument has been formed, as approved by County in its sole discretion, shall be established that details the provision for regular monitoring of the status of the detention pond storage capacities as well as requirements for detention pond cleanouts when necessary to maintain design storm water storage levels. The HOA will employ professional services, subject to prior approval by the County Department of Transportation to monitor implementation and maintenance and self-fund such professional services as needed to ensure that all privately-owned stormwater facilities are operated and maintained in compliance with all state and local requirements. Stormwater Control Treatment Best Management Practices measures shall be located on private property and shall be privately owned and maintained. The provisions for Stormwater Control Treatment Best Management Practices measures shall be stated in the Master Declaration of Covenants which shall be subject to the review and approval of the County Counsel prior to the approval of the final map for first phase of the Modified Project. Pursuant to the terms of the Covenants, the County shall be entitled to pursue such legal action as County deems appropriate against the HOA or any responsible property owner for damages based on improper maintenance of the storm sewer management program.

**8.10 Subsequent Approvals.** The Master Building Design Plan and Landscape Plan for each phase of the Modified Project shall be subject to design review by the Director of Planning to ensure that each phase is in material compliance with this Restated Development Agreement, the Project Site Plan and the Project Design Guidelines.

**8.11 Construction of Off-Site Improvements.** The Modified Project Description includes construction of the following off-site improvements to be funded by the Landowner as follows:

- A. Landowner agrees to fund and construct a roundabout on South State Street at the intersection with Plant Road that shall be constructed either before or no later than the final inspection of the 100<sup>th</sup> housing unit. The roundabout shall be consistent with the conceptual plans for such Roundabout Improvements as shown on the Amended Vesting Tentative Map, with the understanding that the final plans for such Roundabout Improvements, including but not limited to the design of the center of the Roundabout Improvements, including landscaping and any monument signage, shall be submitted to the County Department of Transportation for design approval prior to the commencement of construction of the Roundabout Improvements. Prior to constructing the roundabout, Landowner agrees to install a left-turn lane on the northbound South State Street intersection

approach which mirrors the existing left-turn lane on the southbound South State Street intersection approach. Landowner also agrees to provide the eastbound project access intersection approach subject to approval of the Department of Transportation.

- B. Landowner agrees to fund and construct a sidewalk to County standards on the north side of Plant Road from the Roundabout to the existing bus shelter on Plant Road. Landowner shall commence and complete the off-site sidewalk improvements simultaneously as the improvements of the Roundabout. In the event that additional right-of-way is necessary to accommodate the pedestrian improvement, the County may secure it at its own expense from the abutting property owner if funding is available. Landowner shall define the location and need for additional right-of-way as early as possible to help facilitate the acquisition of such property for the public pedestrian improvements. If additional right-of-way is necessary for public pedestrian improvements and it is not secured in a timely fashion by the County, the development of the Roundabout may proceed without the pedestrian connectivity at the northeasterly corner and instead additional public pedestrian improvements will be made along the west side of South State Street (or other available right of way as identified by the County Department of Transportation) equal to the cost of construction for the portion of pedestrian connectivity omitted at the northeasterly corner near the existing bus shelter on Plant Road.

**8.12 Development Standards.** The Amended Vesting Tentative Map, as approved by the Board of Supervisors on \_\_\_\_\_, 2023 by Resolution No. \_\_\_\_\_, includes the Project Site Plan attached to this Restated Development Agreement as **Exhibit "B"** which shows and describes the approved lot configuration, and building setbacks and lot coverage for the Modified Project. The approved Project Design Guidelines set forth the standards for application of development standards for the Modified Project. The approval of the Project Site Plan attached to this Restated Development Agreement as **Exhibit "B"** and the Project Design Guidelines shall be deemed to be an approval by the County of a legal deviation from development standards of the applicable zoning, as authorized by the State Density Bonus law, as such development standards are shown and described on **Exhibit "B"** and as provided in the Project Design Guidelines.

**8.13 Affordable Housing Requirement.** Landowner has received certain concessions and waivers related to County zoning and land division code, including but not limited to lot size and configuration and setback and lot coverage requirements based on the agreement made by Landowner to construct a minimum of 39 age-restricted dwelling units and to restrict 10% of the non-age-restricted dwelling units to be sold to qualifying moderate income households. The Inclusionary Housing Agreement between the Landowner and the County that is attached as **Exhibit "D"** provides for the details of the requirements related to the provision of affordable residential units within the Modified Project by the Landowner as of the Effective Date of this Restated Development Agreement. Landowner and the County agree that such affordable housing units shall be included by the Landowner within the Modified Project on an incremental and phased basis, on a proportionate basis as the Modified Project is built out, as set forth in the Inclusionary Housing Agreement, and such affordable housing units in a phase shall be completed simultaneously with market rate units for the phase of the Modified Project in which such affordable housing units are located.

