

**RECORD WITHOUT FEE  
PURSUANT TO GOVERNMENT CODE §§ 6103 AND 27383**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

**CITY OF HEALDSBURG  
401 GROVE STREET  
HEALDSBURG, CALIFORNIA 95448  
ATTN: SAMANTHA ZUTLER, ESQ.**



**2020041464**

Official Records Of Sonoma County  
Deva Marie Proto  
06/01/2020 09:13 AM  
HEALDSBURG CITY

**AGM 89 Pgs**

**Fee: \$0.00**

**PAID**



*SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY*

## **DEVELOPMENT AGREEMENT**

**by and between**

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

**and**

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

## TABLE OF CONTENTS

	<b>Page</b>
<b>1. DEFINITIONS.....</b>	<b>4</b>
<b>2. EFFECTIVE DATE AND TERM.....</b>	<b>7</b>
2.1 Effective Date .....	7
2.2 Term.....	7
2.3 Expiration.....	7
2.4 Developer Representations and Warranties .....	7
<b>3. DEVELOPMENT OF THE PROPERTY .....</b>	<b>8</b>
3.1 Vested Rights .....	8
3.2 Applicable Law .....	8
3.3 Development Timing .....	9
3.4 Regulation by Other Public Agencies.....	9
3.5 Life of Project Approvals.....	10
3.6 Developer's Right to Rebuild .....	10
3.7 State and Federal Law .....	10
3.8 Compliance with State and Federal Law .....	10
<b>4. FEES AND EXACTIONS.....</b>	<b>10</b>
4.1 Development Fees, Taxes and Exactions.....	10
4.2 Impact Fees .....	11
4.3 Processing Fees.....	11
4.4 Taxes and Assessments.....	11
4.5 Consultant Fees.....	11
<b>5. OBLIGATIONS OF THE PARTIES.....</b>	<b>12</b>
5.1 Affordable/Workforce Housing Units .....	12
5.2 Middle Income Housing Units.....	12
5.3 Local Preference Requirements .....	13
5.4 Senior Living Community Affordable Housing .....	14
5.5 Housing Guaranty and Satisfaction of Obligations .....	14
5.6 Fire Substation .....	15
5.7 Connectivity Measures.....	16
5.8 PILOT Agreement .....	17

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
5.9 Hotel Community Benefit Fee .....	17
5.10 Sales Tax Point of Sale Designation .....	17
<b>6. COOPERATION AND IMPLEMENTATION. ....</b>	<b>18</b>
6.1 Subsequent Project Approvals .....	18
6.2 Processing Applications for Subsequent Project Approvals .....	18
6.3 Changes and Amendments to Project Approvals .....	19
6.4 Amendment of this Agreement .....	20
6.5 Mitigation Measures .....	20
6.6 Cooperation in the Event of Legal Challenge .....	20
6.7 Indemnity and Hold Harmless .....	21
<b>7. DEFAULT AND REMEDIES. ....</b>	<b>21</b>
7.1 Breach .....	21
7.2 Default .....	21
7.3 Withholding of Permits .....	22
7.4 Remedies .....	22
7.5 Periodic Review .....	22
7.6 Enforced Delay; Extension of Time of Performance .....	24
7.7 Resolution of Disputes .....	24
7.8 Termination .....	24
<b>8. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE .....</b>	<b>25</b>
8.1 Mortgagee Protection .....	25
8.2 Mortgagee Obligations .....	25
8.3 Notice of Default to Mortgagee .....	25
<b>9. ASSIGNABILITY .....</b>	<b>25</b>
9.1 Assignment by Developer .....	25
9.2 Covenants Run With The Land .....	26
9.3 Pre-Approved Transfers .....	26
9.4 Non-Assuming Transferees .....	27
9.5 Foreclosure .....	27

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>10. GENERAL.....</b>	<b>27</b>
10.1 Controlling Law .....	27
10.2 Construction of Agreement.....	27
10.3 No Waiver .....	27
10.4 Agreement is Entire Agreement.....	28
10.5 Estoppel Certificate.....	28
10.6 Further Documents.....	28
10.7 Time of Essence.....	28
10.8 Construction.....	28
10.9 Notices .....	29
10.10 Developer is an Independent Contractor.....	29
10.11 No Joint Venture .....	29
10.12 Nondiscrimination.....	30
10.13 No Third Party Beneficiary.....	30
10.14 Further Assurances; Warranty by Signers.....	30
10.15 Counterparts.....	30

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into as of the Effective Date by and between THE CITY OF HEALDSBURG, a California municipal corporation (“**City**”), and CCS HEALDSBURG, LLC, a Delaware limited liability company (“**Comstock**” or “**Developer**”). City and Developer may each be referred to as a “**Party**,” and collectively as the “**Parties**.”

Developer and City enter into this Agreement on the basis of the following facts, understandings, and intentions, and the following recitals are a substantive part of this Agreement:

### RECITALS

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

B. Comstock owns an approximately 32-acre parcel of land at 16977 Healdsburg Avenue in the City of Healdsburg, as further described in Exhibit A and incorporated herein by this reference (“**North Village site**” or “**Property**”).

C. In November 2017, Comstock submitted an application for a tentative subdivision map in preparation for development of the Property. The City determined that, pursuant to the requirements of the Healdsburg 2030 General Plan (“**General Plan**”)—which identifies the northern entry to Healdsburg as an area warranting special study in recognition of its importance both as an attractive gateway into the City and an area of transition from the rural landscape of the Alexander Valley to the more urban core of downtown Healdsburg—the City must prepare the North Entry Area Plan (“**NEAP**”) prior to development of the Property. The NEAP provides detailed guidance for future development of the North Village site including a vision concept, land use guidelines, development standards, and design guidelines.

D. On May 20, 2019, pursuant to the California Environmental Quality Act (Cal. Gov’t Code § 21000 *et seq.*) and California Environmental Quality Act Guidelines (14 Cal. Code Regs. § 15000 *et seq.*) (collectively, “**CEQA**”), the City Council adopted Resolution 68-2019, Certifying the Final Environmental Impact Report (SCH No. 2018062041) (“**EIR**”), Adopting CEQA Findings, a Mitigation Monitoring and Reporting Plan (“**MMRP**”), and a Statement of Overriding Considerations; adopted Resolution 69-2019 adopting the NEAP as part of the Land Use Element of the General Plan; and introduced Ordinance 1190, which, among other things, established in the Healdsburg Municipal Code new Sections 20.12.200 through 20.12.235 establishing the “**North Entry Area Plan Overlay**.”

E. To implement the NEAP, Developer proposes to develop, and the Parties desire to provide for the development of, a project that includes the following elements, all as shown on Exhibit B, attached hereto and incorporated herein by this reference (collectively, “**Project**”):

1. Approximately, but no more than, 301 residential units (collectively, **“Residential Units”**) consisting of the following:

a. Thirty (30) affordable/workforce apartments subject to recorded restrictions that require occupancy by households with very low, low, and moderate incomes, of which six (6) units are anticipated to be for households below 50% of area median income (**“AMI”**), nine (9) units are anticipated to be for households between 50% and 80% of AMI, and fifteen (15) units are anticipated to be for households between 80% and 120% of AMI (collectively, **“Affordable/Workforce Housing”**). Notwithstanding the foregoing, the final mix of units in any given affordability category may vary, but in no event shall less than three (3) units be occupied by Very Low Income Households, nor shall more than fifteen (15) units be occupied by households between 80% and 120% of AMI.

b. Forty-five (45) multi-family mixed-use housing units subject to recorded restrictions that require occupancy by households with moderate and middle incomes (**“Middle Income Households”**), of which twenty-four (24) units shall be for households between 80% and 120% of AMI and twenty one (21) units shall be for households between 120% and 160% of AMI, and five (5) live-work units subject to recorded restrictions that require occupancy by households with incomes between 120% and 160% of AMI (collectively, **“Middle Income Housing”**).

c. Two hundred twenty-one (221) units of senior housing within a **“Senior Living Community,”** inclusive of thirty (30) units subject to recorded restrictions that require occupancy by households with very low and moderate incomes, of which twenty (20) units shall be for households below 50% of area median income and ten (10) units shall be for households between 80% and 120% of AMI (collectively, **“Senior Living Community Affordable Housing”**).

2. Approximately twenty four (24) memory care beds, approximately thirty (30) assisted living beds (not to exceed a total of 54 memory care and assisted living beds), and ancillary facilities including dining facilities, meeting rooms, and administrative offices within the Senior Living Community.

3. Approximately 12,000 square feet of commercial retail and **“maker”** space, parking, and other public and private amenities.

4. A hotel containing up to 108 guest rooms, 100-seat restaurant, rooftop bar, and parking.

5. A variety of public-serving amenities including a pedestrian promenade, grange building and common green.

F. Through this Agreement, the Parties intend to preserve the size and density of development as set forth in the Project Approvals, as defined below. City and Developer each acknowledge that development and construction of the Project is a substantial long-term

undertaking involving major investments by Developer and City, and that assurances the Project can be developed and used in accordance with the terms and conditions set forth herein and the existing rules governing development of the Property will benefit both Developer and City.

G. This Agreement will eliminate uncertainty in the comprehensive development planning of the Project and provide that the Property may be developed, constructed, completed, and used pursuant to this Agreement, and in accordance with existing policies, rules, and regulations of the City, subject to the exceptions and limitations expressed herein. Further, this Agreement will (i) secure orderly development of the Property; (ii) meet the goals of the City's General Plan; (iii) help to maintain an economic and social balance between housing supply and employment opportunities; (iv) provide affordable housing for various income categories in excess of the minimum required by the City's existing inclusionary housing requirements; (v) provide services, goods, and amenities to City and Project residents; (vi) secure construction of a fire substation with direct access to Healdsburg Avenue; and (vii) provide connectivity fee funding for North Healdsburg Avenue Plan implementation, all of which provide tangible benefits beyond those that could be imposed through project conditions of approval.

H. The analysis in the NEAP EIR allows the use of CEQA streamlining and/or tiering provisions for projects developed under the NEAP EIR, including the Project. Accordingly, City has prepared an Addendum to the NEAP EIR pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15164 that documents City's review of the Project in accordance with CEQA. All mitigation measures in the NEAP MMRP are project-level measures applicable to the Project, and the MMRP attached hereto as Exhibit C and incorporated herein by this reference. City identified the following applicable CEQA streamlining and/or tiering code sections, each of which, separately and independently, provide a basis for the Project's CEQA compliance:

1. A Community Plan Exemption, pursuant to Public Resources Code section 21083.3 and CEQA Guidelines section 15183;
2. Reliance on the NEAP EIR as a Program EIR, pursuant to CEQA Guidelines section 15168.

I. After conducting a public hearing with respect to this Agreement on February 11, 2020, the Healdsburg Planning Commission (the "Planning Commission") recommended that the City Council approve the Agreement. On April 6, 2020, after conducting a public hearing on this Agreement, the City Council adopted Ordinance No. 1202, approving this Agreement.

J. Following public hearings and extensive environmental analysis, City has taken numerous actions in connection with the development of the Project on the Property. The approvals and development actions described in this Recital J are collectively referred to herein as the "Existing Project Approvals." The Existing Project Approvals are as follows:

1. By City Council Resolution No. 2019-02, dated May 20, 2019, North Entry Area Plan Environmental Impact Report (SCH No. 2018062041) ("EIR");

2. By City Council Resolution No. 2019-01, dated May 20, 2019, North Entry Area Plan (“NEAP”), which addressed the plan for and overall development and use of the Property in accordance with General Plan Land Use Policy LU-18;

3. By Planning Commission Resolution No. 2020-02, dated February 11, 2020, Master Conditional Use Permit (“MCUP”), which addressed (1) the Project’s mix of residential and commercial uses (including approval of a density bonus and a shared parking reduction) in support of the vision and guiding principles, goals, and policies of the NEAP, (2) the size and location of retail uses, (3) the size and location of visitor lodging uses, (4) the location of an active community gathering space for residents, neighbors, and visitors, (5) off-site infrastructure, improvements, and mechanisms for establishing maintenance obligations, and (6) the preliminary grading and drainage plan.

K. Subsequent to approval of this Agreement, the City and Developer anticipate that applications for additional approvals, entitlements, and permits related to the development and operation of the Project will be submitted to implement the Project (“**Subsequent Project Approvals**”).

L. Having duly examined this Agreement and conducted public hearings thereon and following a recommendation from the Planning Commission, the City Council has found, among other things, this Agreement is consistent with the General Plan and the NEAP and has been reviewed and evaluated in accordance with the Development Agreement Law.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Law, and in consideration of the mutual representations, covenants, and promises of the Parties, the adequacy of which is hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

### **1. DEFINITIONS.**

“*Administrative Agreement Amendment*” shall have the meaning set forth in Section 6.4(a).

“*Administrative Project Amendment*” shall have the meaning set forth in Section 6.3(a)(i).

“*Affordable/Workforce Housing*” shall have the meaning set forth in Recital E.

“*Agreement*” shall have the meaning set forth in the introductory paragraph preceding the Recitals.

“*Applicable Law*” shall have the meaning set forth in Section 3.2.

“*Assignment*” shall have the meaning set forth in Section 9.1.

“*Building Permit*” means a permit issued by the City for the renovation or construction of a building or structure, as required by the California Building, Residential, Mechanical,

Electrical, Plumbing, Green Building, Fire or Energy Standard Codes, as adopted by the City and incorporated in the Healdsburg Municipal Code by reference.

*"CEQA"* shall have the meaning set forth in Recital D.

*"Changes in the Law"* shall have the meaning set forth in Section 3.7.

*"City"* shall have the meaning set forth in the introductory paragraph preceding the Recitals.

*"City Manager"* means the City Manager of the City or his/her designee.

*"Consultant Fees"* shall have the meaning set forth in Section 4.5.

*"Cure Period"* shall have the meaning set forth in Section 7.1.

*"Default"* shall have the meaning set forth in Section 7.2.

*"Developer"* means CCS Healdsburg, LLC and its permitted successors and assigns.

*"Development Agreement Law"* shall have the meaning set forth in Recital A.

*"Effective Date"* shall have the meaning set forth in Section 2.1.

*"Existing Project Approvals"* shall have the meaning set forth in Recital I.

*"Extended Cure Period"* shall have the meaning set forth in Section 7.1.

*"Impact Fees"* shall have the meaning set forth in Section 4.2.

*"Low Income Households"* shall have the meaning defined in California Health and Safety Code Section 50079.5 and as periodically published by the California Department of Housing and Community Development, which is approximately 80% of the AMI or below.

*"Major Agreement Amendment"* shall have the meaning set forth in Section 6.4(b).

*"Middle Income Households"* means persons living together whose income is between 120% and 160% of the AMI.

*"Middle Income Housing"* shall have the meaning set forth in Recital E.

*"MMRP"* shall have the meaning set forth in Recital D.

*"Moderate Income Households"* means persons living together whose income is between 80% and 120% of the AMI.

*"Montage Healdsburg Development Agreement"* means that certain Development Agreement by and Between the City of Healdsburg and Sonoma Luxury Resort LLC dated April 11, 2011.

***“Monthly Housing Fee”*** means the equivalent of rent. The Senior Housing Project is contemplated as a Continuing Care Retirement Community, as defined by Health & Safety Code section 1771.7, and the 30 affordable units will not be sold or rented, but instead residents will sign a resident agreement that covers the cost of housing, programming and health and wellness services. The monthly housing fee as defined here is simply the portion of that monthly fee that relates to housing (including a reasonable utility allowance for utilities paid by the resident as established by the Sonoma County Community Development Commission, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service, Internet, or cable or subscription TV plus other fees and charges required to be paid by residents of the Senior Housing Project on a non-optional basis) but does not include programming and other optional services provided in the resident agreement.

***“Mortgage”*** shall have the meaning set forth in Section 8.1.

***“Mortgagee”*** shall have the meaning set forth in Section 8.1.

***“New City Laws”*** shall mean City’s laws, rules, regulations, official policies, standards, and specifications, including those enacted or imposed by a citizen-sponsored initiative or by the City Council directly or indirectly in connection with any proposed initiative, in each case to the extent amended or otherwise imposed following the Effective Date.

***“Non-Administrative Project Amendment”*** shall have the meaning set forth in Section 6.3(a)(ii).

***“Party/Parties”*** shall have the meaning set forth in the introductory paragraph preceding the Recitals of this Agreement.

***“PILOT Agreement”*** means that certain “Payment In Lieu of Taxes Agreement, as further described in Section 5.8.

***“Processing Fees”*** shall have the meaning set forth in Section 4.3.

***“Project”*** shall have the meaning set forth in Recital E.

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

***“Property”*** shall have the meaning set forth in Recital B.

***“Recitals”*** shall mean Recitals A through L of this Agreement, which are hereby incorporated into this Agreement.

***“Senior Living Community”*** shall have the meaning set forth in Recital E.

***“Senior Living Community Affordable Housing”*** shall have the meaning set forth in Recital E.

*“Subsequent Discretionary Approvals”* means all other Subsequent Project Approvals other than Subsequent Ministerial Approvals, including amendments of the Project Approvals, improvement agreements, architectural review permits, use permits, lot line adjustments, subdivision maps, rezonings, development agreements, permits that are not Subsequent Ministerial Approvals, resubdivisions, and any amendments to, or repealing of, any of the foregoing.

*“Subsequent Ministerial Approvals”* means permits or approvals that are required by Applicable Law and that are to be issued without the exercise of discretion upon compliance with uniform, objective standards, and regulations. They include applications for road construction permits or authorizations; grading and excavation permits; building permits, including electrical, plumbing, mechanical, Title 24 Electrical, and Title 24 Handicap permits or approvals; certificates of occupancy; encroachment permits; water connection permits; and any other similar permits required for the development and operation of the Project.

*“Subsequent Project Approvals”* shall have the meaning set forth in Recital K.

*“Taxes and Assessments”* shall have the meaning set forth in Section 4.4.

*“Term”* shall have the meaning set forth in Section 2.2.

*“Transfer”* shall have the meaning set forth in Section 9.1.

*“Very Low Income Households”* shall have the meaning defined in California Health and Safety Code Section 50105 and as periodically published by the California Department of Housing and Community Development, which is approximately 50% of the AMI or below.

## **2. EFFECTIVE DATE AND TERM.**

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

**2.2 Term.** The term (“Term”) of this Agreement shall commence upon the Effective Date and shall extend for a period of ten (10) years thereafter, unless terminated earlier pursuant to the terms of this Agreement. The Term has been negotiated and established by the City and Developer as a reasonable estimate of the time required to develop the Project, including all on- and off-site public improvements, and obtain the public benefits of the Project.

**2.3 Expiration.** Following the expiration of the Term, or the earlier completion of development of the Project and all of Developer’s obligations in connection therewith, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 7.8 below.

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

- (a) Developer owns the entirety of the Property, as provided herein;

(b) Developer: (i) is organized and validly existing under the laws of the State of Delaware; (ii) to the extent required, has qualified and been authorized to do business in the State of California and has complied with all requirements pertaining thereto; and (iii) to the extent required, is in good standing and has all necessary powers under the laws of the State of California to own property;

(c) No approvals or consents of any persons are necessary for the execution, delivery, or performance of this Agreement by Developer, except as have been obtained;

(d) The execution and delivery of this Agreement have been duly authorized by all necessary corporate action; and

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

### **3. DEVELOPMENT OF THE PROPERTY.**

3.1 Vested Rights. The Property is hereby made subject to the provisions of this Agreement. Developer shall have the vested right to develop the Property and the Project in accordance with and subject to the Existing Project Approvals, the Subsequent Project Approvals, Applicable Law, and this Agreement, which shall control the permitted uses, density and intensity of use of the Property, the maximum height and size of buildings on the Property, and provisions for reservation or dedication of land for public purposes.

3.2 Applicable Law. City and Developer acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the limitations, reservations, and exceptions contained in this Agreement are intended to reserve to City all of its police power that cannot be so limited. Notwithstanding the foregoing reservation of City, it is the intent of City and Developer that this Agreement provide and be construed to provide Developer with rights afforded by law, including but not limited to, the Development Agreement Law. Therefore, the laws, rules, regulations, official policies, standards, and specifications of City applicable to the development of the Property and/or the Project shall be (collectively, "Applicable Law"):

(a) Those rules, regulations, official policies, standards, and specifications of the City set forth in the Project Approvals and this Agreement;

(b) With respect to matters not addressed by and not otherwise inconsistent with the Project Approvals and this Agreement, those laws, rules, regulations, official policies, standards, and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing and manner of construction, densities, intensities of uses, heights and sizes, and requirements for on- and off-site infrastructure and public improvements, in each case only to the extent in full force and effect on the Effective Date;

(c) New City Laws that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals,

and any other matter of procedure imposed at any time, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

(d) New City Laws that revise City's uniform construction codes, including City's building code, plumbing code, mechanical code, electrical code, fire code, grading code, and other uniform construction codes, as of the date of permit issuance, provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

(e) New City Laws that are necessary to protect physical health and safety of the public, provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties; and

(f) New City Laws that do not apply to the Property and/or the Project due to the limitations set forth above, but only to the extent that such New City Laws are accepted in writing by Developer in its sole discretion.

### **3.3 Development Timing.**

(a) The Parties acknowledge that Developer cannot at this time predict when or the rate at which the phases of the Project will be developed or the order in which each phase will be developed. Such decisions depend upon numerous factors that are not within the control of Developer, such as market orientation and demand, construction financing, interest rates, absorption, completion, and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that, unless otherwise provided for in this Agreement, Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its sole business judgment, subject to the terms, requirements and conditions of the Existing Project Approvals and this Agreement.

(b) Developer will use its best efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive, and timely manner in accordance with the provisions and conditions of this Agreement and the Existing Project Approvals.

**3.4 Regulation by Other Public Agencies.** City and Developer acknowledge and agree that other governmental or quasi-governmental entities not within the control of City possess authority to regulate aspects of the development of the Property and the Project and that

this Agreement does not limit the authority of such other public agencies. City shall cooperate with Developer in Developer's effort to obtain such permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Property and/or the Project; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement, or to amend any City policy, regulation, or ordinance in connection therewith.

**3.5 Life of Project Approvals.** The term of any and all Project Approvals shall automatically be extended for the longer of the Term or the term otherwise applicable to such Project Approvals. Without limiting the generality of the foregoing, pursuant to the Subdivision Map Act, any vesting or tentative maps heretofore or hereafter approved in connection with development of the Project or the Property, shall be extended for the Term (and may be subject to other extensions provided under the Subdivision Map Act).

