THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement ("**Third Amendment**") is entered into this ___ day of _____, 2021, by and between the City of Healdsburg, a California municipal corporation ("**City**"), and Sonoma Luxury Resort, LLC, a Delaware limited liability company ("**Developer**"). City and Developer are referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. On April 11, 2011, under the authority of Ordinance No. 1107, the City and Developer entered into a Development Agreement; a Memorandum of Development Agreement was recorded in the Official Records of Sonoma County ("**Official Records**") on April 27, 2011 as Instrument No. 2011037227 ("**Development Agreement**"). The Development Agreement governs the development of approximately 258 acres of real property, more particularly described in the legal description attached hereto as Exhibit "A" and incorporated herein (the "**Property**"), with a 130-room luxury resort (the "**Resort**"), 70 single family residences (the "**Residences**"), dedication of land to the City for development of up to 150 affordable housing units (the "**Affordable Housing**"), dedication of land to the City for development of a public park (the "**Public Park**"), and construction and dedication of land and improvements to the City of Passalacqua Drive and Parkland Farms Blvd. (the "**Public Roads and Related Utilities**"), public trails (the "**Public Trails**"), a fire substation (the "**Fire Substation**"), and a pump station (the "**Pump Station**")(collectively, the "**Project**").

B. In addition to the Development Agreement, the City has approved of the following entitlements governing the development of the Project on the Property:

1. On January 31, 2011, pursuant to Resolution No. 18-2011, the City conditionally approved the Saggio Hills Tentative Subdivision Map (TM06-04) ("**Tentative Map**");

2. On April 5, 2016, an Insubstantial Amendment To The Development Agreement Between The City Of Healdsburg And Sonoma Luxury Resort, LLC, Dated April 11, 2011 ("**First Insubstantial Amendment**");

3. On April 4, 2016, pursuant to Resolution No. 19-2016, the first final map which was filed for record in the Official Records of Sonoma County on May 23, 2018, in Book 795 of Maps at Pages 31-40, Document No. 2018-037508 ("**FM-1**"). In consideration of the approval and recording of FM-1, on April 20, 2018, City and Developer entered into an Agreement For Subdivision Improvements Saggio Hills First Final Map, which was filed for record in the Official Records of Sonoma County on April 25, 2018, as Instrument No. 2018-028277 ("**SIA-FM-1**");

4. On June 18, 2018, pursuant to Resolution No. 61-2018, the second final map which was filed for record in the Official Records of Sonoma County on September 14, 2018, in Book 798 of Maps at Pages 29-35, Document No. 2018-065059 ("**FM-2**"). In consideration of the approval and recording of FM-2, on July 23, 2018, City and Developer entered into an Agreement For Subdivision Improvements Saggio Hills Second Final Map, which was filed for record in the Official Records of Sonoma County on September 14, 2018, as Instrument No. 2018-065060 ("**SIA-FM-2**");

5. On June 18, 2018, pursuant to Resolution 61-2018, the third final map which was filed for record in the Official Records of Sonoma County on September 14, 2018, in Book 798 of Maps at Pages 36-43, Document No. 2018-065061 ("**FM-3**"). In consideration of the approval and recording of FM-3, on July 23, 2018, City and Developer entered into an Agreement For Subdivision Improvements Saggio Hills Third Final Map, which was filed for record in the Official Records of Sonoma County on September 14, 2018, as Instrument No. 2018-065062 ("**SIA-FM-3**").

6. On May 30, 2019, an Insubstantial Amendment To The Development Agreement Between The City of Healdsburg and Sonoma Luxury Resort, LLC, Dated April 11, 2011 ("**Second Insubstantial Amendment"**);

C. **Public Trails:** The Public Trails, as defined in the Development Agreement, consist of a 4' wide public hiking trail on the north side of Passalacqua Road across Parcel 1 (Resort Parcel) and Parcel 2 (Residential Parcel) and a 10' wide public pedestrian and bicycle trail that extends from Healdsburg Avenue, through Parcel 8 (Public Park Parcel), Parcel 7 (Resort Parcel), and Parcels 5 and 6 (Affordable Housing Parcels). In connection with the Public Trails, Section 6 (b) of Exhibit B to the Development Agreement provides that City agrees to accept an offer of dedication of the Public Trails "at such time as (i) the City approves the First Final Map (if such Public Trails are then completed), or (ii) such Public Trails are completed in accordance with the Subdivision Improvement Agreement for the First Final Map (if such Public Trails are not completed when such final map is approved)." While an easement for the Public Trail on the north side of Passalacqua Road across Parcels 1 and 2 was offered for dedication to the City on FM-1, the public hiking trail has not yet been constructed. The public pedestrian and bicycle trail through the Public Park (Parcel 8), Resort (Parcel 7), and Affordable Housing (Parcels 5 and 6) sites has not yet been constructed. In accordance with the Second Insubstantial Amendment, the timing of construction of the Public Trails was extended in an effort to coordinate with the City's master planning efforts for the Public Park and Affordable Housing parcels.