#### **8.14 Insurance.**

- A. Public Liability and Property Damage Insurance.** At all times that Landowner is constructing any improvements that will become public improvements, Landowner shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than one million dollars (\$1,000,000) and a deductible of not more than ten thousand dollars (\$10,000.00) per claim. The policy so maintained by Landowner shall name County as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.
- B. Workers' Compensation Insurance.** At all times that Landowner is constructing any improvements that will become public improvements, Landowner shall maintain Workers' Compensation insurance for all persons employed by Landowner for work at the Project site. Landowner shall require each contractor and subcontractor similarly to provide Workers' Compensation insurance for its respective employees. Landowner agrees to indemnify County for any damage resulting from Landowner's failure to maintain any such insurance.
- C. Evidence of Insurance.** Prior to commencement of construction of any improvements which will become public improvements, Landowner shall furnish County satisfactory evidence of the insurance required in Sections 8.14.A and 8.14.B and evidence that the carrier is required to give County at least thirty (30) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to County, its elective and appointive boards, commissions, officers, agents, employees and representatives and to Landowner performing work on the Project.

#### **8.15 Permitted Delays; Supersedure by Subsequent Laws.**

- A. Permitted Delays.** In addition to any specific provisions of this Agreement, performance by either Party of its obligations hereunder shall be excused during any period of delay, to the extent that delay is an actual cause of default, caused at any time by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties, restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations), litigation, acts or neglect of the other Party, or any other cause beyond the reasonable control of a Party. Each Party shall promptly notify the other Party in writing of any delay hereunder as soon as possible after the same has been ascertained. The Landowner and Director of Planning shall then meet and confer reasonably and in good faith to determine how to respond to the delay so as to meet the purposes and intent of this Agreement. The Director of Planning may refer the Landowner's request to the Board. The Term of this Agreement shall be extended by the period of any delay hereunder, not to cumulatively exceed seven (7) years.
- B. Subsequent Laws.** If any Laws made or enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with



such new Law. Immediately after enactment of any such new Law, the Parties shall meet and confer reasonably and in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible, then Landowner shall have the right to terminate this Agreement by written notice to County. In addition, at Landowner's election, the Term of this Agreement may be extended for the duration of the period in which the new Law precludes compliance with the provisions of this Agreement for a period not to exceed 24 months. Landowner shall have the right to challenge the new Law preventing compliance with the terms of this Agreement and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

**8.16 Dedication of Access Improvements.** An access strip sufficient to accommodate the roundabout to the satisfaction of the Department of Transportation and as shown on the Vesting Tentative Map and any additional right of way that may be needed for development of subdivision access improvements along the South State Street corridor including drainage and frontage improvements, and the roundabout within the South State Street corridor shall be offered for dedication to the County in fee simple with all costs borne by the Landowner.

## **ARTICLE 9. AMENDMENT OR CANCELLATION.**

**9.1 Modification Because of Conflict with State or Federal Laws.** In the event that State or Federal laws or regulations enacted after the Effective Date of this Restated Development Agreement prevent or preclude compliance with one or more provisions of this Restated Development Agreement or require changes in plans, maps or permits approved by County, the parties shall meet and confer in good faith in a reasonable attempt to modify this Restated Development Agreement to comply with such Federal or State law or regulation. Any such amendment or suspension of the Agreement shall be approved by County Board of Supervisors in accordance with the County Code and this Restated Development Agreement.

**9.2 Amendment by Mutual Consent.** This Restated Development Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of Government Code section 65868.

**9.3 Amendment of Modified Project Approvals.** Any amendment of Modified Project Approvals shall not require an amendment to the Agreement unless the amendment relates to: (a) the permitted use of the Property; (b) provision for reservation or dedication of land; (c) the density or intensity of use of the Modified Project; or (d) the maximum height or size of proposed buildings. Such amendment shall be limited to those provisions of this Restated Development Agreement, which are implicated by the amendment of the Modified Project Approval(s).

**9.4 Cancellation by Mutual Consent.** Except as otherwise permitted herein, this Restated Development Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors in interest, in accordance with the provisions of the Government Code. Any fees paid pursuant to this Restated Development Agreement prior to the date of cancellation shall be retained by County.

## **ARTICLE 10. ANNUAL REVIEW.**

**10.1 Review Date.** The annual review date for this Restated Development Agreement shall be approximately twelve (12) months from the effective date of the Restated Agreement.

**10.2 Initiation of Review.** The Director of Planning shall initiate the annual review by giving to Landowner written notice that County intends to undertake such review. Within thirty (30) days of County's notice, Landowner shall provide evidence to the Director of Planning to demonstrate good faith compliance with the Restated Development Agreement. The burden of proof, by substantial evidence of compliance, is upon Landowner. County's failure to timely initiate the annual review is not an event of default under this Restated Development Agreement and is not deemed to be a waiver of the right to do so at a later date; accordingly, Landowner is not deemed to be in compliance with the Agreement by virtue of such failure to timely initiate review.

**10.3 Staff Reports.** County shall deposit in the mail to Landowner a copy of all staff reports, and related Exhibits, concerning contract performance at least ten (10) days prior to any annual review.