**3.6 Developer's Right to Rebuild.** City agrees that Developer may renovate or rebuild portions of the Project at any time within the Term should it become necessary due to any casualty, including natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval consistent with all prior Project Approvals and Applicable City Law. Any such renovation or rebuilding shall be subject to all design, density, and other limitations and requirements imposed by this Agreement, and shall comply with the Project Approvals, Applicable City Law, and the requirements of CEQA.

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

**3.8 Compliance with State and Federal Law.** Developer, at its sole cost and expense, shall comply with applicable requirements of, and obtain all permits and approvals required by, regional, State, and Federal agencies having jurisdiction over the Project.

#### **4. FEES AND EXACTIONS.**

**4.1 Development Fees, Taxes and Exactions.** Developer shall pay all fees, special assessments, special taxes, exactions, and dedications payable due to the development, build out, occupancy, and use of the Property pursuant to this Agreement including Impact Fees, Processing Fees, Taxes and Assessments, and Consultant Fees, except as otherwise provided herein.

**4.2 Impact Fees.** Developer shall pay all applicable development impact fees imposed pursuant to the Mitigation Fee Act, California Government Code section 66000 *et seq.* (“**Impact Fees**”), that are in force and effect on a City-wide basis at the time, and at the rates in effect, when such Impact Fees are due in connection with the issuance of building permits or site improvement permits for components of the Project. Notwithstanding the foregoing, Developer may elect to defer payment of any applicable Impact Fees identified in Healdsburg Municipal Code Section 17.32.010.A to the earlier of twenty-four (24) months after the date an agreement that satisfies the requirements of Healdsburg Municipal Code Section 17.32.010 is recorded against the Property or prior to City’s issuance of the final certificate of occupancy for the component of the Project for which the fee is due, whichever comes first. In the event such deferred impact fees exceed Two Hundred Fifty Thousand Dollars (\$250,000) Developer shall be obligated to provide a surety bond or letter of credit in compliance with Healdsburg Municipal Code Section 17.32.010.D in a form reasonably acceptable to the City Manager, whose approval thereof shall not be unreasonably withheld, conditioned, or delayed.

**4.3 Processing Fees.** City may charge and Developer agrees to pay all applicable processing fees, application fees, inspection and monitoring fees, and staff and legal fees (“**Processing Fees**”), for land use approvals, grading and building permits, general plan maintenance fees, and other permits and entitlements, that are in force and effect on a City-wide basis at the time those permits, approvals, or entitlements are applied for on any or all portions of the Project, and that are intended to cover the actual costs of processing the foregoing.

**4.4 Taxes and Assessments.** Subject to the terms of the PILOT Agreement, as described in Section 5.8, City may charge and Developer agrees to pay any new, increased, or modified taxes or assessments, imposed as a condition of or in connection with the Project Approvals or otherwise, provided such taxes and assessments are equally applied on a City-wide basis and have a uniform effect on a broadly-based class of land, projects, or taxpayers, as applicable, within the City (“**Taxes and Assessments**”).

**4.5 Consultant Fees.** In addition to charging the foregoing Processing Fees, City may, in its sole discretion, contract with one or more outside inspectors, engineers, attorneys, or consultants to perform all or any portion of the monitoring, inspection, testing, application processing, and evaluation services to be performed in connection with construction and development of the Project or in connection with the periodic review of the Agreement (“**Consultant Fees**”). Developer shall pay to City, within thirty (30) days following City’s written demand therefore, the full amount of all Consultant Fees, plus a ten (10) percent City administration charge. City shall provide copies of consultant bills identifying work performed that City asks Developer to pay pursuant to this paragraph at the same time that the City submits an invoice seeking payment to Developer. In the event that a consultant bill contains attorney-client privileged communications, City may redact those portions of the consultant bill that are so privileged. The Consultant Fees, together with the associated administrative charge, shall be in addition to, and not in lieu of, the Processing Fees.

## **5. OBLIGATIONS OF THE PARTIES.**

### **5.1 Affordable/Workforce Housing Units.**

(a) Developer shall cause construction of a minimum of thirty (30) units of Affordable/Workforce Housing within the Project, affordable to households with very low, low, and moderate incomes, as follows:

(i) Six (6) dwelling units are anticipated to be made available for occupancy at an affordable rent, adjusted for household size, to Very Low Income Households.

(ii) Nine (9) dwelling units are anticipated to be made available for occupancy at an affordable rent, adjusted for household size, to Low Income Households.

(iii) Fifteen (15) dwelling units are anticipated to be made available for occupancy at an affordable rent, adjusted for household size, to Moderate Income Households.

(b) Notwithstanding the foregoing, the final mix of Affordable/Workforce Housing units in any given affordability category may vary, but in no event shall less than three (3) units be occupied by Very Low Income Households, nor shall more than fifteen (15) units be occupied by households between 80% and 120% of AMI.

(c) Developer shall provide approximately five (5) one-bedroom dwelling units, nine (9) two-bedroom dwelling units, and sixteen (16) three-bedroom dwelling units within the Affordable/Workforce Housing. Notwithstanding the foregoing, Developer shall have the right to construct at least eight (8) three-bedroom dwelling units within the Affordable/Workforce Housing.

(d) Developer or developer's successor in interest shall enter into an "Affordable Housing Agreement" with City setting forth its obligations to provide and maintain the Affordable/Workforce Housing units for a term of 55 years. The Affordable Housing Agreement shall be executed by Developer or developer's successor in interest and be recorded against the Property prior to City issuance of the first building permit for the Project. The Affordable Housing Agreement shall be assignable to the owner and operator of the Affordable/Workforce Housing units, and City shall release the Affordable Housing Agreement from the Property except for the parcel containing the Affordable/Workforce Housing units upon the issuance of a final certificate of occupancy for the Affordable/Workforce Housing units or issuance of a guaranty pursuant to Section 5.5 of this Agreement, whichever is earlier.

### **5.2 Middle Income Housing Units.**

(a) Developer shall cause construction of a minimum of fifty (50) units of Middle Income Housing within the Project, which shall be made available at an affordable rent to households with moderate and middle incomes, as follows:

(i) Twenty four (24) dwelling units shall be made available for occupancy at an affordable rent, adjusted for household size, to Moderate Income Households.

(ii) Twenty one (21) dwelling units shall be made available for occupancy at an affordable rent, adjusted for household size, to Middle Income Households.

(iii) Five (5) live-work units shall be made available for occupancy at an affordable rent, adjusted for household size, to Middle Income Households.

(b) Developer shall provide fifteen (15) studio dwelling units, sixteen (16) one-bedroom dwelling units, fourteen (14) two-bedroom dwelling units, and five (5) live-work dwelling units of approximately 1,000 square feet per unit within the Middle Income Housing.

(c) The Middle Income Housing will require Growth Management Ordinance (“GMO”) Category C allocations. If the GMO is modified in the future to allow units sold at an affordable sales price to Middle Income Households to qualify for Category C allocations, Developer may, in its sole discretion, develop the Middle Income Housing for sale rather than for rent.

(d) Developer shall enter into a “**Middle Income Housing Agreement**” with City setting forth its obligations to provide and maintain the Middle Income Housing units for a term of 55 years. The regulatory agreement shall meet any applicable requirements of the GMO Policies and Procedures as may be amended, or applicable new GMO policies and procedures that may be adopted, by the City Council specifically for Middle Income Housing units that do not otherwise conflict with the terms of this Agreement. The Middle Income Housing Agreement shall be executed by Developer and be recorded against the Property prior to City issuance of the first building permit for the Project. The Middle Income Housing Agreement shall be assignable to the owner and operator of the Middle Income Housing units, and City shall release the Middle Income Housing Agreement from the Property, except for the parcel containing the Middle Income Housing units, upon the issuance of a certificate of occupancy for the Middle Income Housing units or issuance of a guaranty pursuant to Section 5.5 of this Agreement, whichever is earlier..

### 5.3 Local Preference Requirements.

(a) In order to ensure that there is an adequate supply of affordable housing within the City of Healdsburg for residents and employees of businesses within the City, to the extent allowed by law, within the pool of eligible applicants for the Affordable/Workforce Housing units and the Middle Income Housing units, first priority will be given to qualified households with members who live or work in the city limits of Healdsburg. If there are no qualified households who meet these criteria and the respective household income requirements of the Affordable/Workforce Housing units and the Middle Income Housing units, second priority shall be granted to qualified households with members who live or work in unincorporated north Sonoma County or the cities of Windsor, Geyserville, or Cloverdale. In the event

there are fewer applicants for the Affordable/Workforce Housing units and the Middle Income Housing units that meet the criteria specified in this paragraph than there are available Affordable/Workforce Housing units and Middle Income Housing units, such units shall be made available to members of the general public, without regard for the local preference requirements of this section 5.3, who are income qualified for the Affordable/Workforce Housing units and the Middle Income Housing units, respectively.

(b) The above requirements shall be memorialized in the Affordable Housing Agreement and Middle Income Housing Agreement, respectively.

#### **5.4 Senior Living Community Affordable Housing.**

(a) Developer shall cause construction of a minimum of thirty (30) units of Senior Living Community Affordable Housing within the Senior Living Community component of the Project, affordable to households with very low and moderate incomes, as follows:

(i) Twenty (20) dwelling units shall be made available for occupancy at an affordable Monthly Housing Fee or rent, adjusted for household size, to Very Low Income Households.

(ii) Ten (10) dwelling units shall be made available for occupancy at an affordable Monthly Housing Fee or rent, adjusted for household size, to Moderate Income Households.

(b) The Senior Living Community Affordable Housing for Very Low Income Households shall be reserved for employees and volunteers of the Senior Living Community. The Senior Living Community Affordable Housing for Moderate Income Households shall be subject to the local preference requirements described in Section 5.3(a) of this Agreement.

(c) Developer or Developer's successor in interest shall enter into a "Senior Living Community Affordable Housing Agreement" with City, setting forth its obligations to provide and maintain the Senior Living Community Affordable Housing units for a term of 55 years. The Senior Living Community Affordable Housing Agreement shall be executed by Developer or Developer's successor in interest and be recorded against the parcel containing the Senior Living Community within ten (10) days after the Effective Date. The Senior Living Affordable Housing Agreement shall be assignable to the owner and operator of the Senior Living Community.

#### **5.5 Housing Guaranty and Satisfaction of Obligations.**

(a) All Workforce/Affordable Housing units and Middle Income Housing units must have received a certificate of occupancy before City will issue a final certificate of occupancy for the hotel. In lieu of obtaining certificates of occupancy for Workforce/Affordable Housing or Middle Income Housing units

required by this paragraph, Developer may provide a completion guaranty in favor of City, in a form reasonably acceptable to the City Manager, whose approval thereof shall not be unreasonably withheld, conditioned, or delayed, to secure its obligation to deliver any Workforce/Affordable Housing units or Middle Income Housing units required under this Agreement but not yet complete.

(b) As provided in the Existing Project Approvals, the provision of age-restricted units in accordance with this Agreement entitles Developer to a density bonus under Government Code section 65915 and Healdsburg Municipal Code section 20.20.035.

(c) The provision of the Affordable/Workforce Housing units in accordance with this Agreement shall satisfy any and all of Developer's inclusionary housing obligations under Healdsburg Municipal Code section 20.20.030 and any successor provisions, ordinances, or policies related to affordable housing production or Impact Fees.

(d) The Senior Living Community units shall be identified and designated before City's issuance of the final certificate of occupancy for the Senior Living Community.

#### 5.6 Fire Substation.

(a) The Montage Healdsburg Development Agreement includes approximately 0.85 acres located within the boundaries of the Saggio Hills Area Plan (known as "**Montage Healdsburg**") that is required to be used for the development of a Healdsburg Fire Department substation ("**Fire Substation**") that will be conveyed to the City.

(b) Using the design process set forth in Section 11(b) of Exhibit B to the Montage Healdsburg Development Agreement, which is included as Exhibit D to this Agreement and incorporated by reference, Developer will prepare, at its sole cost and expense, construction drawings for an approximately 3,984 square-foot Fire Substation on the east side of Healdsburg Avenue, south of Passalacqua Road ("**Fire Substation Site**"). Unless otherwise approved by the City in writing, the Fire Substation construction drawings will include each of the elements identified in the conceptual plans prepared pursuant to Section 11(b) of Exhibit B to the Montage Healdsburg Development Agreement.

(c) The City will provide Developer One Million Five Hundred Thousand Dollars (\$1,500,000) ("**City Fire Substation Contribution**") to be used for the construction of the Fire Substation, and City will extend needed infrastructure, including roads and utilities, to the Fire Substation Site at City's sole cost and expense.

(d) With the exception of the City Fire Substation Contribution, Developer shall construct the Fire Substation at its sole cost and expense; provided, however, that Developer's total cost shall not exceed Two Million Dollars

(\$2,000,000) (“**Developer Fire Substation Contribution**”). Beginning April 1, 2021 and every April 1 annually thereafter until the commitment is satisfied, the Developer Fire Substation Contribution shall be increased by a percentage equal to the percent increase of the Consumer Price Index for All Urban Consumers (CPI-U San Francisco-Oakland-Hayward) (the “**Index**”), or an equivalent index if the Index is no longer available, calculated from March of the previous year to March of the current year. If the Index shows a decrease for the year, the Developer Fire Substation Contribution will not change.

(e) The City Fire Substation Contribution plus the Developer Fire Substation Contribution shall equal the “**Total Fire Substation Contribution.**”

(f) Any costs to construct the Fire Substation that exceed the Total Fire Substation Contribution shall be the City’s sole responsibility. However, to the extent that the Fire Substation construction costs less than the Total Fire Substation Contribution, or if additional sources of funding are identified that reduce the amount of the Developer Fire Substation Contribution, Developer shall pay the balance of the Developer Fire Substation Contribution to the City prior to City’s issuance of the final certificate of occupancy for the hotel.

(g) Developer and City desire that the Fire Substation be completed prior to Project completion and, therefore, the Fire Substation shall be completed and conveyed to the City prior to City’s issuance of the first certificate of occupancy for the Senior Living Community or the hotel component of the Project. In lieu of completion and conveyance of the Fire Substation to the City, required by this paragraph, Developer may provide a completion guaranty in favor of City, in a form reasonably acceptable to the City Manager, whose approval thereof shall not be unreasonably withheld, conditioned, or delayed, to secure its obligation to deliver the Fire Substation required under this Agreement but not yet complete. Developer shall obtain a building permit and initiate construction of the Fire Substation as a condition to City’s acceptance of the completion guaranty and issuance of the first certificate of occupancy for the Senior Living Community or the hotel component of the Project. Notwithstanding the foregoing, the condition requiring Developer to obtain building permit and commence construction of the Fire Substation shall be waived if City is unable to approve the building permit due to the City’s failure to materially perform its obligations in this Section 5.6.

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

#### 5.7 Connectivity Measures.

(a) As provided in the Existing Project Approvals, Developer shall provide on-site shuttles and/or participate in equivalent alternatives as necessary to satisfy the Transportation Demand Management Plan requirements, subject to

agreements approved by the City Manager, in order to transport residents, visitors, employees, and guests, to and from the Project and downtown, and Developer will encourage bicycling through clear on-site wayfinding signage and the provision of support facilities such as secure bike parking and bike share within the Project.

(b) Prior to City's issuance of the final certificate of occupancy for the hotel, the Developer shall make a one-time contribution to the City of "Connectivity Funds" in a total amount of Two Hundred Fifty Thousand Dollars (\$250,000). The City may use the Connectivity Funds to undertake implementation of the North Healdsburg Avenue Plan or to fund other improvements that improve access to and from the Project and other areas of the City, such as improving bikeways, creating pedestrian routes that includes sidewalks along existing and new streets, off-street pathways and pedestrian connections.

5.8 PILOT Agreement. No later than thirty (30) days after issuance of the first building permit for the Senior Living Community, Developer (or Developer's successor in interest to the parcel containing the Senior Living Community) shall cause a Payment-In-Lieu of Taxes Agreement ("PILOT Agreement") Agreement to be recorded against the parcel containing the Senior Living Community in the form attached to this Agreement as Exhibit E. The PILOT Agreement is intended to reimburse the City for lost property tax revenue in the event that the Senior Living Community applies for and obtains an exemption from ad valorem property taxes, plus the cost of increased demand for service from the City's fire department attributable to the Senior Living Community.

5.9 Hotel Community Benefit Fee.

(a) The "Hotel Community Benefit Fee" shall equal one half cent for every dollar charged to hotel guests for room occupancy, parking, and resort fees.

(b) Before the issuance of a certificate of occupancy for the hotel, the Developer shall cause a Hotel Community Benefit Fee Agreement to be recorded against the parcel containing the hotel. The Hotel Community Benefit Fee Agreement shall provide that, beginning on the date that is ten (10) years after the issuance of a certificate of occupancy for the hotel, and continuing for a period of ninety-nine years, the Developer shall pay to the City the Hotel Community Benefit Fee on or before the last day of the month for the prior month's balance of the Hotel Community Benefit Fee.

(c) Developer shall have the right, but not the obligation, to pass through the Hotel Community Benefit Fee to hotel guests. Developer may, in its sole business judgement, elect to begin collecting the Hotel Community Benefit Fee from hotel guests at any time, including before any portion of the Hotel Community Benefit Fee is due or payable to the City.

5.10 Sales Tax Point of Sale Designation. Developer shall use good faith efforts to require all persons and entities providing bulk lumber, concrete, structural steel, and pre-fabricated building components, such as roof trusses, to be used in connection with the

construction and development of, or incorporated into, the Project, to designate City as the sole point-of-sale for purposes of computing sales taxes due under the Bradley-Burns Uniform Local Sales and Use Tax Law (California Revenue and Taxation Code sections 7200 *et seq.* and implementing regulations) on the sale of such bulk construction and building materials and components.

## **6. COOPERATION AND IMPLEMENTATION.**

**6.1 Subsequent Project Approvals.** Developer and City acknowledge and agree that Developer intends to submit applications for Subsequent Project Approvals. In connection with any Subsequent Project Approval, the City shall exercise its discretion in accordance with Applicable Law and the Project Approvals and as provided by this Agreement.

### **6.2 Processing Applications for Subsequent Project Approvals.**

(a) Developer acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans, and other information required under Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Project Approvals.

(b) Upon submission by Developer of all appropriate applications and processing fees for any pending Subsequent Project Approval, City shall, in accordance with applicable law, reasonably and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer's currently pending Subsequent Project Approval applications.

(c) With the Existing Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety, and general welfare of the community. Applications for Subsequent Ministerial Approvals that are consistent with this Agreement and the Existing Project Approvals shall be processed and considered in a manner consistent with the vested rights granted by this Agreement, shall be deemed to be tools to implement those final policy decisions, and shall be approved by City so long as they are consistent with Applicable Law, this Agreement, and the Existing Project Approvals. While City expressly reserves its discretion with respect to all Subsequent Discretionary Approvals, City agrees that it shall not use such authority in considering any application for a Subsequent Discretionary Approval to change the policy decisions reflected by the Existing Project Approvals or otherwise to prevent or frustrate the further development of the Project as set forth in the Existing Project Approvals and this Agreement.

(d) Nothing herein shall limit the ability of City to require environmental review, reports, analysis, and/or studies the City determines to be necessary to assist in determining that any requested Subsequent Ministerial Approval is consistent with this Agreement and the Existing Project Approvals. If City determines that an application for a Subsequent Ministerial Approval is not consistent with this Agreement or the Existing Project Approvals and should be processed as an application for a Subsequent Discretionary Approval rather than a Subsequent Ministerial Approval, the City shall specify in writing the reasons for such determination and may propose a modification that would be processed as a Subsequent Ministerial Approval. Developer shall then either modify the application to conform to this Agreement and the Existing Project Approvals, as the case may be, and the City shall then re-evaluate whether the application can be processed as a Subsequent Ministerial Approval, or the City shall process the application as an application for a Subsequent Discretionary Approval.

(e) City shall process Developer's applications for Subsequent Project Approvals to the fullest extent allowed by Applicable Law and Developer may proceed with Subsequent Project Approvals as provided for herein to the fullest extent allowed by Applicable Law.

### 6.3 Changes and Amendments to Project Approvals.

(a) Given the anticipated long-term build-out of the Project, City and Developer acknowledge that modifications or amendments to the Project Approvals may be appropriate and mutually desirable. To the extent permitted by Applicable Law, any Project Approval may, from time to time, be amended or modified in the following manner:

(i) Upon the written request of Developer for an amendment or modification to a Project Approval, the City Manager shall determine: (A) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (B) whether the requested amendment or modification is consistent with this Agreement and Applicable Law. If the City Manager finds, in his or her sole discretion, that the proposed amendment or modification is minor, consistent with this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the environmental review, the amendment shall be determined to be an "Administrative Project Amendment" and the City Manager may approve the Administrative Project Amendment consistent with City's procedures for such administrative actions, including requirements (if any) for notice, public hearing, or appeal rights. Administrative Project Amendments shall not require an amendment to this Agreement.

(ii) Any request of Developer for an amendment or modification to a Project Approval that is determined by the City Manager or his/her designee not to be an Administrative Project Amendment as set forth above shall be deemed a "Non-Administrative Project Amendment" and shall be subject to review, consideration, and action pursuant to the Project Approvals, Applicable Law, and this Agreement, as applicable.

**6.4 Amendment of this Agreement.** This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

(a) **Administrative Agreement Amendments.** Any amendment to this Agreement that does not substantially affect (a) the Term of this Agreement; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land or the Developer's obligations under Section 5 of this Agreement; (d) conditions, terms, restrictions, or requirements for subsequent discretionary actions; (e) increases in the density or intensity of the use of the Property or the maximum height or size of proposed buildings; or (f) monetary contributions by Developer, shall be deemed an "**Administrative Agreement Amendment**" and the City Manager, except to the extent otherwise required by Applicable Law, may approve the Administrative Agreement Amendment without notice and public hearing.

(b) **Major Agreement Amendments.** Any amendment to this Agreement that is determined not to be an Administrative Agreement Amendment as set forth above shall be deemed a "**Major Agreement Amendment**" and shall require giving of notice and a public hearing before the Planning Commission and City Council in accordance with Applicable Law. The City Manager shall have the authority to determine if an amendment is a Major Agreement Amendment or an Administrative Agreement Amendment pursuant to the terms of this Section 6.4.