D. **Affordable Housing:** In connection with the Affordable Housing, Section 7 of Exhibit B to the Development Agreement obligates Developer to mass grade, complete wetlands mitigation, and install infrastructure (i.e. 12" water main, 8" sewer main, joint trench improvements for gas, electricity, and conduit for communications and cable television) within the Public Roads and Related Utilities to the boundary of each of Parcel 5 and Parcel 6 ("**Affordable Housing**

Land") following City approval of mass grading plans. Further, pursuant to Section 9 of Exhibit B to the Development Agreement, Developer is obligated to (i) reimburse City (or at City's request pay directly) an amount not to exceed $50,000 for a site development analysis ("**Site Analysis**"), once City "makes arrangements for" said Site Analysis, and (ii) pay to City $1,000,000 to "facilitate and expedite the City's analysis of, planning for and provision of the affordable housing" (the "**Affordable Housing Payment**"). The first phase of development has commenced, and Developer deposited the Affordable Housing Payment into an escrow account with Stewart Title Guaranty Company ("**Stewart Title**"), in accordance with joint escrow instructions between Developer and City, dated May 17, 2019, which sum may be withdrawn by City on demand. The City initiated a Site Analysis for the Affordable Housing in February 2019, the cost of which has been reimbursed to the City by Developer. Developer has completed wetlands mitigation and is in the five-year monitoring phase.

Section 7 of Exhibit B to the Development Agreement also obligates Developer to deliver to the Title Company, to be held in escrow pursuant to escrow instructions reasonably satisfactory to the City, Developer and Title Company, an executed and acknowledged grant deed by which Developer conveys title to Parcels 5 and 6 of FM-1 (the "**Affordable Housing Land Deed**") to City. Developer and City have executed joint escrow instructions dated May 17, 2019, and Developer executed, acknowledged and delivered the Affordable Housing Land Deed into escrow with Stewart Title as required by the Development Agreement. Prior to conveyance of the Affordable Housing Land to City, Developer is obligated to complete the mass grading of, and construction of Public Roads and Utilities needed to serve, the Affordable Housing Land. In accordance with the Second Insubstantial Amendment, completion of this work is pending additional direction from City regarding the mass grading and road alignment on the Affordable Housing Land.

E. **Public Park:** In connection with the Public Park, Section 10 (a) of Exhibit B to the Development Agreement obligates Developer to complete the mass grading of and the infrastructure for Parcel 8 ("**Public Park Land**") prior to conveyance of the Public Park Land to City. Additionally, Developer is obligated to complete wetlands mitigation partially on the Public Park Land. Further, City's selected park design firm is to work cooperatively with Developer with respect to matters affecting the mass grading. Section 12(b) of Exhibit B to the Development Agreement obligates Developer, for no more than $3,000,000, for the cost of design and construction of the Public Park, and to provide City with funds equal to the amount of the contract between the City and its park designer within 10 days of notice from City to Developer that City is entering into said contract. City has selected a park design firm and work is underway to complete a conceptual design for the Public Park, thus the final mass grading plans for the Public Park (Parcel 8) have not been completed.

Section 10 (a) of Exhibit B to the Development Agreement also obligates Developer to deliver to the Title Company, to be held in escrow pursuant to escrow instructions reasonably satisfactory to the City, Developer and Title Company, an executed and acknowledged grant deed

by which Developer conveys title to Parcel 8 of FM-1 (the "**Public Park Land Deed**") to City. Developer and City have executed joint escrow instructions dated May 17, 2019, and Developer executed, acknowledged and delivered the Public Park Land Deed into escrow with Stewart Title as required by the Development Agreement. As required by the Development Agreement, prior to conveyance of the Public Park Land to City, Developer is obligated to complete the mass grading of and the infrastructure for the Public Park Land. The mass grading has not been completed pending additional direction from City regarding the conceptual design for the Public Park. Further, as also required prior to conveyance of the Public Park Land to City, City has not awarded a contract for construction of the Public Park. Also, as noted in Recital G below, improvements constructed by Developer on Passalacqua Drive which serve the Public Park Land are incomplete and not in accordance with the Tentative Map.

F. **Fire Substation:** In connection with the Fire Substation, Section 11 (a) of Exhibit B to the Development Agreement obligates Developer to deliver to the Title Company, to be held in escrow pursuant to escrow instructions reasonably satisfactory to the City, Developer and Title Company (the "**Fire Substation Land Title Instructions**"), an executed and acknowledged grant deed (the "**Fire Substation Land Deed**") by which Developer conveys title to Parcel 10 of FM-1 (the "**Fire Substation Land**") to City. The Second Insubstantial Amendment deferred the timing of the Developer's obligation to submit these documents into escrow to "within ten (10) business days following receipt of written instructions from the City to do so." Prior to conveyance of the Fire Substation Land to City, Developer is obligated to complete the construction of the Fire Substation. Developer has completed the design of the Fire Substation, as required by the Development Agreement, but construction of the Fire Substation has not commenced nor been completed. Developer has not been able to commence and complete the construction of the Fire Substation as provided by the Development Agreement, as City has worked to identify a source of funding for construction costs which exceed Developer's $1.75 million obligation. Accordingly, mass grading of the Fire Substation Land also has not commenced.

G. **Public Roads and Related Utilities:** In connection with the Public Roads and Related Utilities, pursuant to Section 16 (a) of Exhibit B to the Development Agreement, Developer is obligated to design and construct the Public Roads and Related Utilities as described and depicted in Exhibit B-15 to the Development Agreement. Further, title to the Public Roads and Related Utilities is to be dedicated to the City. FM-1 created Parcel 11 to encompass the public right of way known as Passalacqua Drive and Parkland Farms Blvd ("**Public Road Parcel**"). Developer executed, acknowledged and recorded an Irrevocable Offer Of Dedication For Public Roads in favor of the City related to Parcel 11, dated May 15, 2019, and recorded June 4, 2019, in the Official Records at Instrument No. 2019037260 ("**Offer of Dedication**"). SIA-FM-1 provides plans and bonding for the construction of Passalacqua Drive and Related Utilities, however, (i) the improvements constructed by Developer on Passalacqua Drive are incomplete and not in accordance with the Tentative Map, and (ii) there are no such plans or bonding provided for Parkland Farms Blvd and Related Utilities as required by the Development Agreement.