**10.4 Costs.** Costs reasonably incurred by County in connection with the annual review shall be paid by Landowner.

**10.5 Non-compliance with Agreement; Hearing.** If the Director of Planning determines, on the basis of substantial evidence, that Landowner has not complied in good faith with the terms and conditions of the Agreement during the period under review, County Counsel, upon receipt of any report or recommendation from the Planning Commission, may initiate proceedings to modify or terminate the Agreement, at which time an administrative hearing shall be conducted, in accordance with the procedures of State law and the Mendocino County Code. As part of that final determination, County Board of Supervisors may impose conditions that it considers necessary and appropriate to protect the interest of County.

**10.6 Appeal of Determination.** The decision of County Board of Supervisors as to Landowner's compliance shall be final, and any Court action or proceeding to attack, review, set aside, void or annul any decision of the determination by the County shall be commenced within thirty (30) days of the Board's action.

## **ARTICLE 11. DEFAULT.**

**11.1 Default:** Subject to any applicable extension of time, failure by any party to perform any term or provision of this Restated Development Agreement required to be performed by such party shall constitute an event of default ("Event of Default"). For purposes of this Restated Development Agreement, a party claiming another party is in default shall be referred to as the "Complaining Party", and the party alleged to be in default shall be referred to as the "Party in Default". A Complaining Party shall not exercise any of its remedies as the result of such Event of Default unless such Complaining Party first gives notice to the Party in Default as provided in Section 11.2.A, and the Party in Default fails to cure such Event of Default within the applicable cure period.

## 11.2 Procedure Regarding Defaults.

- A. **Notice.** The Complaining Party shall give written notice of default to the Party in Default, specifying the default complained of by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.
- B. **Cure.** The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided such cure, correction or remedy shall be completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be deemed by the Complaining Party to be reasonably necessary to correct the matter).
- C. **Failure to Assert.** Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining 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.
- D. **Notice of Default-Time to Cure.** If an Event of Default occurs prior to exercising any remedies, the Complaining Party shall give the Party in Default written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the Party in Default shall have such period to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged default is such that it cannot practicably be cured within such thirty (30) day period, the cure shall be deemed to have occurred within such thirty (30) day period if: (a) the cure shall be commenced at the earliest practicable date following receipt of the notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (in no event later than thirty (30) days after the curing party's receipt of the notice), the curing party provides written notice to the other party that the cure cannot practicably be completed within such thirty (30) day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within ninety (90) days after the first notice of default is given.

**11.3 Legal Proceedings.** Subject to the provisions of the foregoing Section 11.2, if the Party in Default fails to cure a default in a timely manner in accordance with the foregoing, the Complaining Party, at its option, may institute legal proceedings pursuant to this Restated Development Agreement or, in the event of a material default, terminate this Restated Development Agreement.

- A. Notwithstanding the foregoing, upon any such Notice of Default being given, either Party may seek resolution of the matter by sending written notice to the other Party requesting mediation of the matter of the Notice of Default. If such request for mediation is delivered by one Party to the other Party then the following shall apply:
  - (1) **Negotiation and Mediation.** The Parties shall make every effort to meet and confer for the purposes of resolving the claim or dispute by good faith negotiations. If the Parties do not resolve the claim or

dispute within thirty (30) days of the date of the Notice, or such other period as may be agreed upon by the Parties, either party shall have an additional thirty (30) days to submit the claim or dispute to mediation under the auspices of Judicial Arbitration & Mediation Services, Inc. (J.A.M.S.), or, if the Parties agree otherwise, to an independent mediator providing dispute resolution services in Mendocino County, California.

- (a) All costs of mediation shall be borne equally by the Parties.
  - (b) If the claiming Party does not submit the dispute or claim to mediation within thirty days (30) after termination of negotiations, or does not appear for the mediation, the claiming Party shall be deemed to have waived the claim or dispute and the other Party shall be deemed to be released and discharged from any and all liability to the claiming Party on account of such claim or demand, provided however, that nothing herein shall be deemed to release the Party from liability to any other person other than the claiming Party.
  - (c) Any settlement of a claim or dispute through mediation shall be documented in writing by the mediator. If the parties do not settle the claim or dispute within thirty (30) days after submission of the matter to the mediation process or within such other time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings. The Termination of Mediation shall set forth that the Parties are at an impasse and the date that the mediation was terminated.
- B. Upon the occurrence of an Event of Default, subject to subparagraph A, above, the Parties may pursue all other remedies at law or in equity, which are not otherwise provided for or prohibited by this Restated Development Agreement, or in County's regulations governing development agreements, expressly including the remedy of specific performance of this Restated Development Agreement.