**6.5 Mitigation Measures.** Developer shall comply with all applicable mitigation measures in the MMRP.

**6.6 Cooperation in the Event of Legal Challenge.**

(a) City and Developer, at Developer's sole cost and expense, shall cooperate in the event of any court action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, any Existing Project Approvals, or any Subsequent Project Approvals and City shall appear in the action and defend its decision, except that City shall not be required to be an advocate for Developer. To the extent that Developer determines to contest or defend such litigation challenges, Developer shall reimburse City, within ten (10) business days following City's written demand therefore, which may be made from time to time during the course of such litigation, all costs incurred by City in connection with the litigation challenge, including City's administrative, legal, and court costs, provided that City, in its sole discretion, shall determine to either: (a) elect to joint representation by Developer's counsel; or (b) retain an experienced litigation attorney. If Developer defends any such legal challenge, Developer shall indemnify, defend, and hold harmless City and its officials and employees from and against any claims, losses, or liabilities assessed or awarded against City by way of judgment, settlement, or stipulation. Nothing herein shall authorize Developer to settle such legal challenge on terms that would constitute an amendment or modification of this Agreement, any Existing Project Approvals, or any Subsequent Project Approvals, unless such amendment or modification is approved by City in accordance with

applicable legal requirements, and City reserves its full legislative discretion with respect thereto.

(b) In addition, City shall have the right, but not the obligation, to contest or defend such litigation challenges, in the event that Developer elects not to do so. If City elects to contest or defend such litigation challenges, City shall bear all related costs and expenses, including City's attorney fees, administrative fees and court costs; however, Developer shall indemnify and hold harmless City and its officials and employees from and against any losses or liabilities assessed or awarded against City by way of judgment. Developer's indemnity and hold harmless obligations set forth in this Section 6.6(b) shall not extend to any claim arising from City's negligence or willful misconduct.

**6.7 Indemnity and Hold Harmless.** Developer shall indemnify and hold City and its elected and appointed officers, employees, agents, and representatives harmless from and against any and all claims, costs, liabilities, and damages (including attorneys' fees and costs), including without limitation bodily injury, death, or property damage, resulting directly or indirectly from the approval or implementation of this Agreement, the development and construction of the Project by or on behalf of Developer, or from any operations performed under this Agreement, whether such operations were performed by Developer or any of Developer's contractors, subcontractors, agents, or employees, except to the extent such claims, costs, and liabilities arise from the active negligence or willful misconduct of City, its elected and appointed officers, agents, employees, representatives, contractors, or subcontractors.

## **7. DEFAULT AND REMEDIES.**

**7.1 Breach.** Subject to extensions of time under this Agreement or by mutual consent in writing, the failure or delay by either Party to perform any term or provision of this Agreement shall constitute a breach of this Agreement. In the event of alleged breach of any terms or conditions of this Agreement, the Party alleging such breach shall give the other Party notice in writing specifying the nature of the breach and the manner in which the breach or default may be satisfactorily cured, and the Party in breach shall have thirty (30) days following such notice ("**Cure Period**") to cure such breach, except that in the event of a breach of an obligation to make a payment, the Party in breach shall have ten (10) days to cure the breach. If the breach is of a type that cannot reasonably be cured within thirty (30) days, the breaching Party shall, within a 30-day period following notice to the non-breaching Party, notify the non-breaching Party of the time it will take to cure such breach, which shall be a reasonable period under the circumstances ("**Extended Cure Period**"); commence to cure such breach; and be proceeding diligently to cure such breach. During the Cure Period or Extended Cure Period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings; but the City's right to refuse to issue a permit or Subsequent Project Approval, under Section 8.3, shall not be limited by this provision. The failure of any Party to give notice of any breach shall not be deemed to be a waiver of that Party's right to allege any other breach at any other time.

**7.2 Default.** If the breaching Party has not cured such breach within the Cure Period or the Extended Cure Period, if any, such Party shall be in default ("**Default**"), and the

non-breaching Party, at its option, may terminate the Agreement, institute legal proceedings pursuant to this Agreement, and shall have such remedies as are set forth in Section 7.4 below.

**7.3 Withholding of Permits.** In the event of a Default by Developer, City shall have the right to refuse to issue any permits or other approvals to which Developer would otherwise have been entitled pursuant to this Agreement. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

**7.4 Remedies.**

(a) In the event of a Default by City or Developer, the non-defaulting Party shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code section 65868 and Municipal Code section 17.20.070. Following notice of intent to terminate, the matter shall be scheduled for consideration and reviewed in the manner set forth in the Development Agreement Law. Following consideration of the evidence presented in the review before the City Council, either Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 7.8 below.

(b) City and Developer agree that in the event of Default by City, the Parties intend that the only remedy shall be declaratory relief or specific performance of this Agreement. The Parties further agree that in the event of Default by Developer, the City's primary remedy is specific performance of the terms and provisions of this Agreement. In no event shall either Party be entitled to any actual, consequential, punitive, or special damages. If City issues an Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition after a reasonable opportunity to cure, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

(c) In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with the purpose of this Agreement except as limited by Section 7.4(b) above. Any such legal action shall be brought in the Superior Court for Sonoma County, California.

**7.5 Periodic Review.**

(a) The annual review date for this Agreement shall occur in the same month as the month of the Effective Date. No later than sixty (60) calendar days prior to the annual review date, Developer shall submit to the City an accounting of the fees due and paid to the City, any assignments or transfers of the Property, and all construction of public improvements under this Agreement. Developer shall initiate the annual review by submitting a written request to the Planning Director. Developer shall submit an application and pay all legally required fees as required by the City,

and provide evidence as determined necessary by the Director to demonstrate good faith compliance with the provisions of this Agreement. However, failure to initiate the annual review within thirty (30) days of receipt of written notice to do so from City shall not constitute a Default by Developer under this Agreement, unless City has provided actual notice and opportunity to cure and Developer has failed to so cure.

(b) The annual review required by Government Code section 65865.1 and the City Municipal Code shall be conducted as provided herein:

(i) The City Manager shall review Developer's submission to ascertain whether Developer has complied in good faith with the terms of this Agreement. If the City Manager finds good faith compliance by Developer with the terms of this Agreement, the City Manager shall so notify Developer and the City Council in writing and the review for that period shall be concluded. If the City Manager finds good faith compliance with this Agreement, the notification to the City Council shall not require a hearing of any kind or an appearance from Developer. If the City Manager is not satisfied that the Developer is performing in accordance with the material terms and conditions of this Agreement, the City Manager shall refer the matter to the City Council for a determination regarding compliance with this Agreement and notify Developer in writing at least fifteen (15) business days in advance of the time at which the matter will be considered by the City Council.

(ii) In the event that the City Manager is not satisfied pursuant to section (b)(i) above, the City Council shall conduct a hearing at which Developer must submit evidence that it has complied in good faith with the terms and conditions of this Agreement. The findings of the City Council on whether Developer has complied with this Agreement for the period under review shall be based upon substantial evidence in the record. If the City Council determines that, based upon substantial evidence, Developer has complied in good faith with the terms and conditions of this Agreement, the review for that period shall be concluded. If, however, the City Council determines, based upon substantial evidence in the record, that there are significant questions as to whether Developer has complied in good faith with the terms and conditions of this Agreement, the City Council may continue the hearing and shall notify Developer of the City's intent to meet and confer with Developer within thirty (30) days of such determination, prior to taking further action. Following the thirty (30) day time period, the City Council shall resume the hearing in order to further consider the matter and to make a determination regarding Developer's good faith compliance with the terms and conditions of this Agreement and to take those actions it deems appropriate, including but not limited to, termination of this Agreement, in accordance with California Government Code section 65865.1 and the City Municipal Code.

(c) Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

(d) If, after an annual review, City finds Developer has complied in good faith with this Agreement, City shall promptly, following Developer's request, issue to Developer a certificate of compliance ("Certificate of Compliance")

certifying that Developer has so complied through the period of the applicable annual review. The Certificate of Compliance must be in recordable form and must contain such information as may be necessary to impart constructive notice of City's finding. Developer may record the Certificate of Compliance in the Official Records of the County of Sonoma

**7.6 Enforced Delay; Extension of Time of Performance.** Subject to the limitations set forth below, performance by either Party hereunder shall not be deemed to be an event of default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: a court action, ballot measure, or referendum instituted by a third party or other governmental entity or official challenging City's approval of this Agreement, any Existing Project Approvals, or any Subsequent Project Approvals; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; unusually severe weather; economic downturns (which for purposes of this Section 7.6 means three consecutive quarterly declines of the monetary value of all finished goods and services produced in the United States, as measured by initial quarterly estimates of United States Gross Domestic Product published by the United States Department of Commerce Bureau of Economic Analysis); acts or omissions of the other Party; or acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of City, which shall not excuse performance by City). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause but in any event shall not exceed a cumulative total of one year. Notwithstanding the foregoing, extension of time for an economic downturn shall commence upon Developer's notification to City of the economic downturn (together with appropriate backup evidence) and continue for the period of the economic downturn or five years, whichever is less.

**7.7 Resolution of Disputes.** With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to by the Parties.

**7.8 Termination.** This Agreement shall terminate upon the earlier of (i) expiration of the Term, or (ii) when the Property has been fully developed and all of Developer's obligations have been fully satisfied as reasonably determined by City, or (iii) after all appeals have been exhausted before a final court of judgment, or issuance of a final court order directed to the City to set aside, withdraw, or abrogate the City's approval of this Agreement or any material part thereof. Upon termination of this Agreement as to all of the Property, at the request of Developer, the City shall record a Notice of Termination for each affected parcel in a form satisfactory to the City Attorney in the Office of the Sonoma County Recorder. In the event this Agreement is terminated, neither party shall have any further rights or obligations hereunder, except for those obligations of Developer set forth in Sections 6.6 (Cooperation in the Event of Legal Challenge) and 6.7 (Indemnity and Hold Harmless).

## **8. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE.**

**8.1 Mortgagee Protection.** This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the date on which this Agreement or a memorandum thereof is recorded, including the lien of any deed of trust or mortgage (“Mortgage”). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees (“Mortgagees”) who acquire title to the Property or any portion thereof by foreclosure, trustee’s sale, deed in-lieu-of foreclosure, voluntary transfer, or otherwise.

**8.2 Mortgagee Obligations.** City, upon receipt of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Developer under this Agreement, provided that all defaults by Developer hereunder that are reasonably susceptible of being cured are cured by the Mortgagee as soon as reasonably possible, provided, however, that in no event shall such Mortgagee personally be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such property by such Mortgagee. The foreclosing Mortgagee shall have the right to find a substitute developer to assume the obligations of Developer, which substitute shall be considered for approval by the City pursuant this Agreement. In any event, a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by the Agreement or the Project Approvals.

**8.3 Notice of Default to Mortgagee.** If City receives notice from a Mortgagee requesting a copy of any notice of default given to Developer and specifying the address for service thereof, City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to Developer, all notices given to Developer describing all claims by the City that Developer has defaulted hereunder. If City determines that Developer is not in compliance with this Agreement, City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with service on Developer. Each Mortgagee shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City’s notice.

## **9. ASSIGNABILITY.**

**9.1 Assignment by Developer.** Developer may not convey, assign, or transfer (“Transfer”) any of its interests, rights, or obligations under this Agreement without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned, or delayed. Any Transfer of all or a portion of this Agreement shall be documented by an Assignment and Assumption Agreement in a form reasonably acceptable to the City. In no event shall the obligations conferred upon Developer under this Agreement be transferred except through a transfer of all or a portion of the Property. Should Developer transfer any of its interests, rights, or obligations under this Agreement in connection with a transfer by Developer of a portion of the Property (such Transfer, a “Partial Assignment”), such Partial Assignment

shall be documented by an Assignment and Assumption Agreement in a form reasonably acceptable to the City. To the extent provided in the Assignment and Assumption Agreement, the transferee of such interests, rights, or obligations under this Agreement (each, a “**Partial Transferee**”) shall only be liable for performance of the obligations of Developer under this Agreement (including, without limitation, indemnification obligations and the obligation to install public improvements and pay fees) related to the portion of the Property transferred to such Partial Transferee, and no Default by Developer or any other assignee who received a Partial Assignment hereunder shall constitute an event of Default hereunder by such Partial Transferee. Should Developer transfer any of its interests, rights, or obligations under this Agreement, it shall nonetheless remain liable for performance of the obligations for installation of public improvements and payment of fees, unless the transferee agrees to be bound by the relevant terms of the Agreement, including the obligations for installation of public improvements and payment of fees, in which case the transferee shall be solely liable for performance of the obligations for installation of public improvements and payment of fees. During the Term, Developer shall provide City with written notice of a request to Transfer any interest in this Agreement ninety (90) days prior to any such contemplated Transfer. Any such request for a Transfer shall be accompanied by quantitative and qualitative information that substantiates, to the City’s satisfaction, that the proposed transferee has the capability to fulfill the rights and obligations of this Agreement. Within forty-five (45) days of such a request and delivery of information, the City Manager shall make a determination, in his or her sole discretion, as to whether the Transfer shall be permitted or whether such Transfer necessitates an Amendment to this Agreement, subject to approval by the City Council. Each successor in interest to Developer shall be bound by all of the terms and provisions applicable to the portion of the Property acquired. This Agreement shall be binding upon and inure to the benefit of the Parties’ successors, assigns, and legal representatives. This Agreement shall be recorded by the City in the Sonoma County Recorder’s Office promptly upon execution by each of the Parties.

**9.2 Covenants Run With The Land.** Subject to the provisions of Section 9.1, above, pertaining to a Partial Assignment and a Partial Transferee, all of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall run with the land and shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Property, any lot, parcel, or any portion thereof, and any interest therein, whether by sale, operation of law, or other manner, and shall inure to the benefit of the Parties and their respective successors.

**9.3 Pre-Approved Transfers.** The following transfers shall not require approval by the City and shall automatically, upon the satisfaction of the conditions in Section 9.1 above, result in the release of Developer of its obligations hereunder as they may relate specifically to the specific property or asset sold or transferred: (a) prior to the issuance of any Building Permits, sale, or lease of the Property in its entirety to any corporation, limited liability company, partnership, or other entity that is controlling of, controlled by, or under common control with Developer, where “control” for purposes of this definition means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other members of such entity; and (b) a loan or mortgage pertaining to the Property.

9.4 **Non-Assuming Transferees.** Except as otherwise required by a transferor, the burdens, obligations, and duties of such transferor under this Agreement shall not apply to any purchaser of any individual residential unit offered for sale. The transferee in a transaction described above and the successors and assigns of such a transferee shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term hereof. Nothing in this Section shall exempt any property transferred to a non-assuming transferee from payment of applicable fees, taxes, and assessments or compliance with applicable conditions of approval.

9.5 **Foreclosure.** Nothing contained in this Section shall prevent a transfer of the Property, or any portion thereof, to a lender as a result of a foreclosure or deed in lieu of foreclosure, and any lender acquiring the Property, or any portion thereof, as a result of foreclosure or a deed in lieu of foreclosure shall take such Property subject to the rights and obligations of Developer under this Agreement; provided, however, in no event shall such lender be liable for any defaults or monetary obligations of Developer arising prior to acquisition of title to the Property by such lender, and provided further, in no event shall any such lender or its successors or assigns be entitled to a Building Permit or occupancy certificate until all fees due under this Agreement (relating to the portion of the Property acquired by such lender) have been paid to City.

## 10. GENERAL.

10.1 **Controlling Law.** This Agreement shall be governed by the laws of the State of California, without reference to choice of laws principles.

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

10.3 **No Waiver.** No delay or omission by the City or Developer in exercising any right or power accruing upon the other Party's noncompliance or failure to perform under the provisions of this Agreement shall impair or be construed to waive any right or power. A waiver by City or Developer of any of the covenants or conditions to be performed by the other Party

shall not be construed as a waiver of any succeeding breach of the same or other covenants and conditions.

**10.4 Agreement is Entire Agreement.**

(a) The following Exhibits are attached to this Agreement:

- Exhibit A Legal Description of the Property
- Exhibit B Depiction of Property and Improvements
- Exhibit C MMRP
- Exhibit D Fire Substation Design Process
- Exhibit E Form of PILOT Agreement

(b) This Agreement and all exhibits attached hereto or documents incorporated herein by this reference, are the sole and entire agreement between the Parties concerning the Property. The Parties acknowledge and agree that they have not made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery, except representations set forth herein, and each Party acknowledges that it has relied on its own judgment in entering this Agreement. The Parties further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect, and that neither of them has relied thereon in its dealings with the other.

**10.5 Estoppel Certificate.** City or Developer from time to time may deliver written notice to the other Party requesting written certification that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and constitutes a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or, if it has been amended or modified, specifying the nature of the amendments or modifications, and, (iii) the requesting Party does not have knowledge of default in the performance of its obligations under this Agreement, or if in known default, describing therein the nature and monetary amount, if any, of the default.

**10.6 Further Documents.** Each Party shall execute and deliver to the other all other instruments and documents as may be reasonably necessary to carry out this Agreement.

**10.7 Time of Essence.** Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties hereunder.

**10.8 Construction.** This Agreement has been reviewed and revised by legal counsel for both the City and Developer and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

**10.9 Notices.** Except as otherwise expressly provided herein, all notices and demands pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified mail, postage prepaid. Except as otherwise expressly provided herein, notices shall be considered delivered when personally served, upon delivery if delivered by commercial courier, or two (2) days after mailing if sent by mail. Notices shall be sent to the addresses below for the respective Parties; provided, however, that any Party may change its address for purposes of this Section by giving written notice to the other Parties. These addresses may be used for service of process:

**City:** City Manager  
Attn: David Mickaelian  
City of Healdsburg  
401 Grove Street  
Healdsburg, California 95448

**with copy to:** City Attorney  
Attn: Samantha Zutler, Esq.  
City of Healdsburg  
101 Howard Street, Suite 400  
San Francisco, California 94123

**Developer:** CCS Healdsburg, LLC  
Attn: Robert Comstock  
2301 Rosecrans Avenue, Suite 1150  
El Segundo, CA 90245

**with copies to:** Miller Starr Regalia  
Attn: Bryan W. Wenter, Esq.  
1331 North California Boulevard  
Walnut Creek, CA 94596

The provisions of this Section shall be deemed directive only and shall not detract from the validity of any notice given in a manner that would be legally effective in the absence of this Section.

**10.10 Developer is an Independent Contractor.** Developer is not an agent or employee of City, but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed or utilized by Developer in connection with this Agreement are employees or contractors of Developer and shall not be considered employees of City in any respect.

**10.11 No Joint Venture.** It is specifically understood and agreed that the Project is a private development. No partnership, joint venture, or other association of any kind between City and Developer is formed by this Agreement.

**10.12 Nondiscrimination.** Developer shall not discriminate, in any way, against any person on the basis of race, color, national origin, gender, marital status, sexual orientation, age, creed, religion, or disability in connection with or related to the performance of this Agreement.

**10.13 No Third Party Beneficiary.** This Agreement shall not be construed or deemed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

**10.14 Further Assurances; Warranty by Signers.** The Parties agree to execute such additional instruments and to undertake such actions as may reasonably be necessary to effectuate the intent of this Agreement. Each of the persons whose signature appears below warrants and represents that he/she is the duly authorized representative of the entity on whose behalf the signature appears and that in signing this Agreement, such person intends to, and does hereby, bind said entity to the terms and conditions of this Agreement.

**10.15 Counterparts.** This Agreement may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been entered into by and between the Parties as of the Effective Date.

**CITY:**

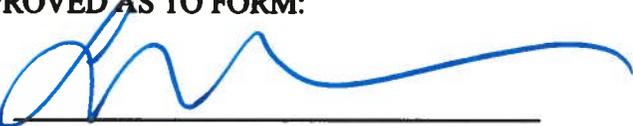
**City of Healdsburg, a  
California municipal corporation**

By:

  
\_\_\_\_\_  
David Mickaelian  
City Manager

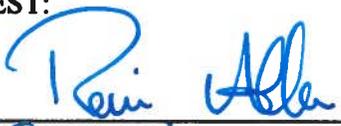
**APPROVED AS TO FORM:**

By:

  
\_\_\_\_\_  
Samantha Zutler, Esq.  
City Attorney

**ATTEST:**

By:

  
\_\_\_\_\_  
Raina Allan  
Acting City Clerk

**DEVELOPER:**

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

By:

  
\_\_\_\_\_  
Robert Comstock  
Title:

[insert notary acknowledgments]

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

STATE OF CALIFORNIA )  
 ) §  
County of Sonoma )

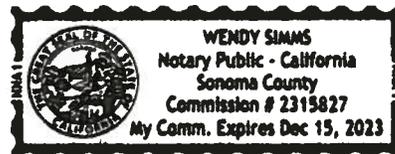
On May 12, 2020, before me, Wendy Simms a Notary Public, personally appeared Robert Comstock who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized 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.

Wendy Simms  
Signature of Notary

(Affix seal here)



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

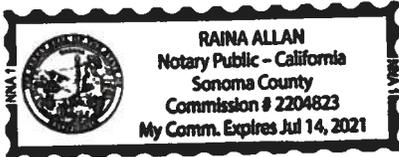
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Sonoma )  
On May 26, 2020 before me, Raina Allan, Notary Public,  
Date Here Insert Name and Title of the Officer  
personally appeared David Mickaelian  
Name(s) of Signer(s)

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 Raina Allan  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Development Agreement

Document Date: May 6, 2020 Number of Pages: 31

Signer(s) Other Than Named Above: Robert Comstock

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RECORDING REQUESTED BY|

Comstock Healdsburg, LLC

AND WHEN RECORDED MAIL TO

COMSTOCK HEALDSBURG, LLC  
2301 Rosecrans Avenue, Suite 1150  
El Segundo, CA 90245

2019016300

Official Records Of Sonoma County  
Deva Marie Proto

03/07/2019 11:16 AM  
Fee: \$ 127.00 7 Pages



**CONFORMED COPY**  
Not Compared with Original

A.P.N.: 091-060-009-000, 091-060-019-000, 091-060-022-000, 091-060-025-000

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT DEED**

**AFNF**

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$0.00 City Transfer Tax: \$0.00

( ) Unincorporated Area ( X ) City of Healdsburg

R&T 11911 - Conveyance Confirms title to the grantee who continues to hold the same proportionate interest

( X ) computed on full value of property conveyed, or

( ) computed on full value less value of liens and encumbrances remaining at time of sale.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **COMSTOCK HEALDSBURG, LLC, a Delaware limited liability company**

Hereby GRANT(S) to **COMSTOCK HEALDSBURG, LLC, a Delaware limited liability company**

The land described herein is situated in the State of California, County of Sonoma, City of Healdsburg, described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

Dated: January 17, 2019

COMSTOCK HEALDSBURG, LLC, a Delaware limited liability company

By: Comstock Crosser & Associates Development Company, Inc., Manager

*Bob Comstock*  
By: *Bob Comstock*

**MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE**

**SAME AS ABOVE**

Name	Street Address	City & State
------	----------------	--------------

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

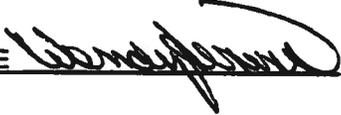
State of California )  
County of SONOMA ) ss.