H. On May 30, 2019, a Second Insubstantial Amendment To Development Agreement ("**Second Insubstantial Amendment**"), was executed by and between the City and Developer, and a Memorandum of Second Insubstantial Amendment to Development Agreement, of the same date, was recorded in the Official Records on August 5, 2019, at Instrument No. 2019053988. The intent of the Second Insubstantial Amendment was to address outstanding obligations outlined in Recitals C, D, E, F and G above and work to coordinate the timing of Developer's obligation to commence and complete (i) construction of the Public Trails, (ii) the mass grading of and infrastructure improvements to the Affordable Housing Land, (iii) the mass grading of and infrastructure improvements to the Public Park Land, (iv) construction of the remaining Public Roads & Related Utilities on Parcel 11 (also known as Passalacqua Drive and Parkland Farms Boulevard) (collectively, the "**Public Improvements**"), with the timing of the City's completion and adoption of a master plan for the Public Park Land and a development plan for the Affordable Housing Land. Developer acknowledged that its obligation to commence and complete the construction of the Public Improvements is not dependent upon or conditioned upon the City's completion and adoption of a master plan for the Public Park Land or a development plan for the Affordable Housing Land. Therefore, the Second Insubstantial Amendment confirmed that Developer must commence activities related to the construction of the Public Improvements and complete the Public Improvements no later than expiration of the Development Agreement. Further, with respect to the dedication of the Fire Substation Land, it was acknowledged that the City has approved FM-1 but was still working through the design of the Fire Substation; accordingly, Developer is obligated to prepare, execute and submit the Fire Substation Land Deed and Fire Substation Land Title Instructions into escrow within ten (10) business days following receipt of written instructions from the City do so.

I. Subsequent to the execution of the Second Insubstantial Amendment, the purpose of which was to also accommodate the City's need for additional time to prepare for the affordable housing and park projects, City staff and Developer have continued to discuss refinements to the timing and scope of their respective obligations under the Development Agreement, as amended, and desire to modify their respective obligations related to the Public Trails, Affordable Housing, Public Park, Fire Substation, and Public Roads and Related Utilities as more particularly provided in this Third Amendment. Unless specifically stated herein, this Third Amendment does not, nor is it intended to, impose new or additional obligations on the Parties beyond that provided for in the Development Agreement.

Now, therefore, the City and Developer, for valuable consideration the receipt of which is hereby acknowledged, agree as follows:

1. Section 6 (b) of Exhibit B to the Development Agreement is hereby amended in its entirety to read as follows:

6. Trails.

(b) Public Trails. Except as may otherwise be provided herein, the Developer shall, at

the Developer's sole cost and expense, provide for the design and construction of public hiking trail (the "**Northwest Trail**") and a public pedestrian and bicycle trail (the "**Multi-Use Trail**") (collectively, the **"Public Trails")** in the approximate locations for Public Trails shown on the Public and Private Trail Map attached hereto as Exhibit B-3. The exact locations of the Public Trails shall be (i) generally consistent with the approximate locations shown on Exhibit B-3 attached hereto, (ii) determined based on consideration of topography, drainage, existing vegetation and other physical constraints, and (iii) shown in the final plans and specifications therefor as approved by the City. The Public Trails shall be designed and constructed in accordance with the Area Plan and the standards for public trails set forth on Exhibit B-4 attached hereto, and shall be posted with signs stating that the Public Trails will be open to public pedestrian use subject to the City's rules and regulations relating to public trails. The final designs for the Public Trails shall be (i) generally consistent with the conceptual standards shown on Exhibit B-4 attached hereto, (ii) based on consideration of topography, drainage, existing vegetation and other physical constraints, and (iii) shown in the final plans and specifications for the Public Trails as approved by the City. The Developer shall cause the Northwest Trail to be completed and open for use not later than the opening of the Public Park, and with the prior consent of City may intermittently close portion(s) of the Northwest Trail during construction activities on Parcel 1 (Resort) or Parcel 2 (Residences) if, and for so long as, public safety concerns warrant closure as determined by City.

The Developer has submitted to the City, and the City has approved a bulk parcel final map (the **"First Final Map")** establishing separate legal parcels for Parcels 1 (Resort Parcel), 2 (Residential Parcel), 3 (Residential Parcel), 4 (Residential Parcel), 5 (Affordable Housing Parcel), 6 (Affordable Housing Parcel), 7 (Resort Parcel), 8 (Public Park Parcel), 9 (Pump Station Parcel), 10 (Fire Station Parcel), and 11 (Public Road Parcel). The First Final Map delineates the Northwest Trail alignment that is to be located on Parcel 1 (Resort Parcel) and Parcel 2 (Residential Parcel), and includes both an offer to dedicate to the City an easement for the use of the Northwest Trail shown thereon for public trail use (the "**Northwest Trail Easement**"), and an acceptance of such offer of dedication that complies with applicable law.