#### **11.4 Standards for Termination – Procedures for Termination.**

- A. Standards.** A Party may Terminate this Agreement pursuant to Section 11.3 above on account of the commission by the other Party of an Event of Default only if, as a result of such Event of Default, the Party seeking to Terminate demonstrates, on the basis of substantial evidence in the record as a whole, that it will be deprived of a material benefit under this Agreement.
- B. Procedure for Termination.** If a Party concludes that it has the right to Terminate this Agreement pursuant to Section 11.3, such Party shall give to the other Party notice of its intent to terminate this Agreement. If County is the Party seeking to Terminate this Agreement, County shall then conduct a noticed public hearing before the County Board of Supervisors which public hearing shall be scheduled for the first regularly scheduled meeting of the County Board of Supervisors after the giving of public notice of such hearing in accordance with the applicable State Laws; and such notice of public hearing shall be given by County within thirty (30) days following the date

County gives notice of its intent to Terminate this Agreement. At such hearing, County shall demonstrate on the record the grounds and basis on which it claims the right to terminate under Section 11.3 above. Upon conclusion of such public hearing, the County Board of Supervisors shall direct the County Chief Executive Officer to take whatever action the County Board of Supervisors deems necessary or appropriate in connection with County's notice of intent to Terminate, including to proceed with Termination of this Agreement, proceedings for modification of this Agreement, or any other action specified by the County Board of Supervisors in the exercise of its discretion. The public hearing hereunder shall be concluded within sixty (60) days after it has been opened by the County Board of Supervisors and the holding of such public hearing hereunder shall be a condition to the initiation by County of any proceeding at law or in equity in connection with a Party's Termination of this Agreement on account of an Event of Default. If Landowner is the Party exercising a right of Termination, Landowner shall give County at least forty-five (45) days' notice of its intent to Terminate. During the 45-day period, the Parties shall exercise good faith in attempting to resolve the conflict. If the matter cannot be resolved, only after expiration of the 45-day period may Landowner Terminate this agreement. Such Termination shall be made by sending written notice thereof to the County.

- C. Effective Date of Termination.** Termination of this Agreement by a Party on account of an Event of Default shall be effective on the later of (i) the date specified or required to be specified in a Party's notice of intent to Terminate, or (ii) in the case of the County, thirty (30) days after the conclusion of the public hearing pursuant to Section 11.3.B above unless, as a result of such public hearing, the County determines to take actions as an alternative to or in lieu of Termination, in which event County shall not have the right to Terminate this Agreement unless and until it has given a subsequent notice of Intent to Terminate pursuant to this Section 11.3.C.
- D. Effect of Termination.** If a Party Terminates this Agreement, such Termination shall not affect any right or duty emanating from any Modified Project Approvals with respect to the Modified Project or Property approved concurrently or subsequently to the approval of this Agreement, but the rights, duties and obligations of the Parties hereunder shall otherwise cease as of the date of such Termination. Upon Termination of this Agreement, County shall retain any and all benefits, including money or land, previously received by County or that should have been received by County as of the date of Termination under or in connection with this Agreement. Notwithstanding the foregoing provisions, no Termination of this Agreement shall prevent Landowner from completing and occupying buildings or other improvements authorized pursuant to valid building permits or certificates of occupancy previously approved by County or under construction at the time of Termination, unless the reason giving rise to the Termination independently affects such building permits or certificates of occupancy. As used herein, "construction" means work under a valid permit, and "completing" means completion for beneficial use or occupancy by Landowner, or if a portion of the Modified Project is intended for use by a lessee or tenant and the lessee or tenant is responsible for completing the interior improvements, then for such portion "completing" shall mean such

completion except for interior improvements, such as partitions, duct and electrical runouts, floor coverings, wall coverings, lighting, furniture, trade fixtures, finished ceilings, and other improvements typically constructed by or for tenants of buildings.

**11.5 Default by County.** If County does not accept, review, approve or issue necessary development permits or entitlements as defined by this Restated Development Agreement, or as otherwise agreed to by the County and Landowner, or the County otherwise materially defaults under the terms of this Restated Development Agreement, County agrees that Landowner or Landowner's successor shall not be obligated to proceed with or complete the Project, nor shall resulting delays in Landowner performance constitute grounds for termination or cancellation of this Restated Development Agreement. In addition to any other rights or remedies, Landowner and any successor may institute legal or equitable proceedings to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, to enjoin any threatened or attempted violation of the provisions of this Restated Development Agreement, provided however, the Landowner waives any and all rights hereunder to seek damages against the County as a result of any such breach or alleged breach of the provisions of this Restated Development Agreement.

**11.6 Limitations on Actions.** Any action by any third Person to attack, review, set aside, void or annul any action or decision taken by either Party under this Agreement shall not be maintained by such Person unless such action or proceeding is commenced within ninety (90) days after the date such decision or action is made or taken hereunder, or such shorter period as is prescribed by Law.

**11.7 Estoppel Certificate.** Landowner may, at any time, and from time to time, request written notice from County requesting County to certify in writing that, (a) this Restated Development Agreement is in full force and effect and a binding obligation of the Parties; (b) this Restated Development Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (c) to the knowledge of the County the Landowner is not in default in the performance of its obligations under this Restated Development Agreement, or if in default, to describe therein the nature and amount of any such defaults. The County shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the Parties. Chief Executive Officer of County shall be authorized to execute any certificate requested by Landowner. The County may recover its reasonable costs from Landowner. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default.