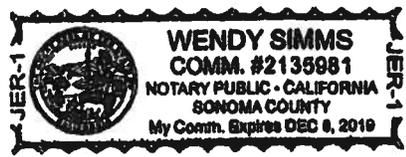
On MARCH 4th 2019 before me,  
Wendy Simms

Notary Public personally appeared Bob Constock

\_\_\_\_\_ 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 



**Exhibit 'A'**  
**Lot Line Adjustment**  
**Resultant Parcel Legal Descriptions**

**Resultant Parcel One**

Lying within the State of California, County of Sonoma, City of Healdsburg and being all of Parcel One and a portion of Parcel Three of the lands of Comstock Healdsburg, LLC, a Delaware limited liability company described by deed recorded March 20, 2017 under Document Number 2017-021315, Sonoma County Records being shown on that certain Record of Survey, filed June 20, 2017 in Book 796 of Maps, at pages 24-25, Sonoma County Records, being more particularly described as follows:

Commencing at the northeast corner of Parcel Two of said lands as shown on said Record of Survey, being a point on the westerly Right of Way of North Coast Railroad Authority, marked by a 1/2" iron pipe tagged PLS 7590; thence along the easterly line of said Parcel Two and said Right of Way, southwesterly on a curve to the right from a tangent that bears South 2°58'27" East, having a radius of 1,106.00, through a central angle of 21°59'54", an arc distance of 424.64 feet to the southeast corner of said Parcel Two; thence continuing southwesterly on said 1,106.00 radius curve; through a central angle of 10°01'12", an arc distance of 193.42 feet; thence leaving said easterly line and said Right of Way North 76°18'25" West, 361.56 feet to the POINT OF BEGINNING; thence South 13°41'35" West, 479.42 feet; thence southeasterly on a curve to the left, having a radius of 100.00 feet through a central angle of 57°02'26", an arc distance of 99.55 feet; thence South 43°20'51" East, 28.50 feet to the Right of Way line of said North Coast Railroad Authority; thence along said Right of Way, South 43°43'50" West, 388.30 feet; thence southwesterly on a curve to the left, having a radius of 11,499.16 feet through a central angle of 00°09'00", an arc distance of 30.10 feet; thence southwesterly on a curve to the left, having a radius of 5,769.60 feet, through a central angle of 00°18'00", an arc distance of 30.21 feet; thence southwesterly on a curve to the left, having a radius of 3,859.75 feet, through a central angle of 00°27'00", an arc distance of 30.31 feet; thence southwesterly on a curve to the left, having a radius of 2,904.83 feet, through a central angle of 00°36'00", an arc distance of 30.42 feet; thence southwesterly on a curve to the left, having a radius of 2,331.88 feet, through a central angle of 6°26'57", an arc distance of 262.47 feet to a 1/2" iron pipe tagged PLS 7590 marking the intersection of the southerly line of said Parcel Three with the westerly line of the Lands of North Coast Railroad Authority, as shown on said Record of Survey; thence along the southerly line of said Parcel Three, North 89°06'05" West, 139.96 feet to the southeast corner of said Parcel One; thence along the southerly line of said Parcel One, North 89°06'05" West, 214.69 feet to the intersection of the said southerly line of Parcel One and the easterly Right of Way of US Highway 101, from which a 3/4" Iron Pipe, not tagged, bears North 89°06'05" West, 0.46 feet as shown on said Record of Survey; thence along the easterly Right of Way line of said US Highway 101, North 16°15'39" East, 621.46 feet to the most westerly corner of said Parcel Three; thence continuing along said Right of Way, North 16°15'39" East, 715.93 feet to a point which bears North 76°18'25" West from the POINT OF BEGINNING; thence leaving said Right of Way, South 76°18'25" East, 582.51 feet to the POINT OF BEGINNING.

Q:\2002\2002005.80\Survey\Supporting Docs\Legal Descriptions\LLA\FINAL\0200580-LD LLA ParcelS 1-3

**Exhibit 'A'**  
**Lot Line Adjustment**  
**Resultant Parcel Legal Descriptions**

Being all of APN 091-060-022 and a portion of APN 091-060-019

Containing 16.07 Acres, more or less.

**Resultant Parcel Two**

Lying within the State of California, County of Sonoma, City of Healdsburg and being all of Parcel Two and a portion of Parcel Three of the lands of Comstock Healdsburg, LLC, a Delaware limited liability company described by deed recorded March 20, 2017 under Document Number 2017-021315, Sonoma County Records being shown on that certain Record of Survey, filed June 20, 2017 in Book 796 of Maps, at pages 24-25, Sonoma County Records, being more particularly described as follows:

Beginning at the northeast corner of said Parcel Two as shown on said Record of Survey, being a point on the westerly Right of Way of North Coast Railroad Authority, marked by a 1/2" iron pipe tagged PLS 7590; thence along the easterly line of said Parcel Two and said Right of Way, southwesterly on a curve to the right from a tangent that bears South 2°58'27" East, having a radius of 1,106.00, through a central angle of 21°59'54", an arc distance of 424.64 feet to the southeast corner of said Parcel Two; thence continuing southwesterly on said 1,106.00 radius curve; through a central angle of 10°01'12", an arc distance of 193.42 feet; thence leaving said easterly line and said Right of Way North 76°18'25" West, 944.06 feet to the easterly Right of Way line of US Highway 101; thence along said Right of Way, North 16°15'39" East, 123.60 feet to the southwest corner of said Parcel Two; thence continuing along said Right of Way North 16°15'39" East, 259.49 feet to the northwest corner of said Parcel Two; thence along the northerly line of said Parcel Two, North 89°48'46" East, 947.56 feet to the Point of Beginning.

Being all of APN 091-060-009 and a portion of APN 091-060-019

Containing 11.01 Acres, more or less.

**Resultant Parcel Three**

Lying within the State of California, County of Sonoma, City of Healdsburg and being a portion of Parcel Three of the lands of Comstock Healdsburg, LLC, a Delaware limited liability company described by deed recorded March 20, 2017 under Document Number 2017-021315, Sonoma County Records, being shown on that certain Record of Survey, filed June 20, 2017 in Book 796 of Maps, at pages 24-25, Sonoma County Records, being more particularly described as follows:

Commencing at the northeast corner of Parcel Two of said lands as shown on said Record of Survey, being a point on the westerly Right of Way of North Coast Railroad Authority, marked by a 1/2" iron pipe tagged PLS 7590; thence along the easterly line of said Parcel Two and said

Exhibit 'A'  
Lot Line Adjustment  
Resultant Parcel Legal Descriptions

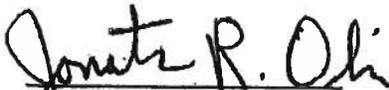
Right of Way, southwesterly on a curve to the right from a tangent that bears South 2°58'27" East, having a radius of 1,106.00, through a central angle of 21°59'54", an arc distance of 424.64 feet to the southeast corner of said Parcel Two; thence continuing southwesterly on said 1,106.00 radius curve; through a central angle of 10°01'12", an arc distance of 193.42 feet to the POINT OF BEGINNING; thence continuing along said Right of Way, southwesterly on a curve to the right having a radius of 1,106.00, through a central angle of 11°41'10", an arc distance of 225.58 feet; thence southwesterly on a curve to the right, having a radius of 1,392.46 feet through a central angle of 01°12'00", an arc distance of 29.16 feet; thence southwesterly on a curve to the right, having a radius of 1,869.91 feet, through a central angle of 00°54'00", an arc distance of 29.37 feet; thence southwesterly on a curve to the right, having a radius of 2,824.83 feet, through a central angle of 00°36'00", an arc distance of 29.58 feet; thence southwesterly on a curve to the right, having a radius of 5,689.59, through a central angle of 00°18'00", an arc distance of 29.79 feet; thence South 43°43'50" West, 306.90 feet; thence leaving said Right of Way North 43°20'51" West, 28.50 feet; thence northerly on a curve to the right having a radius of 100.00 feet, through a central angle of 57°02'26", an arc distance of 99.55 feet ; thence North 13°41'35" East, 479.42 feet to a point which bears North 76°18'25" West from the POINT OF BEGINNING; thence South 76°18'25" East, 361.56 feet to the POINT OF BEGINNING

Being a portion of APN 091-060-019

Containing 3.01 Acres, more or less.

See Exhibit 'B' for graphic depiction.

This description prepared by Carlile • Macy.

  
Jonathan R. Olin  
RTS 7590



Date 1/17/19

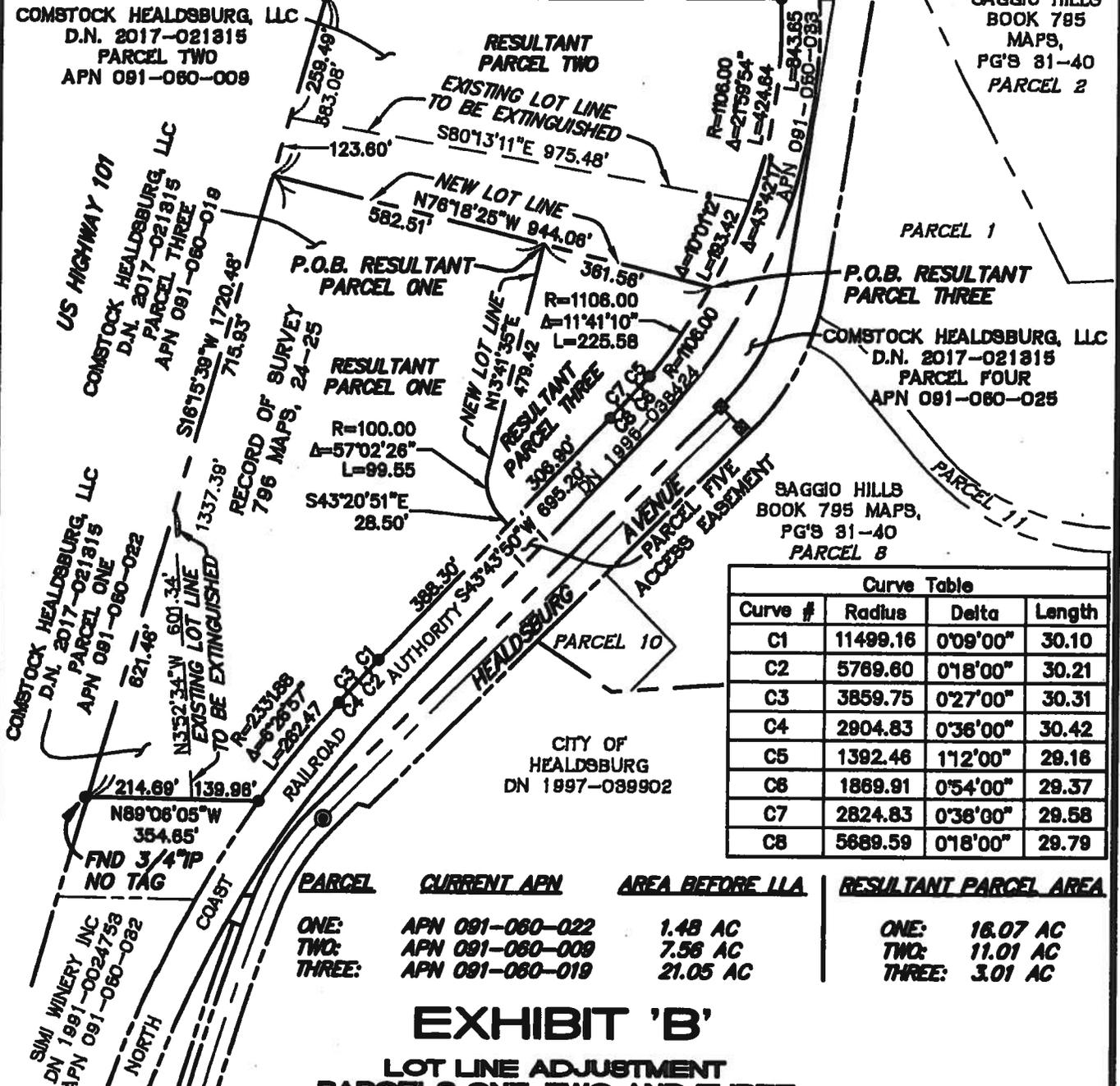
END OF DESCRIPTION

**LEGEND**

P.O.B. POINT OF BEGINNING  
 P.O.C. POINT OF COMMENCEMENT  
 ● 1/2" IRON PIPE PLS 7590  
 PER 796 MAPS 24-25  
 UNLESS OTHERWISE NOTED

LYTTON RANCHERIA OF CALIFORNIA  
 DN 2017-007920  
 APN 091-060-010  
 P.O.B. RESULTANT PARCEL TWO  
 P.O.C. ADJUSTED PARCELS  
 ONE & THREE

**NOTE:**  
 THIS EXHIBIT IS FOR GRAPHIC  
 PURPOSES ONLY. ANY  
 ERRORS OR OMISSIONS SHALL  
 NOT AFFECT THE DEED  
 DESCRIPTION.



Curve Table			
Curve #	Radius	Delta	Length
C1	11499.16	0°09'00"	30.10
C2	5769.60	0°18'00"	30.21
C3	3859.75	0°27'00"	30.31
C4	2904.83	0°36'00"	30.42
C5	1392.46	1°12'00"	29.16
C6	1869.91	0°54'00"	29.37
C7	2824.83	0°36'00"	29.58
C8	5689.59	0°18'00"	29.79

PARCEL	CURRENT APN	AREA BEFORE I.L.A.	RESULTANT PARCEL AREA
ONE:	APN 091-060-022	1.48 AC	ONE: 16.07 AC
TWO:	APN 091-060-009	7.56 AC	TWO: 11.01 AC
THREE:	APN 091-060-019	21.05 AC	THREE: 3.01 AC



1" = 300'

**EXHIBIT 'B'**  
 LOT LINE ADJUSTMENT  
 PARCELS ONE, TWO AND THREE  
 LANDS OF  
**COMSTOCK HEALDSBURG, LLC**  
 HEALDSBURG, CALIFORNIA

CARLILE • MACY

CIVIL ENGINEERS • URBAN PLANNERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS

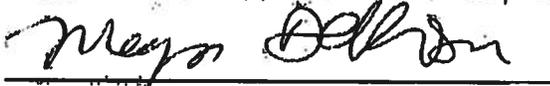
15 THIRD STREET, SANTA ROSA, CA 95401  
 TEL (707) 542-6451 FAX (707) 542-5212

NOVEMBER 2018  
 SHEET 1 OF 1

AutoCAD file name: 202208-02-LLA.dwg | Date: 11/07/2018 09:58:57 AM | User: CARLILE | Plot: 2018 08/27/2018 09:58:57 AM | Scale: 1:300 | Sheet: 1 of 1

PROJECT No. 2002008.B0

The purpose of this conveyance is to combine a portion of the lands of the grantor, said lands being all of APN 091-060-022, with the lands of the grantee, said lands being a portion of APN 091-060-015, and also to combine a portion of the lands of the grantor, said lands being all of APN 091-060-009, with the lands of the grantee, said lands being a portion of APN 091-060-018, pursuant to LLA 2018-05 approved and on file with the City of Healdsburg in accordance with Section 66412(d) of the Subdivision Map Act.



Date: 2/13/19

Maya DeRosa, Planning Director  
City of Healdsburg

**Exhibit 'A'  
Lot Line Adjustment  
Resultant Parcel Legal Descriptions**

**Resultant Parcel 'A'**

Lying within the State of California, County of Sonoma, City of Healdsburg and being a portion of Parcel Two of the lands of CCS Healdsburg, LLC, a Delaware limited liability company as described by deed recorded November 1, 2019 under Document Number 2019-080083, Sonoma County Records, being more particularly described as follows:

Beginning at the northeast corner of Parcel Two as described in said deed, Document Number 2019-080083, also being a point on the westerly Right of Way of North Coast Railroad Authority, marked by a 1/2" iron pipe tagged PLS 7590; thence along the easterly line of said Parcel Two and said Right of Way, southwesterly on a curve to the right from a tangent that bears South 2°58'27" East, having a radius of 1,106.00, through a central angle of 32°01'07", an arc distance of 618.07 feet to the southeast corner of said Parcel Two; thence leaving said easterly line and said Right of Way, along the southerly line of said Parcel Two, North 76°18'25" West, 621.13 feet; thence leaving said southerly line, North 13°41'35" East, 194.10 feet; thence North 12°28'47" West, 56.68 feet; thence North 13°41'35" East, 207.11 feet to the northerly line of said Parcel Two; thence along the northerly line of said Parcel Two, North 89°48'46" East, 658.35 feet to the Point of Beginning.

Being a portion of APN 091-060-038

Containing 8.12 Acres, more or less.

See Exhibit 'B' for graphic depiction.

**Resultant Parcel 'B'**

Lying within the State of California, County of Sonoma, City of Healdsburg and being a portion of Parcel Two of the lands of CCS Healdsburg, LLC, a Delaware limited liability company as described by deed recorded November 1, 2019 under Document Number 2019-080083, Sonoma County Records, being more particularly described as follows:

Commencing at the northeast corner of Parcel Two as described in said deed, Document Number 2019-080083, Sonoma County Records, also being a point on the westerly Right of Way of North Coast Railroad Authority, marked by a 1/2" iron pipe tagged PLS 7590; thence along the easterly line of said Parcel Two and said Right of Way, southwesterly on a curve to the right from a tangent that bears South 2°58'27" East, having a radius of 1,106.00, through a central angle of 32°01'07", an arc distance of 618.07 feet to the southeast corner of said Parcel Two; thence leaving said easterly line and said Right of Way North 76°18'25" West, 621.13 feet to True POINT OF BEGINNING; thence North 76°18'25" West, 322.93 feet to the easterly Right of Way line of US Highway 101; thence along said Right of Way, North 16°15'39" East, 383.08 feet to the northwest corner of said Parcel Two; thence along the northerly line of said Parcel Two, North 89°48'46" East, 289.22 feet; thence leaving said northerly line South 13°41'35" West, 207.11 feet; thence South 12°28'47" East, 56.68 feet; thence South 13°41'35" West, 194.10 feet to the Point of Beginning.

Being a portion of APN 091-060-038

**Exhibit 'A'**  
**Lot Line Adjustment**  
**Resultant Parcel Legal Descriptions**

Containing 2.89 Acres, more or less.

See Exhibit 'B' for graphic depiction.

**Resultant Parcel 'C'**

**Portion One**

Lying within the State of California, County of Sonoma, City of Healdsburg and being all of Parcel Four of the lands of CCS Healdsburg, LLC, a Delaware limited liability company, as described by deed recorded November 1, 2019 under Document Number 2019-080083, Sonoma County Records, being shown on that certain Record of Survey, filed June 20, 2017 in Book 796 of Maps, at pages 24-25, Sonoma County Records, being more particularly described as follows:

Beginning at a 6" x 6" concrete monument marking the westerly right of way of Healdsburg Avenue from which a 6" x 6" concrete monument bears South 44°35'47" East, 60.00 feet as shown on said Record of Survey; thence along said westerly right of way South 45°26'04" West, 1188.34 feet to the beginning of a non-tangent curve to the left having a radius of 530.00 feet, to which point a radial line bears North 44°36'43" West; thence along said curve and said right of way, through a central angle of 23°41'14", an arc distance of 219.11 feet; thence leaving said westerly right of way, North 89°06'05" West, 24.99 feet to a point on the easterly line of the lands of North Coast Railroad Authority as shown on said Record of Survey; thence northeasterly along said easterly line, on a curve to the right from a tangent that bears North 31°08'30" East, having a radius of 2251.88 feet, through a central angle of 4°31'26", an arc distance of 177.80 feet to a 1/2" iron pipe, PLS 7590 marking the beginning of a non-tangent curve to the right having a radius of 2251.88 feet, to which point a radial line bears North 54°12'46" West; thence along said curve, continuing along said easterly line, through a central angle of 6°26'36", an arc distance of 253.24 feet to a 1/2" iron pipe, PLS 7590; thence continuing along said easterly line, on a curve to the right, having a radius of 2824.83 feet, through a central angle of 00°36'00", an arc distance of 29.58 feet; thence continuing along said easterly line, on a curve to the right, having a radius of 3779.75 feet, through a central angle of 0°27'00", an arc distance of 29.69 feet; thence continuing along said easterly line, on a curve to the right, having a radius of 5689.60 feet, through a central angle of 0°18'00", an arc distance of 29.79 feet; thence continuing along said easterly line, on a curve to the right, having a radius of 11419.16 feet, through a central angle of 0°09'00", an arc distance of 29.90 feet to a 1/2" iron pipe PLS 7590; thence continuing along said easterly line North 43°43'50" East, 695.20 feet to a 1/2" iron pipe PLS 7590; thence continuing along said easterly line, on a curve to the left, having a radius of 5769.59 feet, through a central angle of 0°18'00", an arc distance of 30.21 feet; thence continuing along said easterly line, on a curve to the left, having a radius of 2904.83 feet, through a central angle of 0°36'00", an arc distance of 30.42 feet; thence continuing along said easterly line on a curve to the left, having a radius of 1949.91 feet, through a central angle of 0°54'00", an arc distance of 30.63 feet; thence continuing along said easterly line on a curve to the left, having a radius of 1472.46 feet, through a central angle of 1°12'00", an arc distance of 30.84 feet to a 1/2" iron pipe, PLS 7590; thence continuing along said easterly line, on a curve to the left, having a radius of 1186.00 feet, through a central angle of 29°27'54", an arc distance of 609.92 feet to a 1/2" iron pipe, PLS 7590; thence leaving said easterly line South 81°03'25" East, 5.59 feet to a 1/2" iron pipe, PLS 7579

**Exhibit 'A'**  
**Lot Line Adjustment**  
**Resultant Parcel Legal Descriptions**

marking the westerly right of way line of Healdsburg Avenue, as shown on said Record of Survey; thence southerly along said westerly right of way, South 8°56'04" West, 292.22 feet to a ½" iron pipe PLS 7590; thence continuing along said westerly right of way, on a curve to the right, having a radius of 470.00 feet, through a central angle of 36°30'00", an arc distance of 299.41 feet to the Point of Beginning.