The Parties acknowledge that the location of the Northwest Trail Easement as delineated on the First Final Map needs to be relocated. Accordingly, as authorized by Streets and Highways Code section 8333 (c), City agrees to summarily vacate the Northwest Trail Easement and adopt and record a resolution of vacation in accordance with sections 8335 and 8336 ("**Northwest Trail Easement Vacation**"), and concurrently therewith Developer shall grant to City an amended Northwest Trail Easement (the "**Amended Northwest Trail Easement**"). Concurrently with the execution of the Third Amendment, the City and Developer shall execute and enter into the Public Improvement Agreement For Northwest Trail, in the form attached hereto as Exhibit B-28, which shall govern the Northwest Trail Easement Vacation process, the preparation, execution and recording of the Amended Northwest Trail Easement, in the form attached hereto as Exhibit B-29, and the design, commencement and completion of construction, bonding and acceptance of the Northwest Trail on Parcel 1 (Resort Parcel) and Parcel 2 (Residential Parcel).

The City shall, subject to Developer's Multi-Use Trail Contribution outlined herein, undertake the design and construction of the Multi-Use Trail (as a component of the design of the

Public Park), and provide Developer the opportunity to review and comment on said plans as provided in section 10 (b). Concurrent with the conveyance of the Public Park Land to City as provided in Section 10 (a), Developer shall execute, acknowledge and deliver to City for recording in the official records of Sonoma County, a Multi-Use Trail Easement across Parcel 7 (Resort Parcel), in the form attached hereto as Exhibit B-30.

Further, on or before April 15, 2021, City shall (i) prepare a detailed cost estimate for the preparation of the design and plans and specifications for the construction of the Multi-Use Trail ("**Trail Design Cost**") and submit the Trail Design Cost estimate and all supporting documentation to Developer for its review and approval, and (ii) prepare an detailed engineer's estimate of the cost of construction of the Multi-Use Trail, which shall include the cost of any creek restoration and/or mitigation work necessitated by creek crossings ("**Trail Construction Cost**"), and submit the Trail Construction Cost and all supporting documentation to the Developer for its review and approval. Within thirty (30) calendar days after delivery of the Trail Design Cost and Trail Construction Cost to Developer as provided herein, the Parties shall meet and confer in good faith to establish and agree upon the Trail Design Cost and Trail Construction Cost (collectively, the "**Multi-Use Trail Contribution**").

Developer shall pay to City the agreed upon Multi-Use Trail Contribution concurrently with the conveyance of the Public Park Land as provided in Section 10 (a). If the Parties have not reached agreement on the Multi-Use Trail Contribution within sixty (60) calendar days after delivery by City of the estimated Multi-Use Trail Contribution to Developer, then the matter shall be referred to and settled by binding arbitration in front of a single arbitrator administered by the American Arbitration Association under its Construction Industry Arbitration Rules and this Agreement. The award of the arbitrator shall be final as long as the award is rendered in conformity with, and applies, California statutory and decisional law and the terms of this Agreement and may be entered in any court having jurisdiction. The arbitrator shall be a retired superior or appellate court judge and shall have at least 10 years of experience in the construction industry. Hearings shall take place in the County of Sonoma, or such other location as agreed to by the arbitrator and the Parties, and at the time and place selected by the arbitrator; however, the arbitration shall commence no later than sixty (60) calendar days following referral of the matter to binding arbitration and the arbitrator shall render a decision within five (5) calendar days of commencement of the hearing. The arbitrator's compensation and other arbitration expenses shall be divided equally among the Parties and the arbitrator shall have no jurisdiction or authority to award otherwise. The Parties shall be solely responsible for their own attorney fees, costs and expenses, including expert witnesses, actually incurred in connection with any dispute arising out of this Agreement and the arbitrator shall have no jurisdiction or authority to award otherwise. Developer shall pay to City the Multi-Use Trail Contribution as determined by the arbitrator within thirty (30) calendar days following the date of the arbitrator's decision.

Developer acknowledges that its obligation herein for the Multi-Use Trail Contribution is separate and apart from its Developer Public Park Contribution towards costs of design and construction of the Public Park covered by Section 12 (b).

From and after the date on which all or a portion of the Public Trails are completed, and accepted and opened for public use by the City, but subject to the Developer's obligation as stated in Section 15 below to reimburse the City for certain Public Trail maintenance expenses, the City shall maintain and repair the Public Trails (or cause the Public Trails to be maintained and repaired by a third party selected by the City). The City shall cause any such maintenance and repair to be performed in accordance with the City's normal maintenance and repair policies and procedures and only during such hours and in such manner as complies with the City's then applicable noise ordinances for areas zoned for single-family use. Except in the case of an emergency or other unusual circumstance that precludes giving such notice, the City shall give at least twenty-four (24) hours' oral notice of such maintenance or repair to the Northwest Trail to such representative of the Resort having a telephone number in Sonoma County as may from time-to-time be designated in writing by the owner or operator of the Resort to the City. The Developer and the City agree that the City shall not open the Northwest Trail for public use until part or all of the Public Park Land is opened for public use and provides parking for members of the public thereon, even if the Northwest Trail is completed by the Developer prior to the opening of part or all of the Public Park Land for public use.

2. Section 7 of Exhibit B to the Development Agreement is hereby amended in its entirety to read as follows:

7. Affordable Housing Land Grading, Infrastructure and Conveyance. Developer has submitted conceptual mass grading plans for the Affordable Housing Land attached hereto as Exhibit B-5. On or before March 1, 2021, Developer shall submit to the City modified mass grading plans for the Affordable Housing Land amended to reflect the modified roadway alignment of Parkland Farms Boulevard and proposed improvements to the Affordable Housing Land, and City shall approve said mass grading plans on or before March 31, 2021. On or before April 15, 2021, City shall prepare a detailed engineer's estimate for the mass grading of the Affordable Housing Land, as depicted in Exhibit B-5 and modified as outlined above, and which shall include the cost of any creek restoration and/or mitigation work necessitated by the mass grading ("**Affordable Housing Mass Grading Contribution**"), and submit the estimated Affordable Housing Mass Grading Contribution and all supporting documentation to Developer for its review and approval. Within thirty (30) calendar days after delivery of the estimated Affordable Housing Mass Grading Contribution to Developer as provided herein, the Parties shall meet and confer in good faith to establish and agree upon the Affordable Housing Mass Grading Contribution.