**11.8 Venue.** The exclusive venue for any and all disputes shall be the Superior Court of Mendocino County.

## **ARTICLE 12. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE.**

**12.1 Mortgage Protection.** This Restated Development Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for 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 the terms and conditions contained in this Restated Development Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

**12.2 Mortgage Not Obligated.** Notwithstanding the provisions of Section 12.1 above, no Mortgagee shall have any obligation or duty under this Restated Development Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Modified Project Approvals or by this Restated Development Agreement.

**12.3 Notice of Default to Mortgagee and Extension of Right to Cure.** If County receives notice from a Mortgagee requesting a copy of any notice of default given Landowner hereunder and specifying the address for service thereof, then County shall deliver to such Mortgagee, concurrently with service thereon to Landowner, any notice given to Landowner with respect to any claim by County that Landowner has committed an Event of Default. Each Mortgagee shall have the right during the same period available to Landowner to cure or remedy, or to commence to cure or remedy, the Event of Default claimed set forth in County's notice. County, through its Chief Executive Officer, may extend the cure period provided in Section 11.2.D for not more than an additional sixty (60) days upon request of Landowner or a Mortgagee.

### **ARTICLE 13. MISCELLANEOUS PROVISIONS**

**13.1 Negotiated Contract.** Landowner and County agree that this Restated Development Agreement is the product of extensive negotiation between Landowner and County and has been reviewed by legal representatives of each. The parties agree that any rule of construction which would interpret this contract against the drafting party or the party which caused the ambiguity or uncertainty, is waived by the parties, regardless of the application of California Civil Code section 1654 and any California case law to the contrary.

**13.2 Severability.** Except as set forth herein, if any term, covenant or condition of this Restated Development Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Restated Development Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Restated Development Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Restated Development Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party hereto of an essential benefit of its bargain hereunder, then

such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.

**13.3 Full or Partial Invalidity or Unenforceability.** If this Restated Development Agreement in its entirety is determined by a court to be invalid or unenforceable, this Restated Development Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Restated Development Agreement shall be determined by a court to be invalid and/or unenforceable, or if any provision of this Restated Development Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of California which became effective after the effective date of the Adopting Ordinance, then the remaining provisions of this Restated Development Agreement shall nevertheless remain in force and effect.

**13.4 Applicable Law.** This Restated Development Agreement shall be construed and enforced in accordance with the laws of the State of California.

**13.5 Attorneys' Fees and Costs in Legal Actions by Parties to the Agreement.** Should any legal action be brought by either party for breach of this Restated Development Agreement or to enforce any provisions herein, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.

**13.6 Attorneys' Fees and Costs in Legal Actions by Third Parties to the Agreement.** If any person or entity not a party to this Restated Development Agreement initiates an action at law or in equity to challenge the validity of any provision of this Restated Development Agreement or the Modified Project Approvals, the parties shall cooperate and appear in defending such action. Landowner shall bear its own costs of defense as a real party in interest in any such action, and Landowner shall reimburse County for all reasonable court costs and attorneys' fees expended by County in defense of any such action or other proceeding.

**13.7 Transfers and Assignments.** From and after recordation of this Restated Development Agreement against the Property, Landowner shall have the full right to assign this Restated Development Agreement as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by Landowner and assumption by the assignee of such assignment in the form attached hereto as **Exhibit "F"** and the conveyance of Landowner's interest in the Property related thereto, Landowner shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Landowner", with all rights and obligations related thereto, with respect to such conveyed property. The assignment shall not take effect until notice is delivered to County in writing.

**13.8 Agreement Runs with the Land.** All of the provisions, rights, terms, covenants, and obligations contained in this Restated Development Agreement shall be binding upon the parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Restated Development Agreement shall be enforceable as equitable servitude and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property; (a) is for the benefit of such properties and is a burden upon such properties; (b) runs with such properties; and (c) is



binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

**13.9 Bankruptcy.** The obligations of this Restated Development Agreement shall not be dischargeable in bankruptcy.

**13.10 Indemnification.** Landowner agrees to indemnify, defend and hold harmless County, and its elected and appointed boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability related to breach of contract and for any liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by Landowner, or any actions or inactions of Landowner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Property and the Modified Project, provided that Landowner shall have no indemnification obligation with respect to the gross negligence or willful misconduct of County, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been dedicated to and accepted by County or another public entity (except as provided in an improvement agreement or maintenance bond).

**13.11 Notices.** All notices required by this Restated Development Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code section 65865, shall be in writing and delivered in person or sent by certified mail, postage prepaid.