Together with:

**Portion Two**

Lying within the State of California, County of Sonoma, City of Healdsburg and being all of Parcel Three of the lands of CCS Healdsburg, LLC, a Delaware limited liability company as described by deed recorded November 1, 2019 under Document Number 2019-080083, Sonoma County Records, being more particularly described as follows:

Beginning at the most easterly corner of said Parcel Three, being a point on the westerly line of the lands of North Coast Railroad Authority; thence along said westerly line, southwesterly on a curve to the right having from a tangent that bears South 29°02'39" West, having a radius of 1,106.00 feet, through a central angle of 11°41'10", an arc distance of 225.58 feet; thence continuing along said westerly line on a curve to the right, having a radius of 1,392.46 feet through a central angle of 01°12'00", an arc distance of 29.16 feet; thence continuing along said westerly line on a curve to the right, having a radius of 1,869.91 feet, through a central angle of 00°54'00", an arc distance of 29.37 feet; thence continuing along said westerly line on a curve to the right, having a radius of 2,824.83 feet, through a central angle of 00°36'00", an arc distance of 29.58 feet; thence continuing along said westerly line on a curve to the right, having a radius of 5,689.59, through a central angle of 00°18'00", an arc distance of 29.79 feet; thence continuing along said westerly line South 43°43'50" West, 306.90 feet; thence leaving said westerly line North 43°20'51" West, 28.50 feet to the beginning of a curve to the right having a radius of 100.00 feet, thence along said curve through a central angle of 57°02'26", an arc distance of 99.55 feet ; thence North 13°41'35" East, 479.42 feet to a point which bears North 76°18'25" West from the POINT OF BEGINNING; thence South 76°18'25" East, 361.56 feet to the POINT OF BEGINNING

Being all of APN 091-060-025 and all of said Parcel Three, APN, 091-060-039.

Containing 5.10 Acres, more or less.

See Exhibit 'B-1' for graphic depiction.

This description prepared by Carlile • Macy.

\_\_\_\_\_  
Jonathan R. Olin  
PLS 7590

\_\_\_\_\_  
Date

**END OF DESCRIPTION**

Page 3 of 3

**LEGEND**

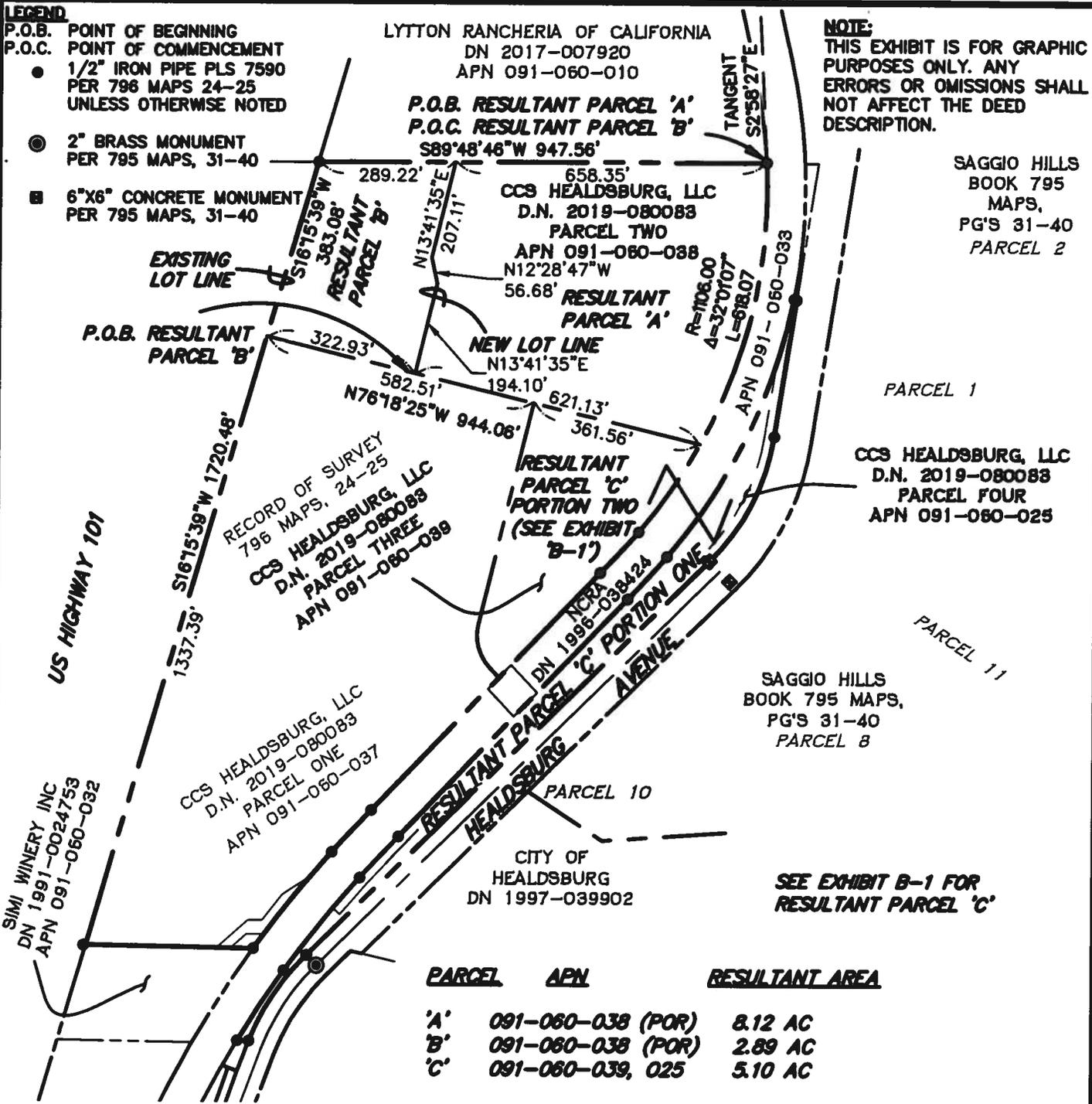
P.O.B. POINT OF BEGINNING  
 P.O.C. POINT OF COMMENCEMENT  
 ● 1/2" IRON PIPE PLS 7590  
 PER 796 MAPS 24-25  
 UNLESS OTHERWISE NOTED

● 2" BRASS MONUMENT  
 PER 795 MAPS, 31-40

■ 6"X6" CONCRETE MONUMENT  
 PER 795 MAPS, 31-40

LYTTON RANCHERIA OF CALIFORNIA  
 DN 2017-007920  
 APN 091-060-010

**NOTE:**  
 THIS EXHIBIT IS FOR GRAPHIC  
 PURPOSES ONLY. ANY  
 ERRORS OR OMISSIONS SHALL  
 NOT AFFECT THE DEED  
 DESCRIPTION.



SAGGIO HILLS  
 BOOK 795  
 MAPS,  
 PG'S 31-40  
 PARCEL 2

PARCEL 1

CCS HEALDSBURG, LLC  
 D.N. 2019-080088  
 PARCEL FOUR  
 APN 091-060-025

PARCEL 11

SAGGIO HILLS  
 BOOK 795 MAPS,  
 PG'S 31-40  
 PARCEL 8

SEE EXHIBIT B-1 FOR  
 RESULTANT PARCEL 'C'

PARCEL	APN	RESULTANT AREA
'A'	091-060-038 (POR)	8.12 AC
'B'	091-060-038 (POR)	2.89 AC
'C'	091-060-039, 025	5.10 AC

**EXHIBIT 'B'**  
**LOT LINE ADJUSTMENT**  
**PARCELS TWO, THREE AND FOUR**  
**DN 2019-080083**

**LANDS OF**  
**CCS HEALDSBURG, LLC**  
 HEALDSBURG, CALIFORNIA



CIVIL ENGINEERS • URBAN PLANNERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS

15 THIRD STREET, SANTA ROSA, CA 95401  
 TEL (707) 542-6451 FAX (707) 542-5212

**SHEET 1 OF 2**



1" = 300'

PROJECT No. 2002008.B0

AutoCAD file name: 02005-LA-CM-B.mxd | [ref file: 0200550-BNDY\_0200550-HG\_97004-ALTA 2018 BNDY]

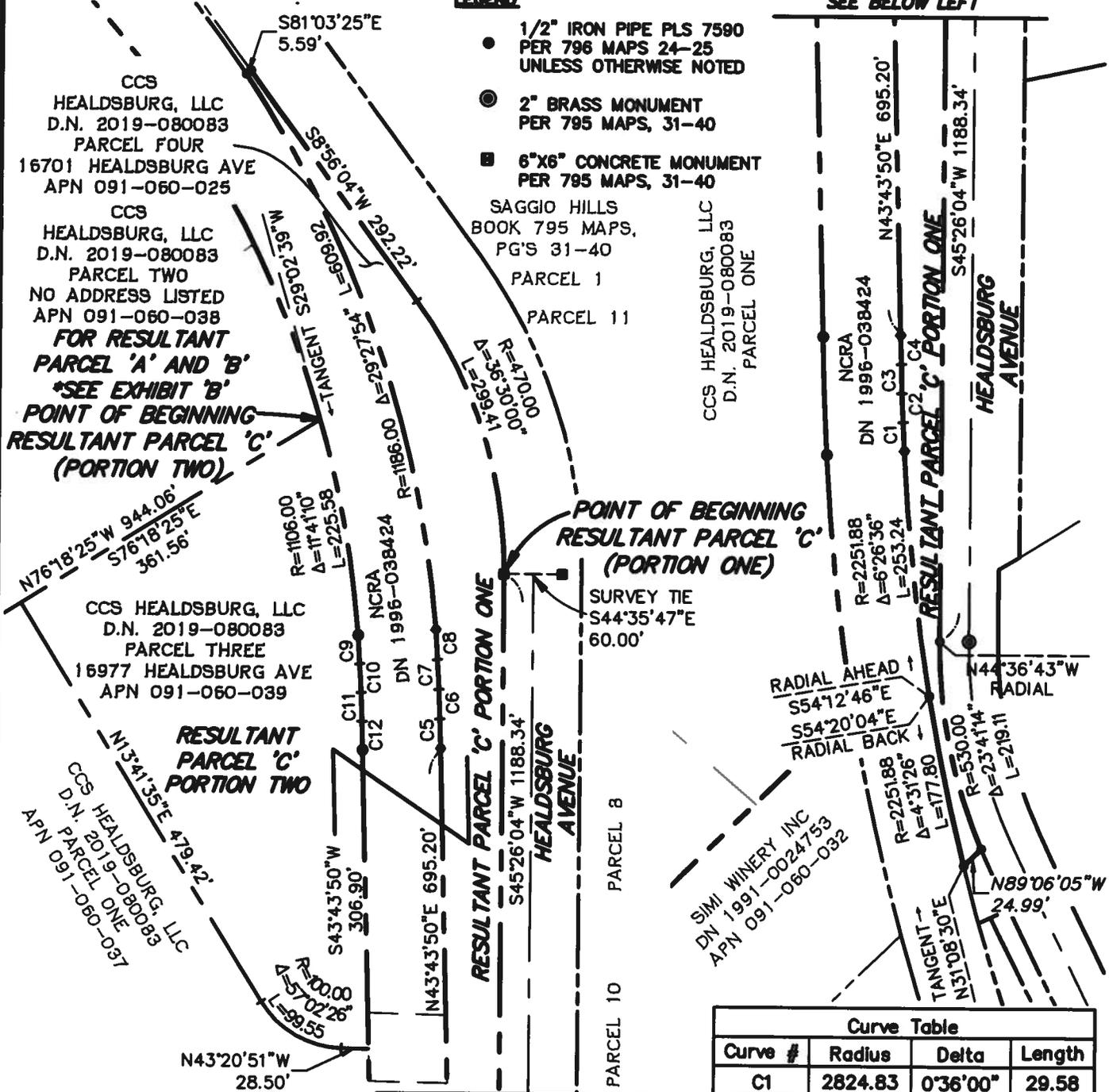
**LEGEND**

- 1/2" IRON PIPE PLS 7590 PER 796 MAPS 24-25 UNLESS OTHERWISE NOTED
- ⊙ 2" BRASS MONUMENT PER 795 MAPS, 31-40
- 6"X6" CONCRETE MONUMENT PER 795 MAPS, 31-40

SAGGIO HILLS  
BOOK 795 MAPS,  
PG'S 31-40  
PARCEL 1  
PARCEL 11

CCS HEALDSBURG, LLC  
D.N. 2019-080083  
PARCEL ONE

SEE BELOW LEFT



**NOTE:**  
THIS EXHIBIT IS FOR GRAPHIC PURPOSES ONLY. ANY ERRORS OR OMISSIONS SHALL NOT AFFECT THE DEED DESCRIPTION.

**EXHIBIT 'B-1'**  
**CCS**  
**HEALDSBURG, LLC**  
HEALDSBURG, CALIFORNIA



**CARLILE • MACY**

CIVIL ENGINEERS • URBAN PLANNERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS

15 THIRD STREET, SANTA ROSA, CA 95401  
TEL (707) 542-6451 FAX (707) 542-5212

Curve Table			
Curve #	Radius	Delta	Length
C1	2824.83	0°36'00"	29.58
C2	3779.75	0°27'00"	29.69
C3	5689.60	0°18'00"	29.79
C4	11419.16	0°09'00"	29.90
C5	5769.59	0°18'00"	30.21
C6	2904.83	0°36'00"	30.42
C7	1949.91	0°54'00"	30.63
C8	1472.46	1°12'00"	30.84
C9	1392.46	1°12'00"	29.16
C10	1869.91	0°54'00"	29.37
C11	2824.83	0°36'00"	29.58
C12	5689.59	0°18'00"	29.79

1" = 150'

PROJECT No. 2002008.B0

SHEET 2 OF 2

AutoCAD file name: 02005-LA-EXH B-1.dwg | [ref files: 97004-ATA 2018 BNDY; 0200500-BNDY]

**EXHIBIT B**

**DEPICTION OF PROPERTY AND IMPROVEMENTS**

[to be inserted]

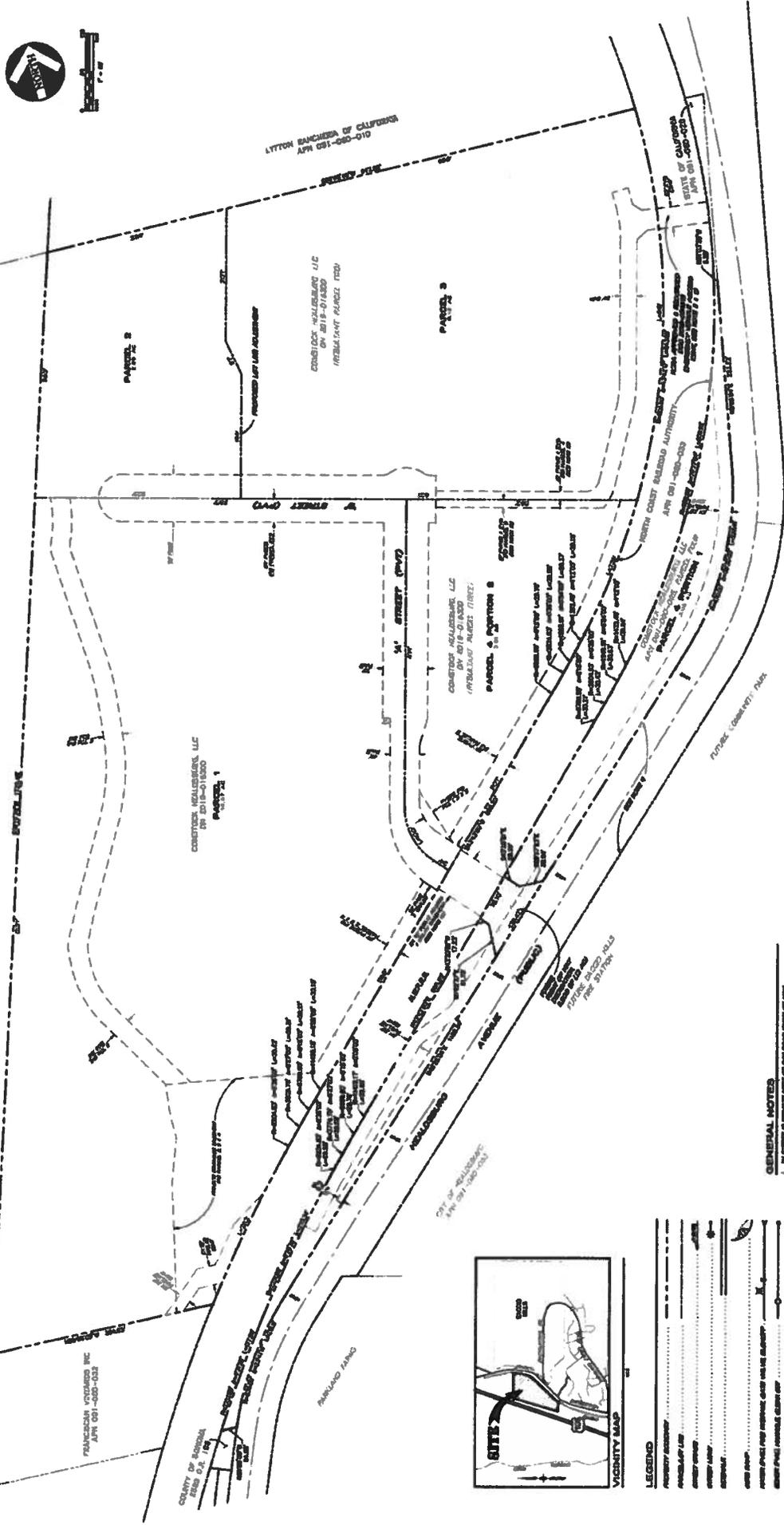


LEGEND	
Symbol	Program
Light Blue	Multi-Family Housing
Light Green	Senior Housing
Light Yellow	Retail & Multi-Family Housing
Light Purple	Hotels





STATE HIGHWAY 101 R/W



# MASTER CONDITIONAL USE PERMIT PARCEL & EASEMENT MAP, & NOTE SHEET NORTH VILLAGE HEADQUARTERS, CALIFORNIA

ELIAB AGUEDA  
JANUARY 2020

THIS MAP AND THE INFORMATION CONTAINED HEREIN ARE THE PROPERTY OF CONSULTING ENGINEERS AND ARCHITECTS, INC. (CEA) AND ARE TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. ANY REUSE OR MODIFICATION OF THIS MAP WITHOUT THE WRITTEN CONSENT OF CEA IS STRICTLY PROHIBITED.

CEA  
10000 UNIVERSITY AVENUE, SUITE 200  
SAN DIEGO, CALIFORNIA 92161  
TEL: 619-594-9200  
WWW.CEA-ARCHITECTS.COM

City: Encinitas • Urban Planning • Leap Services • Garden Apartments  
11740 Camino del Rio South, Suite 100  
San Diego, CA 92108  
Tel: 619-444-7777, Fax: 619-444-7778

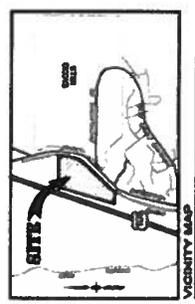
### PROJECT DATA

ADDRESS	11740 CAMINO DEL RIO SOUTH, SUITE 100, SAN DIEGO, CA 92108
APPLICANT	ENCINITAS APARTMENTS
APPLICANT ADDRESS	11740 CAMINO DEL RIO SOUTH, SUITE 100, SAN DIEGO, CA 92108
APPLICANT PHONE	619-444-7777
APPLICANT FAX	619-444-7778
APPLICANT EMAIL	info@encinitasapartments.com
PROJECT NAME	ENCINITAS APARTMENTS
PROJECT ADDRESS	11740 CAMINO DEL RIO SOUTH, SUITE 100, SAN DIEGO, CA 92108
PROJECT PHONE	619-444-7777
PROJECT FAX	619-444-7778
PROJECT EMAIL	info@encinitasapartments.com

### BENCHMARK

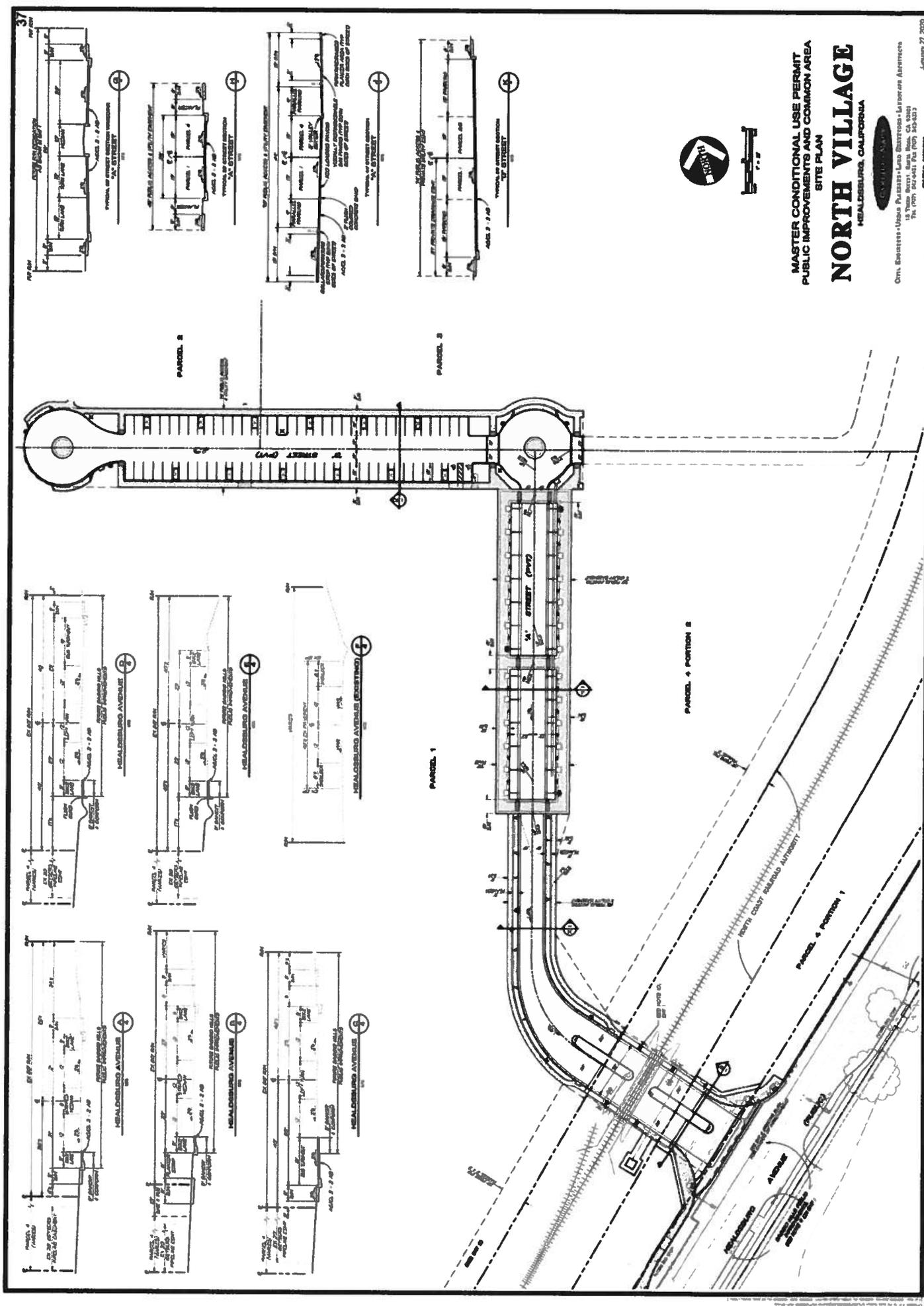
ENCINITAS APARTMENTS  
11740 CAMINO DEL RIO SOUTH, SUITE 100, SAN DIEGO, CA 92108  
TEL: 619-444-7777, FAX: 619-444-7778

- ### GENERAL NOTES
1. THIS MAP IS A PRELIMINARY MAP OF PROPOSED WORK.
  2. THE USER OF THIS MAP SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.
  3. THE USER OF THIS MAP SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
  4. THE USER OF THIS MAP SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY EASEMENTS AND RIGHTS-OF-WAY FROM THE PROPERTY OWNERS.
  5. THE USER OF THIS MAP SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDS FROM THE COUNTY CLERK'S OFFICE.
  6. THE USER OF THIS MAP SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDS FROM THE CITY OF ENCINITAS.
  7. THE USER OF THIS MAP SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDS FROM THE STATE OF CALIFORNIA.
  8. THE USER OF THIS MAP SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDS FROM THE FEDERAL GOVERNMENT.
  9. THE USER OF THIS MAP SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDS FROM THE LOCAL GOVERNMENT.
  10. THE USER OF THIS MAP SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDS FROM THE PRIVATE SECTOR.