Developer shall pay to City the agreed upon Affordable Housing Mass Grading Contribution concurrently with the conveyance of the Affordable Housing Land as provided in this Section 7. If the Parties have not reached agreement on the Affordable Housing Mass Grading Contribution within sixty (60) calendar days after delivery by City of the estimated Affordable Housing Mass Grading Contribution to Developer, then the matter shall be referred to and settled by binding arbitration in front of a single arbitrator administered by the American Arbitration Association under its Construction Industry Arbitration Rules and this Agreement. The award of the

arbitrator shall be final as long as the award is rendered in conformity with, and applies, California statutory and decisional law and the terms of this Agreement and may be entered in any court having jurisdiction. The arbitrator shall be a retired superior or appellate court judge and shall have at least 10 years of experience in the construction industry. Hearings shall take place in the County of Sonoma, or such other location as agreed to by the arbitrator and the Parties, and at the time and place selected by the arbitrator; however, the arbitration shall commence no later than sixty (60) calendar days following referral of the matter to binding arbitration and the arbitrator shall render a decision within five (5) calendar days of commencement of the hearing. The arbitrator's compensation and other arbitration expenses shall be divided equally among the Parties and the arbitrator shall have no jurisdiction or authority to award otherwise. The Parties shall be solely responsible for their own attorney fees, costs and expenses, including expert witnesses, actually incurred in connection with any dispute arising out of this Agreement and the arbitrator shall have no jurisdiction or authority to award otherwise. Developer shall pay to City the Affordable Housing Mass Grading Contribution as determined by the arbitrator within thirty (30) calendar days following the date of the arbitrator's decision.

Concurrent with the commencement of the installation of improvements pursuant to the terms of the Public Improvement Agreement For Public Roads And Related Utilities, in the form attached as Exhibit B-35, Developer shall, at Developer's sole cost and expense (i) commence installation to or at the boundary of each of Parcel 5 and Parcel 6 (in the public right-of-way to be constructed along such boundaries) a twelve inch (12") water main, an eight inch (8") sewer main, and joint trench improvements for gas, electricity, and conduit for communications and cable television services, all in accordance with City Public Works Department and Electric Department standards applicable as of the date of the Public Improvement Agreement For Public Roads And Related Utilities; (ii) complete the grading and removal of existing wetlands on the Affordable Housing Land and Public Road Parcel identified as Areas 10 and 11 in the Wetlands Summary, attached hereto as Exhibit B-39; and (iii) complete the Wetlands Mitigation monitoring (which includes mitigation of existing wetlands on the Affordable Housing Land). The Developer shall, prior to the commencement of the work described in the immediately preceding sentence, provide to the City, in a form and amount reasonably acceptable to the City, a bond (or other security reasonably acceptable to the City) securing the Developer's completion of such work and naming the City as obligee. The parties hereto acknowledge and agree that: (i) the Wetlands Mitigation for the Affordable Housing Land has been installed and is in the monitoring phase and any existing wetlands on the Affordable Housing Land can be removed; (ii) that the established replacement wetlands by Developer have completed one growing season to "grow-in" and the required monitoring has begun; and (iii) the mass grading of the portion of the Affordable Housing Land can commence since the replacement wetlands have been installed, allowing for the removal of any existing wetlands on the Affordable Housing Land.

The Developer, shall, within 20 days after the recording of the First Final Map and at the Developer's sole cost and expense, obtain from the Title Company and provide to the City a title report in favor of the City relating to the Affordable Housing Land. Such title report shall show title to the Affordable Housing Land in the Developer, with the Affordable Housing Land not being subject to any monetary encumbrance that cannot be satisfied and discharged by the payment of

money, or any easement, restriction, condition or covenant that would preclude the use of the Affordable Housing Land for the purposes described in and contemplated by the Development Agreement.

The City shall cause such title report to be, in the City's reasonable discretion, reviewed and approved or disapproved, and a written notice of approval or disapproval to be given to the Developer within 15 business days after the City's receipt of such title report. Any notice of disapproval shall state the reasons for the City's disapproval. Any failure by the City to give written notice of approval or disapproval shall be deemed to be a notice of approval.

If the City disapproves any title report submitted to the City pursuant to this Section 7, the Developer shall have the right to either (x) take action to resolve the City's objections regarding title to the Affordable Housing Land and then submit a revised title report to the City for review and approval pursuant to this Section 7, or (y) submit the issue of the reasonability of the City's disapproval to a mutually acceptable local title officer for review and a recommendation regarding the City's disapproval of said report.

On May 17, 2019, the Developer delivered to the Title Company joint escrow instructions reasonably satisfactory to the City, the Title Company and the Developer (the **"Affordable Housing Land Title Instructions"),** and a deed (the **"Affordable Housing Land Deed")** in the form attached hereto as Exhibit B-6, executed and acknowledged by the Developer, by which the Developer conveys title to the Affordable Housing Land to the City (subject only to easements, restrictions, covenants and conditions permitted by this Section 7).