Notice required to be given to County shall be addressed as follows:

County of Mendocino  
Department of Planning and Building Services  
860 North Bush Street  
Ukiah, CA 95482  
Attn: Planning Director

Notice required to be given to Landowner shall be addressed as follows:

RANCHO YOKAYO LP  
2550 Westlake Drive No. 50  
Chico, CA 95928  
Attention: Doug Guillon

Either party may change the address stated herein by giving notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

**13.12 Reimbursement for Agreement Expense of County.** Landowner agrees to reimburse County for actual expenses incurred over and above fees paid by Landowner as an applicant incurred by County directly relating to this Restated Development Agreement, including attorneys' fees, recording fees, publishing fees and reasonable County staff and outside consultants' costs not otherwise included within application fees. This Restated Development Agreement may be suspended, at County's option, until the fees provided for in this section, as well as any other processing fees owed by the applicant to the County for the Project are paid to the County. Upon

payment of all expenses, the Landowner may request, and the County shall issue, written acknowledgment of payment of all fees. Such reimbursement shall be paid within thirty (30) days of presentation from the County to Landowner of a written statement of charges. Should any such fees be incurred after the date this Restated Development Agreement is executed, such fees shall also be paid within thirty (30) days of presentation from the County to Landowner of a written statement of charges. Fees not paid when due to County shall be subject to a one-time five (5) percent late penalty charge if not paid within thirty (30) days and shall thereafter bear interest at the rate of eleven (11) percent per annum until collected.

**13.13 Third Party Legal Challenge.** If any legal action or special proceeding is commenced by any person or entity challenging this Restated Development Agreement, or any provision herein, any of the actions involved with approving this Restated Development Agreement, or challenging any of the other governmental review, analysis, decisions or action identified in the recitals section of this Restated Development Agreement, the Landowner and County, agree to cooperate with each other in good faith to defend said lawsuit. County may however elect to tender (as provided below) the defense of any such class of lawsuit filed by a third person or entity, to the extent of any claims therein based on alleged defects in the procedures or compliance with applicable laws under which the Project was reviewed and/or approved and, if tendered by County, Landowner shall defend, indemnify and hold County harmless from such claims. Additionally, County may require the Landowner to hire and pay for a separate attorney to defend the County alone from the claims made against the County. County's tender of defense hereunder shall be made in a writing specifically identifying the lawsuit and the claims for which defense and indemnification hereunder are sought by County, which writing shall be delivered to the Landowner as soon as practicable. Provided that County has so tendered the defense of such Claim, the Landowner shall defend, hold, harmless, and indemnify County, its elected officials, officers, appointed officials, and employees from all damages, costs, and expenses incurred in the defense of such claims, including, but not limited to, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in connection therewith. Neither the Landowner nor County shall settle without the consent of the other, which consent shall not be unreasonably withheld. County and the Landowner shall keep the other informed of all material developments involving the resolution of any such claims.

**13.14 Further Assurances.** The Parties agree to execute such additional instruments and to undertake such actions as may be necessary to effectuate the intent of this Restated Development Agreement.

**13.15 Private Undertaking.** County and Landowner agree that the Modified Project is a private development and that County has no ownership interest in the Modified Project except as authorized in the exercise of its governmental functions and except for any financing and lien rights as described in this Restated Development Agreement.

**13.16 Third Party Beneficiaries.** This Restated Development Agreement is made and entered into for the sole protection and benefit of Landowner and, County and their successors and assigns. No other person shall have any right of action based upon any provision in this Restated Development Agreement. County and Landowner hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any Person third party beneficiary status. If any action or proceeding is instituted by any third Person challenging the

validity of any provision of this Agreement, or any action or decision taken or made hereunder, the Parties shall cooperate in defending such action or proceeding.

**13.17 Form of Agreement; Recordation; Exhibits.** County shall cause this Restated Development Agreement, any amendment hereto and any other termination of any parts or provisions hereof, to be recorded, at Landowner's expense, with the County Recorder within ten (10) days of the Effective Date.

**13.18 Clerk's Entry of Additional Technical Information to the Development Agreement.** Following approval of this Agreement by the Board of Supervisors, the Clerk to the Board is authorized to add technical administrative information within the body of the Agreement pertaining to dates and resolution and ordinance numbers. Such entries shall not be considered to be amendments to the Agreement and shall not require the Developer's further approval.

**13.19 Miscellaneous Provisions.**

A. Any amendment or termination of this Restated Development Agreement to be recorded that affects less than all of the Property shall describe the portion thereof that is the subject of such amendment or termination.

B. This Restated Development Agreement consists of \_\_ pages and the following acknowledgments and exhibits, which together constitute the entire understanding and agreement of the parties:

- Exhibit A – Project Property Description
- Exhibit B – Project Site Plan
- Exhibit C – Project Phasing Plan
- Exhibit D – Inclusionary Housing Agreement
- Exhibit E – Mitigation Monitoring & Reporting Program
- Exhibit F – Form of Assignment

[SIGNATURES TO BE PROVIDED ON THE FOLLOWING PAGE.]

**IN WITNESS WHEREOF**, the County of Mendocino, a political subdivision of the State of California, has authorized the execution of this Restated Development Agreement in duplicate by its Chair of the Board of Supervisors and attested to by its County Clerk of the Board under the authority of Ordinance No. \_\_\_\_\_, adopted by the Board of Supervisors of the County on \_\_\_\_\_, 2023, and Landowner has caused this Restated Development Agreement to be executed.

"COUNTY"

"LANDOWNER"

COUNTY OF MENDOCINO,  
a political subdivision of the State of California

RANCHO YOKAYO LP,  
a California limited partnership

\_\_\_\_\_  
Chair of the Board of Supervisors

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By \_\_\_\_\_  
County Counsel

State of California  
County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California  
County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

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

Any and all lands and any and all interest thereto lying within the following described real property.