### LEGEND

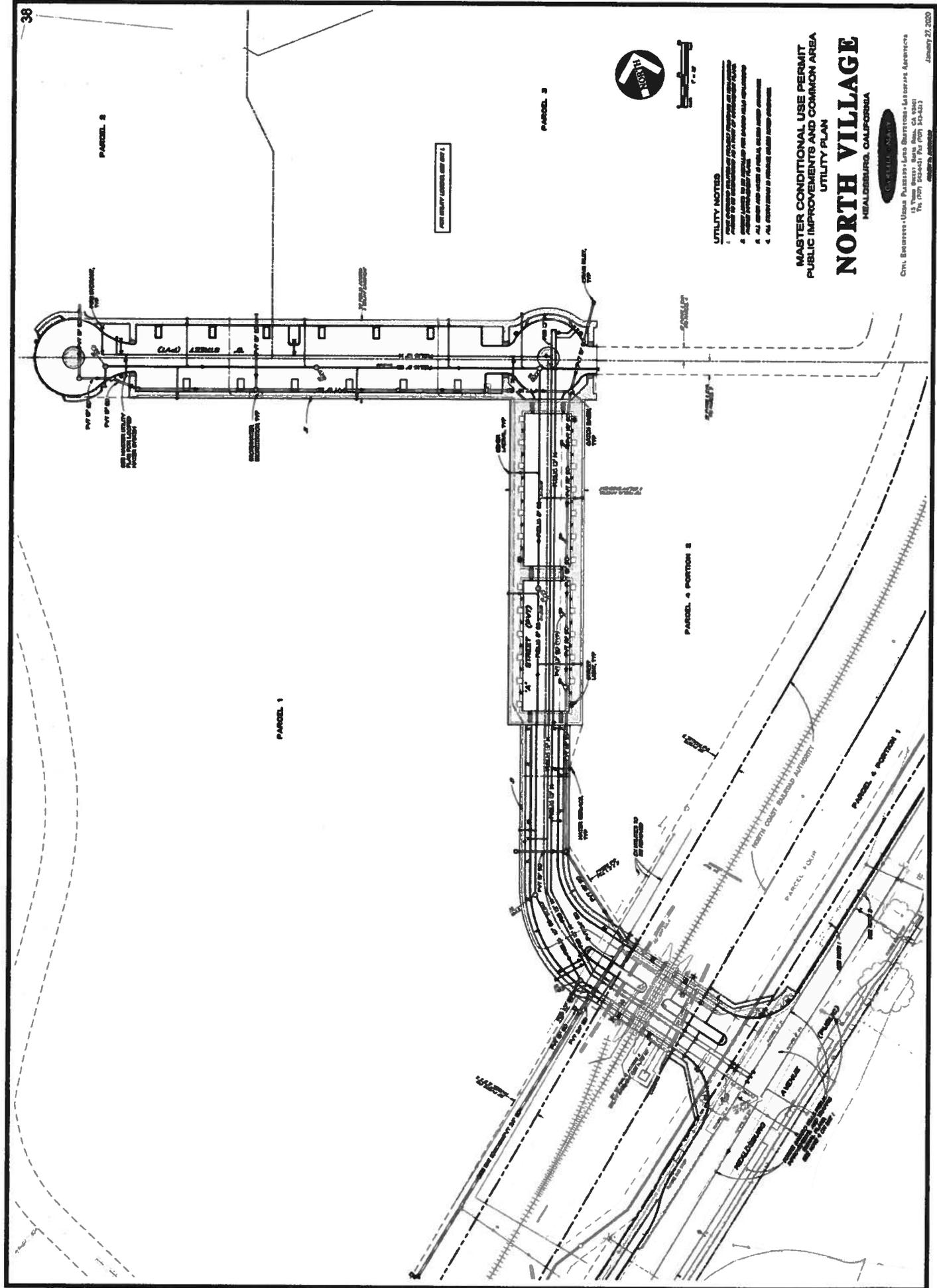
PROPERTY BOUNDARIES	.....
PROPOSED LOT	-----
EXISTING LOT	-----
PROPOSED EASEMENT	-----
EXISTING EASEMENT	-----
PROPOSED STREET	-----
EXISTING STREET	-----
PROPOSED DRIVEWAY	-----
EXISTING DRIVEWAY	-----
PROPOSED SIDEWALK	-----
EXISTING SIDEWALK	-----
PROPOSED BIKEWAY	-----
EXISTING BIKEWAY	-----
PROPOSED UTILITY LINE	-----
EXISTING UTILITY LINE	-----
PROPOSED FENCE	-----
EXISTING FENCE	-----
PROPOSED SIGN	-----
EXISTING SIGN	-----
PROPOSED LIGHT FIXTURE	-----
EXISTING LIGHT FIXTURE	-----
PROPOSED TREE	-----
EXISTING TREE	-----
PROPOSED PLANTING	-----
EXISTING PLANTING	-----
PROPOSED LANDSCAPE	-----
EXISTING LANDSCAPE	-----
PROPOSED HEDGING	-----
EXISTING HEDGING	-----
PROPOSED WALL	-----
EXISTING WALL	-----
PROPOSED FLOOR	-----
EXISTING FLOOR	-----
PROPOSED CEILING	-----
EXISTING CEILING	-----
PROPOSED ROOF	-----
EXISTING ROOF	-----
PROPOSED PORCH	-----
EXISTING PORCH	-----
PROPOSED DECK	-----
EXISTING DECK	-----
PROPOSED PATIO	-----
EXISTING PATIO	-----
PROPOSED BALCONY	-----
EXISTING BALCONY	-----
PROPOSED TERRACE	-----
EXISTING TERRACE	-----
PROPOSED STAIR	-----
EXISTING STAIR	-----
PROPOSED RAMP	-----
EXISTING RAMP	-----
PROPOSED WALKWAY	-----
EXISTING WALKWAY	-----
PROPOSED DRIVEWAY	-----
EXISTING DRIVEWAY	-----
PROPOSED GARAGE	-----
EXISTING GARAGE	-----
PROPOSED CARPORT	-----
EXISTING CARPORT	-----
PROPOSED PORCH	-----
EXISTING PORCH	-----
PROPOSED DECK	-----
EXISTING DECK	-----
PROPOSED PATIO	-----
EXISTING PATIO	-----
PROPOSED BALCONY	-----
EXISTING BALCONY	-----
PROPOSED TERRACE	-----
EXISTING TERRACE	-----
PROPOSED STAIR	-----
EXISTING STAIR	-----
PROPOSED RAMP	-----
EXISTING RAMP	-----
PROPOSED WALKWAY	-----
EXISTING WALKWAY	-----
PROPOSED DRIVEWAY	-----
EXISTING DRIVEWAY	-----
PROPOSED GARAGE	-----
EXISTING GARAGE	-----
PROPOSED CARPORT	-----
EXISTING CARPORT	-----



MASTER CONDITIONAL USE PERMIT  
PUBLIC IMPROVEMENTS AND COMMON AREA  
SITE PLAN  
**NORTH VILLAGE**  
HEALDSBURG, CALIFORNIA

City of Healdsburg • Urban Planning • Landscape Architecture  
15 Third Street, Suite 100, Healdsburg, CA 94920  
Tel: (707) 431-1111 Fax: (707) 431-1117  
www.cityofhealdsburg.com





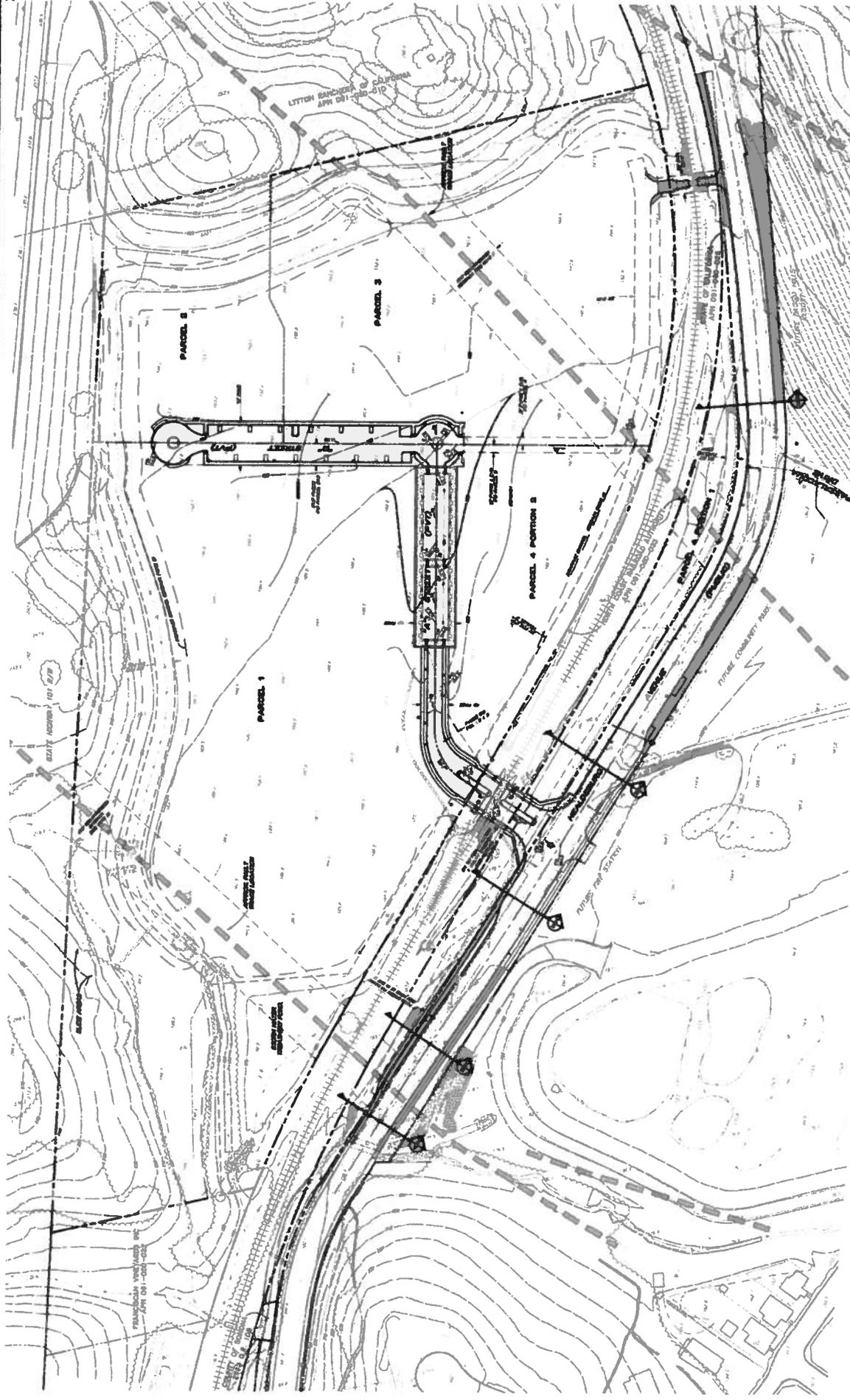
**UTILITY NOTES**

1. ALL UTILITIES SHOWN ARE BASED ON THE RECORD DRAWINGS FOR THE PROJECT.
2. ALL UTILITIES SHOWN ARE BASED ON THE RECORD DRAWINGS FOR THE PROJECT.
3. ALL UTILITIES SHOWN ARE BASED ON THE RECORD DRAWINGS FOR THE PROJECT.
4. ALL UTILITIES SHOWN ARE BASED ON THE RECORD DRAWINGS FOR THE PROJECT.

**MASTER CONDITIONAL USE PERMIT  
PUBLIC IMPROVEMENTS AND COMMON AREA  
UTILITY PLAN**

**NORTH VILLAGE**  
HEALDSBURG, CALIFORNIA

City of Healdsburg • Urban Planning • Land Services • Engineering  
15 Third Street, Suite 200, Healdsburg, CA 94931  
Tel: (707) 838-8111 Fax: (707) 838-8112  
www.cityofhealdsburg.com



MASTER CONDITIONAL USE PERMIT  
PUBLIC IMPROVEMENTS AND COMMON AREA  
GRADING PLAN

# NORTH VILLAGE

HEALDSBURG, CALIFORNIA



Civil Engineers • Utaha Partners • Lisa Strickland • Leanne Adams Architects  
15 Third Street, Suite 300, CA 92020  
Tel: (760) 854-4611 Fax: (760) 854-0171



- NOTED:**
1. THIS GRADING PLAN IS BASED ON THE LATEST AVAILABLE TOPOGRAPHIC DATA AND FIELD SURVEY DATA.
  2. THE GRADING PLAN IS BASED ON THE ASSUMPTIONS AND CONDITIONS LISTED IN THE NOTES TO THE GRADING PLAN.
  3. THE GRADING PLAN IS BASED ON THE ASSUMPTIONS AND CONDITIONS LISTED IN THE NOTES TO THE GRADING PLAN.
  4. THE GRADING PLAN IS BASED ON THE ASSUMPTIONS AND CONDITIONS LISTED IN THE NOTES TO THE GRADING PLAN.
  5. THE GRADING PLAN IS BASED ON THE ASSUMPTIONS AND CONDITIONS LISTED IN THE NOTES TO THE GRADING PLAN.

CIVIL ENGINEERS	
DATE	1/22/20
BY	LSA
CHECKED BY	LSA
SCALE	AS SHOWN

**EXHIBIT C**

**MMRP**

**Mitigation Monitoring and Reporting Program  
for the  
North Entry Area Plan  
Environmental Impact Report  
Healdsburg, California**

Prepared for:



**City of Healdsburg  
401 Grove Street  
Healdsburg, CA 65448  
707.431.3348**

**Contact: Maya DeRosa, Planning & Building Director**

Prepared by:

**FirstCarbon Solutions  
1350 Treat Boulevard, Suite 380  
Walnut Creek, CA 94597  
925.357.2562**

**Contacts: Jason Brandman, Project Director  
Kelsey Bennett, Sr. Project Manager**

**May 10, 2019**



**Table 1: North Entry Area Plan EIR<sup>1</sup> Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<b>Section 3.2—Transportation/Traffic</b>					
<b>MM TRANS-1a:</b> To address anticipated deficient roadway operations, the City has planned for roadway improvements to Dry Creek Road/U.S. 101 South Ramps (study intersection 1) that include signalization. New development within the plan area shall be required to contribute a proportional share allocation towards the cost of installation of a traffic signal at Dry Creek Road/U.S. 101 South.	Prior to Construction	Applicant(s)	City shall confirm payment of proportional fair share fee		
<b>MM TRANS-1b:</b> New development within the plan area shall be required to improve the northbound approach to Dry Creek Road/Grove Street (study intersection 3). The approach shall be restriped to include a separate left-turn lane with a length of at least 275 feet and the signal modified to provide protected left-turn phasing, with the existing right-turn lane converted to use for through/right-turn movements.	Prior to Occupancy	Applicant(s)	City shall confirm completion of restriping		
<b>MM TRANS-1c:</b> New developments within the plan area shall be required to prepare and implement a Transportation Demand Management (TDM) Plan to minimize traffic as much as is reasonably feasible. Such Plans may include measures such as ride-sharing, transit passes, unbundled parking, directing traffic to the Lytton Springs Road interchange, guaranteed rides home, and other impact-reducing measures and shall be submitted to and approved by the City as part of any individual development approvals.	Prior to Occupancy	Applicant(s)	City review and approval of TDM plan		
<b>MM TRANS-3:</b> Prior to development of the plan area, an emergency vehicle only access point shall be established such that access and egress can be maintained during a train pre-emption, at the at-grade railroad crossing at the site entry.	Prior to Occupancy	Applicant(s)	City shall verify implementation of emergency vehicle access		

<sup>1</sup> Includes mitigation measures from the Initial Study included in EIR Appendix A.

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<p><b>MM TRANS-5:</b> New development within the plan area shall be required to contribute a proportional share allocation towards the cost of widening Dry Creek Road to accommodate a westbound left-turn lane the entire length between the U.S. 101 South and North Ramps. The amount paid shall include a proportional share of the cost to widen the westbound approach to Dry Creek Road/U.S. 101 North Ramps to include a second lane; the left lane would feed into the left-turn lane at the U.S. 101 South Ramps and the right lane would be a shared through/right-turn lane serving through traffic and right turns onto the U.S. 101 North on-ramp. These improvements would allow queues in the westbound left-turn lane at the U.S. 101 South Ramps to stack beyond the Dry Creek Road/U.S. 101 North Ramps intersection, if needed, without impacting through traffic.</p>	<p>Prior to Construction</p>	<p>Applicant(s)</p>	<p>City shall confirm payment of proportional fair share fee</p>		
<p><b>Cumulative MM TRANS-1:</b> New development within the plan area shall be required to contribute a proportional share allocation towards the cost of signalizing Dry Creek Road/U.S. 101 North Ramps. The design for the traffic signal shall include provision of an overlap phase between the westbound through movement and the right turn from the off-ramp.</p>	<p>Prior to Construction</p>	<p>Applicant(s)</p>	<p>City shall confirm payment of proportional fair share fee</p>		
<p><b>Section 3.3—Air Quality</b></p>					
<p><b>MIM AIR-3:</b> Prior to occupancy of any residential components of the proposed plan that would occur while construction within the plan area is still underway, the applicant shall retain a qualified air quality consultant to prepare a health risk assessment (HRA) in accordance with the ARB and the Office of Environmental Health and Hazard Assessment requirements to determine the exposure of plan residents to TACs. The HRA shall be submitted to the Planning Division for review and approval. If the HRA concludes that the air quality risks from</p>	<p>Prior to Occupancy</p>	<p>Applicant(s)</p>	<p>City review and approval of HRA</p>		

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<p>ongoing or future construction activities would result in health risks for on-site receptors that are above BAAQMD recommended thresholds that are in place at the time of the analysis (Section 2.3 of the 2017 BAAQMD CEQA Guidelines), then additional measures, such as the requirement for construction equipment to meet certain tier engine standards for off-road equipment, shall be required for all subsequent phases of construction. Alternatively, this mitigation measure can be satisfied by delaying occupancy of any on-site residential components until construction of the entirety of the proposed plan area is complete.</p>					
<p><b>Section 3.4—Greenhouse Gas Emissions and Energy</b></p>					
<p><b>MM GHG-1:</b> Prior to the final discretionary approval for each development project in the plan area, each developer shall provide documentation to the City of Healdsburg demonstrating that the proposed development would meet the BAAQMD recommended threshold of significance for individual projects or would achieve additional GHG emissions reductions sufficient to meet the recommended threshold through a combination of one or more of the following measures and/or other comparable measures approved by the City:</p> <ul style="list-style-type: none"> <li>• Commit to 100 percent renewable energy use through a combination of use of on-site renewable energy and Healdsburg Electric’s “Green Rate” program.</li> <li>• Install onsite solar panels to generate electricity on-site electricity consumption.</li> <li>• Provide documentation of how a ride sharing program or other transportation demand management program for hotel, office, and retail employees would be implemented starting no later than 60 days after operations begin. Use of</li> </ul>	<p>Prior to discretionary approval</p>	<p>Applicant(s)</p>	<p>City review and approval of GHG reduction measures</p>		

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<p>electric vehicles for ride-share program would further reduce GHG emissions.</p> <ul style="list-style-type: none"> <li>• Install electric vehicle charging stations at workplaces and multi-family residences to promote the use of electric vehicles.</li> <li>• Use heat-pumps (rather than natural gas) for heating of residential and commercial spaces.</li> <li>• Purchase voluntary carbon credits from a verified GHG emissions credit broker in an amount sufficient to offset operational GHG emissions that exceed the recommended significance threshold over the lifetime of the proposed development (or a reduced amount estimated based on implementation of other measures listed above). Copies of the contract(s) shall be provided to the City.</li> </ul>					
<b>Section 3.5—Noise</b>					
<p><b>MM NOI-1a:</b> To reduce the occurrence of potentially-significant construction noise impacts to noise-sensitive receptors in the plan area vicinity (or sensitive receptors within the plan area during future buildout), the construction contractor for each development project within the plan area shall comply with the following:</p> <ul style="list-style-type: none"> <li>• Equip internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and are appropriate for the equipment.</li> <li>• Locate stationary noise-generating equipment as far as possible from sensitive receptors in the vicinity.</li> <li>• Locate staging areas and construction material areas as far away as possible from adjacent land uses.</li> <li>• Prohibit all unnecessary idling of internal combustion engines.</li> </ul>	During Construction	Applicant(s)	Site inspection by City grading and building inspectors		