The Developer has submitted to the City, and City has approved a final map (the **"Third Final Map")** for Parcel 3 of the First Final Map, thereby creating the residential lots and related common areas and private roadway parcels shown thereon. Concurrent with the execution and recording of the Third Amendment, Developer and City shall amend and execute the Affordable Housing Land Title Instructions, in the form attached hereto as Exhibit B-31, to provide that the Affordable Housing Land Deed, the legal description of which shall be amended to conform to the Lot Line Adjustment referred to in Section 16 (a), shall be delivered and released to the City upon the satisfaction of several conditions, including the Title Company's receipt of a statement, signed by the City, stating that the Developer has completed, the replacement wetlands described above (including the one growing season "grow-in").

The Developer shall, at its sole cost and expense, cause the Title Company to deliver to the City when the Affordable Housing Land Deed is delivered and released to the City an owner's title insurance policy in the amount of $7,150,000.00, issued by the Title Company, subject only to (x) the exceptions listed in the title report approved by the City pursuant to this Section 7; (y) any easement, restriction, condition or covenant recorded after the Effective Date with the prior consent of the City (which consent shall not be unreasonably withheld); and (z) the restrictions set forth in the Affordable Housing Land Deed.

3. Section 10 of Exhibit B to the Development Agreement is hereby amended in its

entirety to read as follows:

10. Public Park Land Grading and Conveyance and Development of Public Park.

(a) Mass Grading and Conveyance. The City has hired a firm to complete the conceptual design of the Public Park ("Park Design Firm"). The City shall cause its Park Design Firm to work cooperatively with Developer and Developer's civil engineer in an effort to achieve Developer's goals for (i) "balanced" mass grading on the Public Park Land site, (ii) Developer's cost estimate for mass grading of said site, and (iii) the Project site entryway aesthetics. The Parties acknowledge and agree that it is in the best interest of the Project and the development of the Public Park Land for the mass grading on the Public Park Land to be coordinated and consistent with the design of the Public Park Land improvements. At the written request of the City, the Developer shall consider in good faith any modification to the conceptual mass grading plans attached hereto as Exhibit B-7 proposed by the City in connection with such cooperative efforts; provided, however, that the Developer shall not be required to consider any proposed modification that will (i) require the placement of more or less off-site materials on the Public Park Land than is contemplated by the conceptual mass grading plans attached hereto as Exhibit B-7 (the City hereby acknowledging that such mass grading plans provide for "balanced" mass grading work for the Project that does not require either the import or the export of material to or from the Project site). No such modification shall have any force or effect until such time, if any, as the Developer and the City agree in writing that such modification is to take the place of and supersede the conceptual mass grading plans attached hereto as Exhibit B-7.

Furthermore, City shall cause its Park Design Firm to work cooperatively with Developer and Developer's civil engineer in the establishment of the alignment of the Multi-Use Trail across Parcel 5 (Affordable Housing Parcel), Parcel 6 (Affordable Housing Parcel), Parcel 7 (Resort Parcel), and Parcel 8 (Public Park Parcel), as a component of completion of the design of the Public Park.

On or before March 1, 2021, Developer shall submit complete final mass grading plans for the Public Park Land to the City, consistent with the conceptual mass grading plans attached hereto as Exhibit B-7, as shall be modified by the process outlined above between Developer and City's Park Design Firm, and City shall approve said mass grading plans and issue a grading permit therefore on or before April 15, 2021. Subject to weather, regulatory approvals and other unanticipated occurrences as identified in Section 12.2, within 60 days following City's approval of the final mass grading plans for the Public Park Land, the Developer shall commence, at the Developer's sole cost and expense, (i) grading of the Public Park Land in accordance with the mass grading plans attached hereto as Exhibit B-7 (as shall be modified as outlined in the immediately preceding paragraph), which shall include the grading and removal of existing wetlands identified as Areas 4 and 5 in the Wetlands Summary attached hereto as Exhibit B-39; and (ii) subject to weather, regulatory approvals and other unanticipated occurrences as identified in Section 12.2, complete final mass grading of the Public Park Land by December 31, 2021. The Developer shall, prior to the commencement of the work described in the immediately preceding sentence, provide to the City, in a form and amount reasonably acceptable to the City, a bond (or other security

reasonably acceptable to the City) securing the Developer's completion of such work and naming the City as obligee. Further, Developer has completed, at its sole cost and expense, the Wetlands Mitigation, partially on a portion of the Public Park Land located south of Foss Creek and on land owned by the City and located to the southwest of the Public Park Land (parcels 091-040-062 and 091-040-105), as conceptually shown on Exhibit B-14 attached hereto, and identified as Areas 3, 6, 7 and 8 of the Wetlands Summary attached hereto as Exhibit B-39 (the "**Wetland Replacement Lands**").

The Developer, shall, within 20 days after the recording of the First Final Map and at the Developer's sole cost and expense, obtain from the Title Company and provide to the City a title report in favor of the City relating to the Public Park Land. Such title report shall show title to the Public Park Land in the Developer, with the Public Park Land not being subject to any monetary encumbrance that cannot be satisfied and discharged by the payment of money, or any easement, restriction, condition or covenant that would preclude the use of the Public Park Land for the purposes described in and contemplated by the Development Agreement. City acknowledges that the Public Park Land is subject to an easement in favor of Pacific Gas & Electric Company, for placement, use and maintenance of an underground gas regulator, across an area 13' wide by 55' long, along the Healdsburg Avenue frontage of the Public Park Land, dated October 10, 2019, and recorded in the Official Records on May 14, 2020, Instrument No. 2020036718 ("**PG&E Easement**").