All that real property situate in the unincorporated area of the County of Mendocino, State of California, and lying within Lot 72 and Lot 91, Yokayo Rancho, described as follows;

Beginning at a point North 19°36'49" West a distance of 42.50 feet from a ½" iron pipe as shown on "Parcel Map of Minor Subdivision No. 23-93", filed in Map Case 2, Drawer 58, Page 77 and 78, Mendocino County Records, marking the west line of South State Street and the north line of Lot 91, Yokayo Rancho, said point being the TRUE POINT OF BEGINNING; thence along the west line of South State Street South 19°36'49" East a distance of 719.25 feet; thence North 89°32'30" West a distance of 260.53 feet; thence South 19°33'13" East a distance of 114.82 feet to the south line of Lot 91 of said Rancho; thence along said south line North 89°33'29" West a distance of 2,777.28 feet to the west line of Lot 91 of said Rancho; thence along said west line, North 00°41'37" East a distance of 705.86 feet to the north line of said Lot 91; thence along said north line, North 89°39'29" East a distance of 459.93 feet; thence leaving said north line, North 13°22'55" West a distance of 113.24 feet; thence North South 78°38'48" East a distance of 283.32 feet; thence South 08°48'30" East a distance of 53.47 feet to said north line of Lot 91; thence along said north line North 89°39'29" East a distance of 1,347.87 feet; thence leaving said north line North 17°47'26" West a distance of 42.06 feet; thence North 89°39'29" East a distance of 694.41 feet to the POINT OF BEGINNING.

Containing 48.8 acres, more or less.

APN: 184-120-21, 184-110-28, 184-110-29, 184-120-01 and a portion of 184-033-15.

BASIS OF BEARINGS: California Coordinate System Zone 2 (NAD 83). A Bearing of North 16°27'08" West between NGS monuments (PID KT2296 and PID KT2012 both with epoch date 1991.35).

**EXHIBIT B**  
**PROJECT SITE PLAN**



**EXHIBIT C**  
**PROJECT PHASING PLAN**

**EXHIBIT D**  
**INCLUSIONARY HOUSING AGREEMENT**

**EXHIBIT E**

**AMENDED MITIGATION MONITORING & REPORTING PROGRAM**

**EXHIBIT F**

**FORM OF ASSIGNMENT**

OFFICIAL BUSINESS  
Document entitled to free recording  
Government Code Section 6103

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

County of Mendocino

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: County Clerk

(SPACE ABOVE THIS LINE RESERVED FOR  
RECORDER'S USE)

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
RELATIVE TO BELLA VISTA SUBDIVISION**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ (hereinafter "Landowner"), and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter "Assignee").

**RECITALS**

On \_\_\_\_\_, 20\_\_\_\_, County of Mendocino and Landowner entered into that certain agreement entitled "Development Agreement By and Between County of Mendocino and Rancho Yokayo, LP, Relative to the Development known as Bella Vista Subdivision (hereinafter the "Restated Development Agreement"). Pursuant to the Restated Development Agreement, Landowner agreed to develop certain property more particularly described in the Restated Development Agreement (hereinafter, the "Subject Property"), subject to certain conditions and obligations as set forth in the Restated Development Agreement. The Restated Development Agreement was recorded against the Subject Property in the Official Records of Mendocino County on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. 20\_\_-\_\_\_\_\_.

Landowner intends to convey a portion of the Subject Property to Assignee, commonly referred to as Parcel \_\_\_\_\_, and more particularly identified and described in Exhibit A and Exhibit B, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel").

Landowner desires to assign and Assignee desires to assume all of Landowner's right, title, interest, burdens and obligations under the Restated Development Agreement with respect to and as related to the Assigned Parcel.

**ASSIGNMENT AND ASSUMPTION**

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

Landowner hereby assigns, effective as of Landowner's conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Landowner under the Restated Development Agreement with respect to the Assigned Parcel. Landowner retains all the rights, title, interest, burdens and obligations under the Restated Development Agreement with respect to all other property within the Subject Property owned by Landowner.

Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Landowner under the Restated Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Landowner under the Development Agreement with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Restated Development Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Landowner as the "Landowner" under the Restated Development Agreement with respect to the Assigned Parcel.

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

The Notice Address described in Section 13.11 of the Restated Development Agreement for the Landowner with respect to the Assigned Parcel shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS HEREOF, the parties hereto have executed this Restated Development Agreement as of the day and year first above written. This Restated Development Agreement may be signed in identical counterparts.

LANDOWNER:

ASSIGNEE:

RANCHO YOKAYO, LP  
a California limited partnership

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

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

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

Its: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of California  
County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California  
County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Legal Description of Exterior Boundaries of Lands Associated with The  
Development of Bella Vista Estates Subdivision

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**EXHIBIT "A"**

LEGAL DESCRIPTION

Any and all lands and any and all interest thereto lying within the following described real property.