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<ul style="list-style-type: none"> <li>Utilize “quiet” air compressors and other stationary noise sources where technology exists.</li> <li>Erect temporary noise control blanket barriers in a manner to shield noise-sensitive uses.</li> <li>Control noise levels from workers’ amplified music so that sounds are not audible to sensitive receptors in the vicinity.</li> <li>If impact pile driving is proposed, multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced.</li> <li>If impact pile driving is proposed, temporary noise control blanket barriers shall shroud pile drivers or be erected in a manner to shield the adjacent land uses. Such noise control blanket barriers can be rented and quickly erected.</li> <li>If impact pile driving is proposed, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile. Notify all adjacent land uses of the construction schedule in writing.</li> <li>Designate a “disturbance coordinator” responsible for responding to complaints about each project development’s construction noise and taking reasonable measures to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in any notice sent to neighbors regarding the construction schedule.</li> <li>The construction contract shall prohibit noise producing construction activities between the hours of 6:00 p.m. and 7:30 a.m. Monday through Saturday, or at any time on a Sunday or legal holiday.</li> </ul>					

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<p><b>MM NOI-1b:</b> Prior to the issuance of building permits for each development project within the plan area, the following requirements shall be implemented:</p> <ul style="list-style-type: none"> <li>For multi-family residential or motel/hotel projects proposed in areas where exterior day/night average noise levels are, or are projected to exceed, 65 dBA <math>L_{dn}</math> (i.e., within 290-feet of the centerline of U.S. 101), an acoustic analysis shall be prepared that recommends project improvements, as needed, to maintain interior noise levels at or below 45 dBA <math>L_{dn}</math>. This can typically be accomplished with the incorporation of an adequate forced air mechanical ventilation system in the residential units to allow residents the option of controlling noise by keeping the windows closed. The City shall confirm that the recommendations will reduce noise levels below the threshold levels and require compliance with the recommendations of the acoustic analysis.</li> <li>For school, library, church, hospital, nursing home, neighborhood park, or commercial projects proposed in areas where exterior day-night average noise levels are, or are projected to exceed 70 dBA <math>L_{dn}</math> (i.e., within 140-feet of the centerline of U.S. 101) an acoustic analysis shall be prepared that recommends project improvements, as needed, to maintain interior noise levels at or below 45 dBA <math>L_{dn}</math>, if needed. Standard office construction methods typically provide about 25 to 30 decibels of noise reduction in interior spaces. The City shall confirm that the recommendations will reduce noise levels below the threshold levels and require compliance with the recommendations of the acoustic analysis.</li> </ul>	<p>Prior to issuance of building permit</p>	<p>Applicant(s)</p>	<p>City review and approval of acoustical analysis</p>		

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<p><b>MM NOI-1c:</b> Prior to the issuance of building permits for each development project within the plan area, the following requirement, if applicable, shall be met:</p> <ul style="list-style-type: none"> <li>For any noise-sensitive land uses proposed within 50-feet of the railroad centerline, the City shall ensure that an acoustic analysis be prepared that recommends project improvements, as needed, to maintain interior noise levels at or below 45 dBA L<sub>dn</sub>. The City shall confirm that the recommendations will reduce noise levels below the threshold levels and require compliance with the recommendations of the acoustic analysis.</li> </ul>	<p>Prior to issuance of building permit</p>	<p>Applicant(s)</p>	<p>City review and approval of acoustical analysis</p>		
<p><b>MM NOI-2:</b> Prior to the issuance of building permits for each development project within the plan area, an acoustic analysis is conducted by a qualified noise specialist shall be prepared for structures in the plan area that are located within 100 feet of the centerline of the railroad. The analysis shall specify measures including, but not limited to, setbacks and structural design features that will reduce vibration levels at or below the guidelines of the FTA Groundborne Vibration Impact Criteria shown in Table 3.5-7. The City shall confirm that the recommendations will reduce vibration levels below the threshold levels and require compliance with the recommendations of the acoustic analysis.</p>	<p>Prior to issuance of building permit</p>	<p>Applicant(s)</p>	<p>City review and approval of acoustical analysis</p>		

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<p><b>Initial Study Section 4—Biological Resources</b></p> <p><b>MM BIO-1:</b> The following requirement shall be imposed as a condition of approval on all development within the proposed plan area: A pre-construction survey of the site shall be required in order to ensure that nesting raptors, loggerhead shrikes, and other nesting special-status birds are not nesting during project construction. Specifically, these measures shall include:</p> <ul style="list-style-type: none"> <li>• If construction is proposed during the breeding/nesting season for local avian species (typically February 15 through August 31), a focused survey for active nests of migratory birds within and in the vicinity of the project plan shall be conducted by a qualified biologist. Two surveys will be conducted, at least one (1) week apart, with the second survey occurring no more than two (2) days prior to tree removal. If no active nests are found, tree removal or construction activities may proceed.</li> <li>• If an active nest is located during pre-construction surveys, the United States Fish and Wildlife Service (USFWS) and/or the California Department of Fish and Wildlife (CDFW), as appropriate, shall be notified regarding the status of the nest. Furthermore, construction activities shall be restricted to avoid disturbance of the nest until it is abandoned or the biologist deems disturbance potential to be minimal. Restrictions may include establishment of exclusion zones or alteration of the construction schedule.</li> </ul>	<p>Prior to issuance of grading permit</p>	<p>Applicant(s)</p>	<p>City review and approval of nesting bird survey results, including implementation of protective exclusions zones (fencing), if required.</p>		

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<p><b>MM BIO-2:</b> Prior to any specific project development approval or grading that may fill or otherwise encroach into potentially jurisdictional waters of the U.S., the project proponent shall conduct a delineation of waters of the U.S. to determine the extent of USACE, RWQCB, and CDFW potentially jurisdictional features that would be potentially impacted on-site. Any encroachment or fill in these USACE, RWQCB and/or CDFW jurisdictional areas shall not occur unless a Section 404/Section 401 permit or Waste Discharge Requirement and/or Streambed Alteration Agreement, respectively, are acquired and the project proponent replaces the lost value of the jurisdictional area to the satisfaction of the resources agencies issuing the permits to ensure a no-net loss. If proposed development will encroach upon or fill any jurisdictional wetland areas, the applicant shall do the following:</p> <ul style="list-style-type: none"> <li>• Apply for a Section 404 permit from the USACE concurrently or after verification of the wetland delineation by the USACE. Any wetlands that would be lost or disturbed shall be replaced or rehabilitated on a "no net loss" basis in accordance with the USACE mitigation guidelines. On-site creation of wetland habitat may be preferred to off-site mitigation. Habitat restoration, rehabilitation, and/or replacement shall be at a location and by methods agreeable to the USACE;</li> <li>• Obtain a Section 401 water quality waiver of certification from the Regional Water Quality Control Board (RWQCB); and</li> <li>• Obtain a Streambed Alteration Agreement with the CDFW.</li> </ul> <p>If encroachment upon or fill of wetlands is proposed, as a condition of approval for all future development within the</p>	<p>Prior to issuance of grading permit</p>	<p>Applicant(s) shall complete consultation with resource agencies and submit permits, mitigation plan, and/or evidence of mitigation bank credits, as required.</p>	<p>City shall confirm that consultation with resource agencies has been completed.</p>		

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<p>plan area, a mitigation plan shall be implemented that includes at least one of the following:</p> <ul style="list-style-type: none"> <li>• Completion of an on-site Mitigation and Monitoring Plan that includes on-site creation/preservation of the wetlands and/or;</li> <li>• Credits may be obtained at an approved mitigation bank.</li> </ul>					
<p><b>Initial Study Section 5—Cultural Resources</b></p>					
<p><b>MM CUL-1:</b> The following requirement shall be imposed as a condition of approval on all future development within the plan area: In the event a potentially significant cultural resource is encountered during subsurface earthwork activities, all construction activities within a 100-foot radius of the find shall cease and workers should avoid altering the materials until a qualified archaeologist who meets the Secretary of Interior’s Professional Qualification Standards for archaeology has evaluated the situation. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. Any previously undiscovered resources found during construction activities shall be recorded on appropriate Department of Parks and Recreation (DPR) forms and evaluated for significance in terms of CEQA criteria by a qualified archaeologist. Potentially significant cultural resources consist of but are not limited to stone, bone, glass, ceramics, fossils, wood, or shell artifacts, or features including hearths, structural remains, or historic dumpsites. If the resource is determined to be significant under CEQA, the qualified archaeologist shall prepare and implement a research design and archaeological data recovery plan that will capture those categories of data for which the site is significant in accordance with Section 15064.5 of the CEQA Guidelines. The</p>	<p>During Construction</p>	<p>Applicant(s) construction contractor</p>	<p>City shall ensure that the requirement is printed on the plan sheets and included in bid documents</p>		

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<p>archaeologist shall also perform appropriate technical analyses, prepare a comprehensive report complete with methods, results, and recommendations, and provide for the permanent curation or repatriation of the recovered resources in cooperation with the designated Most Likely Descendant (MLD) as needed. The report shall be submitted to the City of Healdsburg, the Northwest Information Center, and the State Historic Preservation Office (SHPO), if required. The plan shall be approved by the City of Healdsburg for review and approval prior to implementation, and the applicant shall adhere to the recommendations in the plan.</p>					
<p><b>MM CUL-2:</b> The following requirement shall be imposed as a condition of approval on all future development within the plan area: In the event that fossils or fossil-bearing deposits are discovered during construction activities, excavations within a 100-foot radius of the find shall be temporarily halted or diverted. The construction contractor shall notify a qualified paleontologist to examine the discovery. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. The paleontologist shall document the discovery as needed in accordance with Society of Vertebrate Paleontology standards and assess the significance of the find under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction activities are allowed to resume at the location of the find. If the applicant determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of construction activities on the discovery. The plan shall be submitted to the City of Healdsburg for review and approval prior to implementation,</p>	<p>During Construction</p>	<p>Applicant(s) construction contractor</p>	<p>City shall ensure that the requirement is printed on the plan sheets and included in bid documents</p>		

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<p>and the applicant shall adhere to the recommendations in the plan.</p> <p><b>MM CUL-3:</b> The following requirement shall be imposed as a condition of approval on all future development within the plan area: In the event of the accidental discovery or recognition of any human remains, CEQA Guidelines Section 15064.5; Health and Safety Code Section 7050.5; Public Resources Code Section 5097.94 and Section 5097.98 must be followed. If during the course of project development there is accidental discovery or recognition of any human remains, the following steps shall be taken:</p> <ol style="list-style-type: none"> <li>1. There shall be no further excavation or disturbance within 100 feet of the remains until the County Coroner is contacted to determine if the remains are Native American and if an investigation of the cause of death is required. If the coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall identify the person or persons it believes to be the most likely descendant (MLD) of the deceased Native American. The MLD may make recommendations to the landowner or the person responsible for the excavation work within 48 hours, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98.</li> <li>2. Where the following conditions occur, the landowner or his or her authorized representative shall rebury the Native American human remains and associated grave goods with</li> </ol>	<p>During Construction</p>	<p>Applicant(s) construction contractor</p>	<p>City shall ensure that the requirement is printed on the plan sheets and included in bid documents</p>		

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<p>appropriate dignity either in accordance with the recommendations of the most likely descendant or within the plan area in a location not subject to further subsurface disturbance:</p> <ul style="list-style-type: none"> <li>• The NAHC is unable to identify a most likely descendant or the most likely descendant failed to make a recommendation within 48 hours after being notified by the commission.</li> <li>• The descendant identified fails to make a recommendation.</li> <li>• The landowner or his authorized representative rejects the recommendation of the descendant, and mediation by the NAHC fails to provide measures acceptable to the landowner.</li> </ul> <p>Additionally, California Public Resources Code Section 15064.5 requires the following relative to Native American Remains:</p> <ul style="list-style-type: none"> <li>• When an initial study identifies the existence of, or the probable likelihood of, Native American remains within a project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code Section 5097.98. The applicant may develop a plan for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American Burials with the appropriate Native Americans as identified by the Native American Heritage Commission.</li> </ul>					

**Table 1 (cont.): North Entry Area Plan EIR Mitigation Monitoring and Reporting Program**

Mitigation Measures	Timing of Verification	Responsible Entity	Method of Verification	Verification of Completion	
				Date	Initial
<b>Initial Study Section 8—Hazards and Hazardous Materials</b>					
<b>MM HAZ-1:</b> The following requirement shall be imposed as a condition of approval prior to all development within the plan area: The Comstock property developer shall prepare a dust control plan that specifies measures to reduce fugitive dust emissions during construction. The developer shall also prepare an asbestos dust mitigation plan to be submitted to and approved by NSCAPCD, in accordance with 17 CCR Section 93105 and 8 CCR Section 1529.	Prior to Construction	Applicant(s)	NSCAPCD review and approval of dust control plan.  Field inspection by City grading and building inspectors		
<b>MM HAZ-2:</b> The following requirement shall be imposed as a condition of approval prior to or concurrent with all development within the plan area: The Comstock property developer shall provide a secondary emergency vehicle access point to facilitate more orderly and efficient levels of development and minimize delaying emergency response times. Potential location options for secondary emergency access include, but are not limited to, a second railroad crossing over the NCRA railway north of the main entrance or a new route south of the plan area through the vacant parcel owned by SIMI Winery, Inc. (APN 091-060-032) and into the plan area. If secondary emergency access is not provided to satisfy fire safety standards, development on the Comstock property will be limited to the extent allowed under applicable fire safety regulations, codes, and ordinances.	Prior to Occupancy	Applicant(s)	City shall verify implementation of emergency vehicle access		

**EXHIBIT D**

**FIRE SUBSTATION DESIGN PROCESS**

**Excerpt from the Saggio Hills Development Agreement**

**Exhibit B**

**Section 11**

**(b) Design.** The Fire Substation shall be designed in accordance with the provisions of this Section 11 (b ), and such design shall be sufficient to provide to the City a fire substation that accommodates three fire fighters, a brush truck, and another vehicle and related parking. With the consent of the City, the Developer previously engaged its architect to prepare a preliminary design for the Fire Substation. Promptly after the Developer gives the Development Notice, Developer shall engage and require an architect selected by the Developer and reasonably acceptable to the City (the "Architect") to complete the design for the Fire Substation

in the manner described in this Section 11(b). Subject to the City's reimbursement obligations described in Section 12(a) below with respect to such costs and expenses, if any, as are incurred by the Developer in the development, design and construction of the Fire Substation that exceed, in the aggregate, the Developer Fire Substation Contribution (as defined in Section 12(a) below), the Developer shall pay any and all amounts due to the Architect for design work contemplated by this Section 11 (b) as and when they become due and payable; provided, however, that nothing in this Section 11 (b) shall preclude the Developer from pursuing any dispute resolution process with respect to any disputed amount claimed by the Architect.

The Fire Substation will be designed and constructed by the Developer while the Fire Substation Land is owned by the Developer. The City and the Developer desire that the Fire Substation be completed before the Resort is completed and open to the public, and therefore desire to provide an efficient means for promptly completing the design of the Fire Substation so that the Developer may timely begin construction thereof. The City and the Developer therefore agree to the following process for the design of the Fire Substation, and for the City's approval of such design in its proprietary capacity (as the future owner of the Fire Substation). Nothing in this Section 11 (b) is intended to limit or otherwise restrict the review of the design of the Fire Substation through the City's normal and customary public process of review and approval by the City's Planning Commission and/or the City Council.

After giving the Development Notice, the Developer shall use diligent efforts to cause the Architect to complete in a diligent and prompt manner, the following:

- (i) **Schematic Plans.** First, proposed schematic plans for the Fire Substation ( the "Proposed Schematic Plans"), which plans shall be based on and consistent with the description of the Fire Substation set forth above and applicable law. The Developer shall, promptly after receipt of the Proposed Schematic Plans from the Architect, submit the Proposed Schematic Plans to the City for review and approval pursuant to this Section 11 (b )(i).

The City shall cause the Proposed Schematic Plans to be reviewed, and a written notice of approval or disapproval thereof to be given to the Developer within 15 business days after the City's receipt thereof. The standard for the City's review of the Proposed Schematic Plans, and for any revisions thereof submitted by the Developer pursuant to this Section 11(b)(i), shall be whether the Proposed Schematic Plans (or any such revision) are consistent with the description of the Fire Substation set forth above and applicable law, and the City shall not unreasonably withhold approval of the Proposed Schematic Plans ( or any such revision) if they meet such standard.

Any disapproval of the Proposed Schematic Plans ( or any such revision) shall state with particularity the reason for such disapproval. Any failure by the City to give such a notice of approval or disapproval within such 15 business day period shall be deemed approval.

## Exhibit D

Upon any disapproval by the City of the Proposed Schematic Plans, the Developer shall have the right to require that the Architect revise the Proposed Schematic Plans and then submit the revised plans to the City for review and approval or disapproval pursuant to this Section 11 (b)(i). Such schematic plans as are approved ( or deemed approved) by the City pursuant to this Section 11 (b)(i) shall be the "Approved Schematic Plans".

- (ii) **Design Development Plans.** Second, proposed design development plans for the Fire Substation (the "Proposed Design Development Plans"), which plans shall be based on and consistent with the Approved Schematic Plans and applicable law. The Developer shall, promptly after receipt of the Proposed Design Development Plans from the Architect, submit the Proposed Design Development Plans to the City for review and approval pursuant to this Section 11 (b)(ii).

The City shall cause the Proposed Design Development Plans to be reviewed, and a written notice of approval or disapproval thereof to be given to the Developer promptly following completion of the City's normal design review process, but not later than ninety (90) days after receipt thereof. The standard for the City's review of the Proposed Design Development Plans, and for any revisions thereof submitted by the Developer pursuant to this Section 11(b)(ii), shall be whether the Proposed Design Development Plans ( or any such revision) are consistent with the Approved Schematic Plans and applicable law, and the City shall not unreasonably withhold approval of the Proposed Design Development Plans (or any such revision) if they meet such standard.

If the City is unable to approve the Proposed Design Development Plans within ninety (90) days, as described herein, and the inability to provide such approval within said 90 days delays the occupancy of the Fire Substation beyond the date on which the Resort is completed, then the fact that the Fire Substation is not completed shall not be a basis for precluding the Resort from opening for business once all other requirements to such opening have been satisfied, so long as Developer has agreed in writing to provide the Fire Department a suitable location at the Resort site for temporary placement of a "brush truck" and appropriate sleeping accommodations for 3 firefighters until the Fire Substation is operational. Such temporary truck storage and firefighter accommodations shall not, without the written approval of the City's Fire Chief, extend for more than the number of days greater than 90 that the City required to approve the Proposed Design Development Plans. Upon any disapproval by the City of the Proposed Design Development Plans, the Developer shall have the right to require that the Architect revise the Proposed Design Development Plans and then submit the revised plans to the City for review and approval or disapproval pursuant to this Section 11(b)(ii). Such design development plans as are approved by the City pursuant to this Section 11(b)(ii) shall be the "Approved Design Development Plans".

- (iii) **Construction Plans and Specifications.** Third, proposed construction plans and specifications for the Fire Substation (the "Proposed Construction Plans") which plans and specifications shall be based on and consistent with the Approved Design Development Plans and applicable law. The Developer shall, promptly after receipt of the Proposed Construction Plans from the Architect, submit the Proposed Construction Plans to the City for review and approval pursuant to this Section 11 (b)(iii).

The City shall cause the Proposed Construction Plans to be reviewed, and a written notice of approval or disapproval thereof to be given to the Developer within 30 calendar days after the City's receipt thereof. The standard for the City's review of the Proposed Construction Plans, and for any revisions thereof submitted by the Developer pursuant to this Section 11 (b)(iii), shall be whether the Proposed Construction Plans ( or any such revision) are consistent with the Approved Design Development Plans and applicable

## Exhibit D

law, and the City shall not unreasonably withhold approval of the Proposed Construction Plans ( or any such revision) if they meet such standard.

Any disapproval of the Proposed Construction Plans ( or any such revision) shall state with particularity the reason for such disapproval. Any failure by the City to give such a notice of approval or disapproval within 30 calendar days from receipt shall be deemed approval.

Upon any disapproval by the City of the Proposed Construction Plans, the Developer shall have the right to require that the Architect revise the Proposed Construction Plans and then submit the revised plans to the City for review and approval or disapproval pursuant to this Section 11 (b )(iii). Such construction plans and specifications as are approved ( or deemed approved) by the City pursuant to this Section 11 (b )(iii) shall be the "Approved Construction Plans".

- (iv) City Initiated Revisions to Approved Construction Plans. The parties hereto anticipate that the Approved Construction Plans will provide for the construction of a fully functional fire substation adequate to provide the fire service capacity contemplated by this Section 11 (b ), and that there will be no need for the City to request any changes to the Approved Construction Plans. In the event, however, the City desires that the Construction Work (as defined in Section I I(c) below) be completed in a manner other than as provided for in the Approved Construction Plans, the City shall cause documentation to be prepared and delivered to the Developer (a "Proposed City Plan Change Request") describing in detail the change from the Approved Construction Plans desired by the City (a "Proposed City Plan Change")

The Developer shall, upon receipt of a given Proposed City Plan Change Request and working with the Contractor (as defined in Section I I(c) below), determine whether (x) the implementation of the Proposed City Plan Change will adversely affect the Construction Schedule (as defined in Section 1 I(c) below), and (y) the amount, if any, by which the cost of the Construction Work will be increased ( or decreased) if such Proposed City Plan Change is implemented.

If the Developer determines that such Proposed City Plan Change will adversely affect the Construction Schedule, then (i) the Developer shall give the City written notice of such determination, and (ii) such Proposed City Plan Change shall not be implemented unless the City agrees in writing that, notwithstanding any provision to the contrary in the Development Agreement (including this Exhibit B), in the event the implementation of such Proposed City Plan Change delays the completion of the Fire Substation beyond the date on which the Resort is completed, then the fact that the Fire Substation is not completed shall not be a basis for precluding the Resort from opening for business once all other requirements to such opening have been satisfied, so long as Developer has agreed in writing to provide the Fire Department a suitable location at the Resort site for temporary placement of a "brush truck" and appropriate sleeping accommodations for 3 firefighters until the Fire Substation is operational. Such temporary truck storage and firefighter accommodations shall not, without the written approval of the City's Fire Chief, extend for more than the number of days required for the Developer, using due diligence to cause the completion of such Proposed City Plan Change, to cause such Proposed City Plan Change to be implemented as requested by the City. If (x) the Developer determines that such Proposed City Plan Change will not adversely affect the Construction Schedule, or (y) the Developer determines that such Proposed City Plan Change will adversely affect the Construction Schedule, but the Parties provide to each other the written agreements to which the immediately preceding sentence refers, then the Developer shall give to the City written notice of the amount of the related increase (or decrease) in the cost of the Construction Work. If, within 5 business days after the City's receipt of the Developer's notice (or such shorter period of time as may be (i)

## Exhibit D

reasonably required to avoid a material delay in the Construction Work, and (ii) specified the Developer's notice), the City gives the Developer written confirmation that (x) the City will pay any such increased cost (accompanied by evidence reasonably acceptable to the Developer of the availability of City funds in an amount sufficient to timely pay such reasonable efforts to cause such Proposed City Plan Change to be implemented by a Construction Change Directive or Change Order ( each as defined in the form of the Construction Contract to which Section 1 I(c) below refers) under the Construction Contract. If, during such 5 business day (or shorter as provided above) period, the City gives the Developer written confirmation that such Proposed City Plan Change is not to be implemented, or if the City does not give any notice during such period, the Developer shall not implement such Proposed City Plan Change.