The City shall cause such title report to be, in the City's reasonable discretion, reviewed and approved or disapproved, and a written notice of approval or disapproval to be given to the Developer within 15 business days after the City's receipt of such title report. Any notice of disapproval shall state the reasons for the City's disapproval. Any failure by the City to give written notice of approval or disapproval shall be deemed to be a notice of approval.

If the City disapproves any title report submitted to the City pursuant to this Section 10(a), the Developer shall have the right to either (x) take action to resolve the City's objections regarding the title to the Public Park Land and then submit a revised title report to the City for review and approval pursuant to this Section 10(a), or (y) submit the issue of the reasonableness of the City's disapproval to a mutually acceptable local title officer for review and a non-binding recommendation regarding the City's disapproval of said report.

On May 17, 2019, the Developer delivered to the Title Company, joint escrow instructions reasonably satisfactory to the City, the Title Company and the Developer (the **"Public Park Land Title Instructions"),** and a deed (the **"Public Park Land Deed")** in the form attached hereto as Exhibit B-8, executed and acknowledged by the Developer, by which the Developer conveys title to the Public Park Land to the City (subject only to the easements, restrictions, covenants and conditions permitted by this Section 10(a)).

The Developer has submitted to the City, and the City has approved of a final map (the **"Second Final Map")** for Parcel 2 of the First Final Map, thereby creating the residential lots and related common areas and private roadway parcels shown thereon. Concurrently with the execution and recording of this Third Amendment, Developer and City shall amend and execute

the Public Park Land Title Instructions, in the form attached hereto as Exhibit B-32, to provide that the Public Park Land Deed shall be delivered and released to the City upon the satisfaction of several conditions, including the Title Company's receipt of a statement, signed by the City, stating that the Developer has completed and City has accepted the mass grading on the Public Park Land.

The Developer shall, at its sole cost and expense, cause the Title Company to deliver to the City when the Public Park Land Deed is delivered and released to the City an owner's title insurance policy in the amount of $6,475,000.00, issued by the Title Company, subject only to: (x) the exceptions listed in the title report approved by the City pursuant to this Section 10(a); (y) the PG&E Easement and any easement, restriction, condition or covenant recorded after the Effective Date with the prior consent of the City (which consent shall not be unreasonably withheld); and (z) the restrictions set forth in the Public Park Land Deed.

(b) Development of the Public Park Land. The Parties intend that, after Developer's conveyance of the Public Park Land to the City pursuant to Section 10(a) above, City will develop the Public Park Land as the Public Park (having (i) active use recreation areas; (ii) passive use recreation areas; (iii) Multi-Use Trail; (iv) existing and new wetlands; (v) a riparian zone for Foss Creek; (vi) parking areas; (vii) a pavilion area; and (viii) landscaped areas), with both the Fire Substation and Public Park being substantially as shown in (i) the "Park Site Concept F" dated July 17, 2006 and approved by the City Council, a copy of which is attached hereto as Exhibit B-9, and (ii) the Public Park design parameters shown on Exhibit B-10 attached hereto, as may be modified by the Public Park design process referred to in Section 10 (a) above.

The Parties agree that City shall be responsible, at its sole cost and expense to the extent the cost thereof exceeds the Developer Public Park Contribution and Multi-Use Trail Contribution (as defined in Sections 6(b) and 12(b)), for designing and constructing the Public Park in general conformity with (i) "Park Site Concept F" dated July 17, 2006, approved by the City Council, a copy of which is attached hereto as Exhibit B-9, and (ii) the Public Park design parameters shown on Exhibit B-10 attached hereto, as may be modified by the Public Park design process referred to in Section 10 (a) above.

City acknowledges that Developer currently owns the Public Park Land and will be providing a substantial portion of the cost of designing and constructing the Public Park, and City and Developer each acknowledges that it will be in the interests of both Parties that the Public Park be architecturally compatible with the remainder of the Project and the residential uses located to the south of the Public Park. Accordingly, City shall provide to Developer copies of site plan and exterior design documents relating to the Public Park (including without limitation site plans, drainage and grading plans, elevations, renderings, color boards and material samples, and schematic, design development and construction plans), as they are received by City, to enable Developer to review such plans and make suggestions, recommendations and comments regarding the site plan for and exterior design of the Public Park as shown by such design documents, and shall consider in good faith any suggestions, recommendations and comments regarding the site planning for and the exterior design of the Public Park made by the Developer following its review

of such design documents, provided that such comments are received by City within twenty (20) days of the City having given the Developer said plans and documents. Nothing in this Section 10(b) is intended to limit or otherwise restrict the review of the design of the Public Park through the City's normal and customary public process of review and approval by the City's Planning Commission and/or the City Council.

The City and the Developer shall each use reasonable efforts to coordinate their respective construction activities, including establishing periodic "coordination" meetings to discuss the status of their respective construction activities, as more particularly described in Section 20(d), below.

4. Section 11 (a) of Exhibit B to the Development Agreement is hereby amended in its entirety to read as follows:

11. Fire Substation Land Grading and Conveyance and Development of Fire Substation.

(a) Mass Grading, Conveyance and Development. On or before March 1, 2021, Developer shall submit complete final mass grading plans for the Fire Substation Land to the City, consistent with the conceptual mass grading plans attached hereto as Exhibit B-7, as shall be modified by the process outlined in Section 10 (a) between Developer and City's Park Design Firm in relation to design of the Public Park, and City shall approve said mass grading plan and issue a grading permit therefore on or before April 15, 2021. Subject to weather, regulatory approvals and other unanticipated occurrences as identified in Section 12.2, within 60 days following City's approval of the mass grading plans for the Fire Substation Land, the Developer shall commence, at the Developer's sole cost and expense, (i) grading of the Fire Substation Land in accordance with the mass grading plans attached hereto as Exhibit B-7 (or such modification thereof as may be agreed to by the Developer and the City pursuant to the provision of Section 10 (a) above); and (ii) subject to weather, regulatory approvals and other unanticipated occurrences as identified in Section 12.2, complete final mass grading of the Fire Substation Land by December 31, 2021.