All that real property situate in the unincorporated area of the County of Mendocino, State of California, and lying within Lot 72 and Lot 91, Yokayo Rancho, described as follows;

Beginning at a point North 19°36'49" West a distance of 42.50 feet from a ½" iron pipe as shown on "Parcel Map of Minor Subdivision No. 23-93", filed in Map Case 2, Drawer 58, Page 77 and 78, Mendocino County Records, marking the west line of South State Street and the north line of Lot 91, Yokayo Rancho, said point being the TRUE POINT OF BEGINNING; thence along the west line of South State Street South 19°36'49" East a distance of 719.25 feet; thence North 89°32'30" West a distance of 260.53 feet; thence South 19°33'13" East a distance of 114.82 feet to the south line of Lot 91 of said Rancho; thence along said south line North 89°33'29" West a distance of 2,777.28 feet to the west line of Lot 91 of said Rancho; thence along said west line, North 00°41'37" East a distance of 705.86 feet to the north line of said Lot 91; thence along said north line, North 89°39'29" East a distance of 459.93 feet; thence leaving said north line, North 13°22'55" West a distance of 113.24 feet; thence North South 78°38'48" East a distance of 283.32 feet; thence South 08°48'30" East a distance of 53.47 feet to said north line of Lot 91; thence along said north line North 89°39'29" East a distance of 1,347.87 feet; thence leaving said north line North 17°47'26" West a distance of 42.06 feet; thence North 89°39'29" East a distance of 694.41 feet to the POINT OF BEGINNING.

Containing 48.8 acres, more or less.

APN: 184-120-21, 184-110-28, 184-110-29, 184-120-01 and a portion of 184-033-15.

BASIS OF BEARINGS: California Coordinate System Zone 2 (NAD 83). A Bearing of North 16°27'08" West between NGS monuments (PID KT2296 and PID KT2012 both with epoch date 1991.35).

Prepared by,



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**Bradley A. Thomas**, PLS 5520  
My License Expires: 9/30/2022  
File No. 9100.06  
13 June e2022

See also Exhibit B, Sheet 2 of 2

Sheet 1 of 2

# EXHIBIT B

DESCRIPTION OF EXTERIOR BOUNDARIES  
OF LANDS ASSOCIATED WITH THE DEVELOPMENT  
OF BELLA VISTA ESTATES SUBDIVISION.



0 125' 250'  
SCALE: 1"=250'

LOT 72 OF THE  
YOKAYO RANCHO

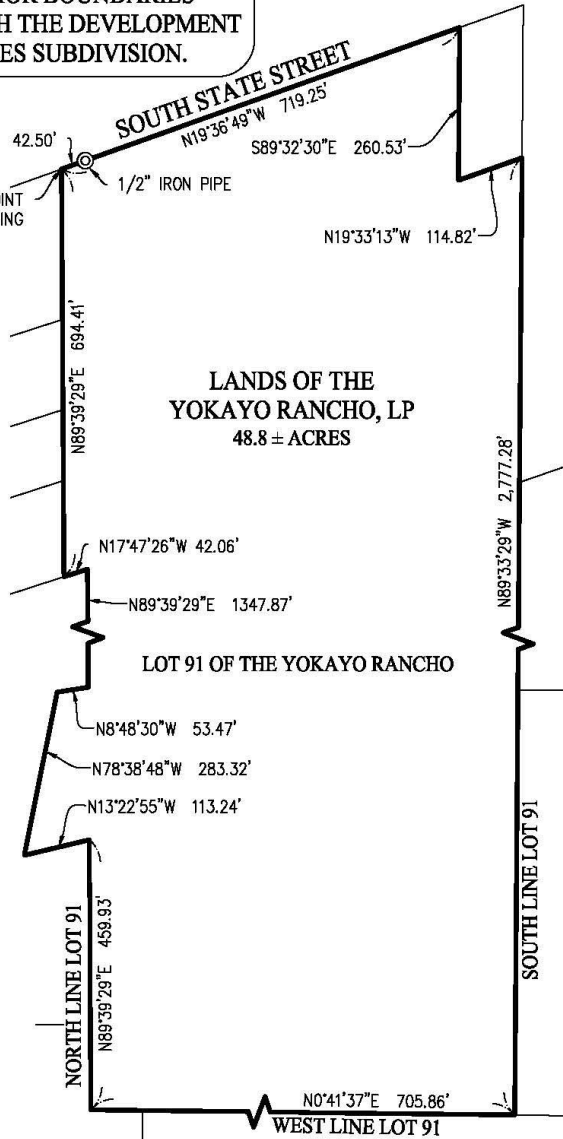


SURVEYOR'S STATEMENT

THIS EXHIBIT WAS PREPARED  
UNDER THE SUPERVISION OF;

BRADLEY A. THOMAS,  
P.L.S.: 5520

DATE: JUNE 13, 2022



LACO ASSOCIATES  
EUREKA • UKIAH • SANTA ROSA • CHICO  
www.lacoassociates.com  
1-800-515-5054

PROJECT NO. 9100.06  
SHEET 2 OF 2