In the event that the Developer is to implement a given Proposed City Plan Change pursuant to this Section I I(b)(iv), such Proposed City Plan Change shall upon and following such implementation be part of and included in the Approved Construction Plans. increased cost), and (y) such Proposed City Plan Change is to be implemented, the Developer shall exercise commercially reasonable efforts to cause such Proposed City Plan Change to be implemented by a Construction Change Directive or Change Order ( each as defined in the form of the Construction Contract to which Section 1 I(c) below refers) under the Construction Contract. If, during such 5 business day (or shorter as provided above) period, the City gives the Developer written confirmation that such Proposed City Plan Change is not to be implemented, or if the City does not give any notice during such period, the Developer shall not implement such Proposed City Plan Change.

In the event that the Developer is to implement a given Proposed City Plan Change pursuant to this Section I I(b)(iv), such Proposed City Plan Change shall upon and following such implementation be part of and included in the Approved Construction Plans.

- (v) Developer Initiated Revisions to Approved Construction Plans. The parties hereto anticipate that the Approved Construction Plans will provide for the construction of a fully functional fire substation adequate to provide the fire service capacity contemplated by this Section 11 ( b ), and that there will be no need for the Developer to request any changes to the Approved Construction Plans. In the event, however, the Developer desires that the Construction Work be completed in a manner other than as provided for in the Approved Construction Plans, the Developer shall cause documentation to be prepared and delivered to the City (a "Proposed Developer Plan Change Request") describing in detail the change from the Approved Construction Plans desired by the Developer (a "Proposed Developer Plan Change") and the reasons therefor.

The Developer shall, prior to submitting a given Proposed Developer Plan Change Request to the City, work with the Contractor to determine whether (x) the implementation of the Proposed Developer Plan Change will adversely affect the Construction Schedule, and (y) the amount, if any, by which the cost of the Construction Work will be increased ( or decreased) if such Proposed Developer Plan Change is implemented.

Each Developer Plan Change Request submitted by the Developer to the City shall be accompanied by the Developer's statement (with supporting documentation reasonably acceptable to the City) of (x) any effect the Proposed Developer Plan Change will have on the Construction Schedule, and (y) the amount of the related increase (or decrease) in the cost of the Construction Work. The City shall, within 5 business days after the City's receipt of such Proposed Developer Plan Change Request, give the Developer written confirmation that (x) such Proposed Developer Plan Change is approved by the City and is to be implemented, or (y) such proposed Developer Plan Change Request is

## **Exhibit D**

disapproved by the City and shall not be implemented. The City shall not unreasonably disapprove any Proposed Developer Plan Change that does not adversely affect the Construction Schedule or increase the cost of the Construction Work to be paid by the City. Any failure by the City to give such confirmation during such 5 business day period shall be an approval of the related Proposed Developer Plan Change.

The Developer shall exercise commercially reasonable efforts to cause each Proposed Developer Plan Change approved by the City pursuant to this Section 11 (b)(v) to be implemented by a Construction Change Directive or Change Order under the Construction Contract. If, during such 5 business day period, the City gives the Developer written confirmation that such Proposed Developer Plan Change is not to be implemented, the Developer shall not implement such Proposed City Plan Change. Developer shall bear the cost of any Proposed Developer Plan Change that results in an increase in the cost of the Construction Work for which the City has given its written approval, including without limitation, any increase in Construction Work costs resulting from Developer's request for an expedited schedule to complete the Construction Work.

In the event that the Developer is to implement a given Proposed Developer Plan Change pursuant to this Section 11(b)(v), such Proposed Developer Plan Change shall upon and following such implementation be part of and included in the Approved Construction Plans.

The City's rights of review and approval or disapproval under this Section 11 (b) are independent of, and in addition to, any governmental powers of the City, and are to be exercised in the City's proprietary capacity as the future owner of the Fire Substation.

**EXHIBIT E**

**FORM OF PILOT AGREEMENT**

**Record Without Fee  
Pursuant to Government Code  
Sections 6103 and 27383**

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

City of Healdsburg  
401 Grove Street  
Healdsburg, California 95448  
Attention: Samantha Zutler, Esq.

*Space Reserved for Recorder's Use Only*

**AGREEMENT FOR PAYMENT IN-LIEU OF TAXES**

This AGREEMENT FOR PAYMENT IN-LIEU OF TAXES ("**Agreement**") dated as of \_\_\_\_\_, 20\_\_ ("**Effective Date**"), is made and entered into by and between KENDAL AT SONOMA, a California non-profit public benefit corporation ("**Owner**") and THE CITY OF HEALDSBURG, a California municipal corporation ("**City**"). City and Owner may each be referred to as a "**Party**", and collectively the "**Parties**".

**RECITALS**

A. Owner is the owner of a portion of that certain real property located at 16977 Healdsburg Avenue in the City of Healdsburg, Sonoma County, California, which approximately 16.07-acre portion is known as all of Assessor's Parcel Number 091-060-022 and a portion of Assessor's Parcel Number 091-060-019) (together the "**Property**"), which is more particularly described in Attachment A attached to this Agreement and incorporated by reference. The "**Property**" includes any additions, improvements, replacements, repairs or modifications, as approved by City, which occur before or after the execution of this Agreement.

B. In 2019, Owner's predecessor-in-interest submitted an application to the City for the development of a mixed-use project, which includes 221 senior independent living units (which include 20 very low-income restricted units for workforce and volunteers and 10 income restricted units for moderate-income senior households); approximately 30 assisted living units; approximately 24 memory care beds; and parking and other associated ancillary uses (the "**Senior Living Facility**").

C. Owner is a charitable organization that will develop, own, and operate the Senior Living Facility. It is anticipated that the Senior Living Facility and the Property will qualify for the "welfare exemption" from ad valorem property taxes provided in Article XIII, Sections 4(b) and 5 of the California Constitution and Rev. & Tax. Code §§214(a) and (f) and be exempt from ad valorem property taxes (the "**Welfare Exemption**").

D. On February 11, 2020, the City's Planning Commission approved Resolution No. \_\_\_\_\_ approving a Master Conditional Use Permit and density bonus for the Project, and it recommended the City Council approve a development agreement for the Project. On \_\_\_\_\_, the City Council adopted Ordinance No. \_\_\_\_\_ approving a Development Agreement that governs, in part, the development of the Senior Living Facility along with the other separately owned and operated components of the mixed-use project (collectively, the "Project Approvals"). The Project Approvals that pertain to the development of the Senior Living Facility shall be referred to as the "Senior Living Facility Project Approvals."

E. As material consideration for the long term assurances, vested rights, and other City obligations provided by the Development Agreement and as a material inducement to City to enter into the Development Agreement, the Owner has offered and agreed to provide certain public benefits to the City as specified in the Development Agreement. These public benefits include Owner's commitment to reimburse the City for lost property tax revenue in the event that the Senior Living Facility applies for and obtains the Welfare Exemption, plus the cost of additional police and fire services necessary to serve the Senior Living Facility as set forth in Section 5.8 of the Development Agreement.

F. Should Owner or any of its successors and assigns in interest obtain the Welfare Exemption or any other tax exemption for the Senior Living Facility or the Property, or any portion thereof, Owner or its successor in interest shall make an annual payment in lieu of property taxes to the City. Regardless of the Welfare Exemption, Owner or its successor in interest shall make an annual payment to the City for the cost of additional services demanded by the Senior Living Facility. Owner and City have agreed to execute and record this Agreement in order to bind Owner and its successors in interest to the in lieu payment obligations, as more particularly set forth in this Agreement.

G. The enforcement of the obligations set forth in this Agreement will ensure that the City will not suffer any loss of its share of property tax revenues that are used to deliver services to the Project, therefore benefitting the City, and Owner, and its successors in interest.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the Parties, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner on behalf of itself and its heirs, executors, successors, assigns and each successor in interest hereby covenants and agrees as follows:

#### **AGREEMENT**

1. The term ("Term") Term of this Agreement shall commence upon the Effective Date and shall extend for a period of ninety-nine years thereafter.

2. This Agreement shall be recorded in the Official Records of the County of Sonoma ("County") no later than thirty (30) days after issuance of the first building permit for the Senior Living Facility. Owner hereby represents, warrants and covenants that with the exception of easements of record, and liens of record as of the Effective Date, absent the written consent of City, this Agreement shall not be recorded behind or otherwise subordinated in priority to any

other lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property.

3. In the event Owner applies for and receives the Welfare Exemption or any other exemption from the payment of real or personal property taxes of any nature, for the Senior Living Facility or the Property, Owner shall be obligated to make an annual payment in lieu of taxes to City (the “**PILOT Payment**”) throughout the Term. If the Senior Living Facility or the Property fail to obtain or subsequently lose the Welfare Exemption or otherwise become subject to the payment of real or personal property taxes --- including if the State of California, or the County Tax Assessor, enacts or enforces another means of taxation or assessment that is not subject to the Welfare Exemption, or determines that the Senior Living Facility is only eligible for a partial Welfare Exemption --- the amount of any subsequent PILOT Payment shall be reduced by the amount of such increase in taxes or assessments actually paid.

4. The PILOT Payment shall equal Two Hundred Twenty Thousand One Hundred Sixty-Nine Dollars (\$220,169) (subject to any annual increases under the Index, as defined below). In addition, Owner shall be obligated to make an annual payment throughout the Term of One Hundred Fourteen Thousand One Hundred Forty Nine Dollars (\$114,149) (subject to any annual increases under the Index, as defined below) to reimburse the City for the cost of additional police and fire services necessary to serve the Senior Living Facility (the “**Reimbursement Payment**”). Collectively, the PILOT Payment, if any, plus the Reimbursement Payment shall be referred to as the “**In Lieu Payment**.”

5. The In Lieu Payment shall be phased in over a three year period as follows:

(a) The initial In Lieu Payment in the amount of Seventy Three Thousand Three Hundred Ninety Dollars (\$73,390) (one-third of the PILOT Payment) shall be due to City from the Owner, payable within thirty (30) days of the date that the Senior Living Facility obtains the Welfare Exemption. The due date of the initial In Lieu payment is hereinafter referred to as the “**Initial In Lieu Payment Date**.” If the City issues the first certificate of occupancy for the Senior Living Facility during the year that the Initial In Lieu Payment Date occurs, then the initial In Lieu Payment shall increase to One Hundred Eleven Thousand Four Hundred Thirty-Nine Dollars (\$111,439) (or one-third of the In Lieu Payment).

(b) On the first annual anniversary of the Initial In Lieu Payment Date, Owner shall make an In Lieu Payment in the amount of One Hundred Forty Six Thousand Seven Hundred Eighty Dollars (\$146,780) (two-thirds of the PILOT Payment) to the City; provided, however, that if the Senior Living Facility has received its first certificate of occupancy during or before the year that the In Lieu Payment due date occurs, the In Lieu Payment shall increase to Two Hundred Twenty-Two Thousand Eight Hundred Seventy-Eight Dollars (\$222,878) (or two-thirds of the In Lieu Payment).

(c) On the second annual anniversary of the Initial In Lieu Payment Date, and on each subsequent annual anniversary date of the Initial In Lieu Payment for the remainder of the term of this Agreement, Owner shall make an In Lieu Payment in the amount of Two Hundred Twenty Thousand One Hundred Sixty-Nine Dollars (\$220,169) (the entire PILOT Payment); provided, however, that if the Senior Living Facility has received its first certificate of

occupancy during or before the year that the In Lieu Payment due date occurs, the In Lieu Payment shall increase to Three Hundred Thirty-Four Thousand Three Hundred Eighteen Dollars (\$334,318).

(d) All In Lieu Payment figures in this Section 5 shall be subject to any annual increases under the Index, as defined below.

(e) Any In Lieu Payment not paid when due shall accrue interest until paid at the lesser of ten percent (10%) per annum or the highest rate allowed by applicable law.

6. Beginning April 1, 2021 and every April 1 annually thereafter, subsequent In Lieu Payments shall be increased each year by a percentage equal to the percent increase of the Consumer Price Index for All Urban Consumers (CPI-U San Francisco-Oakland-Hayward) (the “**Index**”), or an equivalent index if the Index is no longer available, calculated from March of the previous year to March of the current year. If the Index shows a decrease for the year, the In Lieu Payment will not change.

7. Owner hereby subjects its interest in the Property to the covenants and restrictions set forth in this Agreement. The Parties hereby declare their express intent that the covenants and restrictions set forth in this agreement shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the Owner and City, regardless of any sale, assignment, refinancing, conveyance or transfer of the Senior Living Facility or the Property, or any part thereof or interest therein, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by City. The Owner’s heirs, administrators, executors, successors in interest, transferees, and assigns including without limitation any purchaser, transferee or lessee of the Property (collectively, the “**Successor**”) shall be subject to all of the duties and obligations imposed under this Agreement for the full term of this Agreement. If the Property and this Agreement are assigned to and assumed by a Successor, wherever the term “Owner” is used in this Agreement, the term shall mean such Successor.

8. Each and every contract, deed, lease or other instrument affecting or conveying the Senior Living Facility or the Property or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, lease or other instrument. If any such contract, deed, lease or other instrument has been executed prior to the Effective Date, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound by its terms.

9. If, during the term of this Agreement, (i) the Senior Living Facility is physically unable to operate for a period of six (6) consecutive months following issuance by City of a certificate of occupancy for the Senior Living Facility due to casualty or Force Majeure (as defined below); or (ii) there is any regulatory or legal proceeding that results in an unfavorable judgment, order, decree, stipulation or injunction that prevents Owner from operating the Senior Living Facility, the following shall apply:

(a) The Owner may request a temporary reduction in In Lieu Payments due under this Agreement during any such period of inoperation by submitting such request to the City in writing. Upon receipt of such request, the City shall retain an economic consultant at Owner's expense to conduct a fiscal impact analysis of the event's effect on the City's costs of providing public services to the Senior Living Facility or the Property. Using its reasonable judgement based on the result of said fiscal impact analysis, City shall determine the amount, if any, that the In Lieu Payments should be reduced during any such period of inoperation and shall notify Owner of said determination in writing no later than 120 days after receipt of Owner's request for a reduction.

(b) For the purpose of this Agreement, "**Force Majeure**" shall mean any cause not within the reasonable control of Owner which prevents the occupancy of the Senior Living Facility, including, but not limited to, acts of God; winds; hurricanes; tornadoes; extreme weather; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; acts of public enemies; acts, failures to act or orders of any kind of any governmental authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse Owner from performing due to any governmental act, failure to act, or order, where it was reasonably within Owner's power to prevent such act, failure to act, or order.

10. Owner agrees for itself and for its Successors that in the event that a court of competent jurisdiction determines that the covenants in this Agreement do not run with the land, such covenants shall be enforced as equitable servitudes against the Property in favor of City. Without limiting the generality of the foregoing, the Parties hereby declare their understanding and intent that:

(a) The covenants and restrictions contained in this Agreement shall be construed as covenants running with the land pursuant to California Civil Code section 1468 and not as conditions which might result in forfeiture of title by Owner;

(b) The burden of the covenants and restrictions set forth in this Agreement touch and concern the Property in that the Owner's legal interest in the Property and all improvements thereon are rendered less valuable thereby; and

(c) The benefit of the covenants and restrictions set forth in this Agreement touch and concern the land by enhancing and increasing the enjoyment and use of the Property by the Senior Living Facility occupants.

11. All covenants and restrictions contained in this Agreement without regard to technical classification or designation shall be binding upon Owner and its Successors for the benefit of the City, and such covenants and restrictions shall run in favor of the City for the Term, without regard to whether the City is an owner of any land or interest therein to which such covenant and restrictions relate.

12. To the fullest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "**Indemnitees**") harmless

from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "Claims") arising directly or indirectly from, in whole or in part, as a result of, in connection with, or related to Owner's obligations under this Agreement. Owner's indemnity, defense and hold harmless obligations shall not extend to any claim arising from City's negligence or willful misconduct. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

13. Not later than the earlier to occur of (a) the issuance of the first certificate of occupancy by City for the Senior Living Facility or (b) thirty (30) days following the issuance of the Welfare Exemption, Owner shall establish an escrow account in favor of City ("Escrow Account") with a balance of no less than Six Hundred Sixty Eight Thousand Six Hundred Thirty Six Dollars (\$668,636), which equals twice the amount of the annual In Lieu Payment. The Escrow Account shall have priority over all liens, encumbrances or other interests in the Property, whether recorded or not. To the extent necessary, Owner will obtain subordination agreements from lenders or other interest holders to ensure the priority of City's access to the Escrow Account to be used for the purposes defined in this Agreement. The Escrow Account shall be governed by escrow instructions approved in writing by the City that comply with the requirements of Section 14 of this Agreement.

14. Failure by Owner or its Successors to perform its or their obligations hereunder shall constitute a default under this Agreement and a violation of the Senior Living Facility Project Approvals. In addition, a failure by Owner or its Successors to perform its or their In Lieu Payment obligations hereunder shall entitle City to any of the following remedies.

(a) City may institute an administrative or legal action to cure, correct or remedy such default, to recover damages for such default or to obtain any other remedy whether at law or in equity, consistent with the purpose of this Agreement and the Senior Living Facility Project Approvals. City may withdraw funds from the Escrow Account to pay for costs associated with enforcing this Agreement under this Section 14(a).

(b) City may attach a lien to the Property for any In Lieu Payments that are due and payable to the City but have been unpaid for more than 60 days, plus any interest that has accrued pursuant to Section 5(c) of this Agreement.

(c) City may withdraw funds from the Escrow Account to cover the balance due for any In Lieu Payments that are due and payable to the City but have been unpaid for more than 60 days, plus any interest that has accrued pursuant to Section 5(c) of this Agreement.

(d) City may undertake administrative proceedings to form a Community Facilities District ("CFD") pursuant to Government Code Sections 53321, et. seq. or any applicable successor provisions, to enforce the obligations described in this Agreement by creating annual assessments on the Property equal to the In Lieu Payment. If City elects to undertake proceedings to form a CFD, Owner shall, on its own behalf and on behalf of its Successors, consent, and shall not raise objection, to such formation.

(i) The boundaries of a CFD that is formed pursuant to this Agreement shall be limited to the Property.

(ii) As part of any proceedings to form a CFD, City shall be entitled to include in any CFD assessment the cost of formation and administration of such a CFD. City will further be entitled to use any funds in the Escrow Account to pay for any costs associated with forming the CFD.

(iii) If the City elects to form a CFD, any funds remaining in the Escrow Account after formation of the CFD and payment of City costs associated therewith shall be released to Owner and the Escrow Account shall be terminated. If City elects to and does form a CFD pursuant to this section 14, this Agreement shall be terminated upon formation of such CFD and shall have no further force or effect.

15. At any point starting 24 months after issuance of the first certificate of occupancy for the Senior Living Facility, regardless of any default by the Owner, the City may undertake administrative proceedings to form a CFD to enforce the obligations described in this Agreement by creating annual assessments on the Property equal to the In Lieu Payment. Owner shall, on its own behalf and on behalf of its Successors, consent, and shall not raise objection, to such formation. Further, if Owner is not in default under this Agreement, it may submit a written request to the City for the formation of a CFD at any time following the establishment of the Escrow Account, and City shall undertake administrative proceedings to form a CFD. If City forms a CFD pursuant to this Section 15, City will be entitled to use any funds in the Escrow Account to pay for any costs associated with forming the CFD, and any funds remaining in the Escrow Account after payment of City costs associated therewith shall be released to Owner. Upon formation of a CFD pursuant to this Section 15, the Escrow Account shall be terminated, and this Agreement shall be terminated upon formation of such CFD and shall have no further force or effect.

16. Any notice to be given or other document to be delivered by either Party to the other under this Agreement shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight courier, addressed to the party for whom intended, set forth in this Section. Any Party may from time to time, by written notice to the other, designate a different address which shall be substituted for the one specified below.

If to the City:                      City of Healdsburg  
   401 Grove Street  
   Healdsburg, CA 95448  
   Attention: City Manager

with a copy to:                      City of Healdsburg  
   101 Howard Street, Suite 400  
   San Francisco, CA 94123  
   Attention: City Attorney

If to Owner: Kendal at Sonoma  
300 Page Street  
San Francisco, CA 94102  
Attention: Susan O'Connell

with a copy to: Foley and Lardner  
555 California St., Suite 1700  
San Francisco, CA 94104  
Attention: Mark Schieble, Esq.

Clement Fitzpatrick & Kenworthy  
3333 Mendocino Ave., Suite 200  
Santa Rosa, CA 95403  
Attention: Steve Butler, Esq.

17. This Agreement, including the Recitals and all Attachments, together with the Senior Living Facility Project Approvals, contains the entire agreement between the Parties with respect to this Agreement's subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. In the event of any express conflict between this Agreement and any of the Senior Living Facility Project Approvals, the provisions of this Agreement shall control.

18. No alteration, modification, or termination of this Agreement shall be valid unless made in writing and signed by the Parties and recorded in the Official Records of the County.

19. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

20. This Agreement shall be deemed to be jointly prepared by the Parties, and any ambiguities or uncertainties herein shall not be construed for or against either of the Parties. The words "including," "included," "include" and words of similar import shall be not be interpreted as words of exclusion but shall instead be interpreted as though followed by the words "but not limited to" or "without limitation."

21. The Parties represent and warrant that each has the full right, power and authority to carry out its obligations under this Agreement. The individuals executing this Agreement on behalf of each Party represent and warrant that they have full power and authority to execute and deliver this Agreement on behalf of such party.

22. This Agreement shall not be deemed to create any third-party beneficiary rights for any person or entity.

23. No member, official, employee or agent of City shall be personally liable to Owner or any Successor, in the event of any default or breach by City, or for any amount of money which may become due to Owner or its Successor or for any obligation of City under this Agreement.

24. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Sonoma County, California or in the Federal District Court for the Northern District of California.

25. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

26. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

27. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

***[Signature Page Follows.]***

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**CITY:**

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

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

David Mickaelian, City Manager

ATTEST:

\_\_\_\_\_  
Raina Allan, Acting City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Samantha W. Zutler, City Attorney

**OWNER:**

**KENDAL AT SONOMA**  
California non-profit public benefit corporation

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

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

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