The Developer shall, not later than 20 days after the recording of the First Final Map (which when recorded will establish the Fire Substation Land as a separate legal parcel that can be legally conveyed to the City), and at the Developer's sole cost and expense, obtain from a licensed geotechnical engineer or firm and provide to the City a geotechnical report describing conditions relating to the Fire Substation Land.

The Developer, shall, within 20 days after the recording of the First Final Map and at its sole cost and expense, obtain from the Title Company and provide to the City a title report in favor of the City relating to the Fire Substation Land, Such title report shall show title to the Fire Substation Land in the Developer, with the Fire Substation Land not being subject to any monetary encumbrance that cannot be satisfied and discharged by the payment of money, or any easement, restriction, condition or covenant that would preclude the use of the Fire Substation Land for the purposes described in and contemplated by the Development Agreement.

The City shall cause such title report to be, in the City's reasonable discretion, reviewed and

approved or disapproved, and a written notice of approval or disapproval to be given to the Developer within 15 business days after the City's receipt of such title report. Any notice of disapproval shall state the reasons for the City's disapproval. Any failure by the City to give written notice of approval or disapproval shall be deemed to be a notice of approval.

If the City disapproves any title report submitted to the City pursuant to this Section 11(a), the Developer shall have the right to either (x) take action to resolve the City's objections regarding title to the Fire Substation Land and then submit a revised title report to the City for review and approval pursuant to this Section 11(a), or (y) submit the issue of the reasonableness of the City's disapproval to a mutually acceptable local title officer for review and a non-binding recommendation regarding the City's disapproval of said report.

The Developer shall, concurrently with the execution of this Third Amendment, deliver to the Title Company, to be held in escrow pursuant to joint escrow instructions reasonably satisfactory to the City, the Title Company and the Developer, and generally in the form attached hereto as Exhibit B-34 **("Fire Substation Land Title Instructions"),** a deed (the **"Fire Substation Land Deed")** in the form attached hereto as Exhibit B-11, executed and acknowledged by the Developer, by which the Developer conveys the Fire Substation Land to the City (subject only to the easements, restrictions, covenants and conditions permitted by this Section 11(a)).

The Fire Substation Land Title Instructions shall provide that the Fire Substation Land Deed shall be delivered and released to the City upon the satisfaction of several conditions, including the Title Company's receipt of a statement, signed by the City, that the Developer has completed and City has accepted the mass grading on the Fire Substation Land.

The Developer shall, at its sole cost and expense, cause the Title Company to deliver to the City when the Fire Substation Deed is delivered and released to the City an owner's title insurance policy in the amount of $5,600,000.00, issued by the Title Company, and insuring the fee interest that the City acquires pursuant to the Fire Substation Land Deed, subject only to (w) the exceptions listed in the title report approved by the City pursuant to this Section 11(a); (x) any easement, restriction, condition or covenant recorded after the Effective Date with the prior consent of the City (which consent shall not be unreasonably withheld); and (y) the restrictions set forth in the Fire Substation Land Deed.

The Parties acknowledge that Developer has prepared and secured design review approval of conceptual plans for the Fire Substation pursuant to City of Healdsburg Planning Commission Resolution No. 2018-09, approved on April 24, 2018 ("**Fire Substation Design Review Approval**"). City hereby covenants as follows: (i) the final design plans for construction of the Fire Substation shall be substantially consistent with the Fire Substation Design Review Approval; (ii) prior to release of final plans for purposes of seeking bids for construction and securing building permits, Developer shall be provided an opportunity to review and provide comment on the final plans to ensure consistency with the Fire Substation Design Review Approval, provided that comments from Developer shall be provided within twenty (20) calendar days of the date said final plans were provided to Developer; and (iii) City will commence or cause the commencement of construction of the Fire Substation no later than December 31, 2022, and subject to Section 12.2 of

the Development Agreement, will diligently pursue completion of construction thereafter.

5. Sections 11 (b), (c), (d), (e), and (f) of Exhibit B to the Development Agreement are hereby deleted in their entirety. Section 11 (g) of Exhibit B to the Development Agreement is hereby amended in its entirety to read as follows:

(g) Assignment of Warranties and Rights to Design Contracts. The Parties acknowledge that prior to the effective date of the Third Amendment, and in accordance with the provisions of the Development Agreement, Developer has contracted with one or more design professionals (architects, engineers, etc.) in connection with the design of the Fire Substation (the "Design Contracts"). Concurrently with the execution of the Third Amendment, the Developer shall assign and transfer to the City (i) all rights that the Developer has in the Design Contracts and all plans, sketches, specifications and work product created on behalf of the Developer by the design professional pursuant to the Design Contract, and (ii) all rights that the Developer then has or may in the future have relating to any claim of defective or improper design, or any negligence or error or omission of the design professionals or any of its consultants or subcontractors in the design, of the Fire Substation . Upon such assignment and transfer, the Developer shall be released and discharged from any liability for the design of the Fire Substation, and the City shall thereafter defend (by counsel reasonably satisfactory to the Developer), indemnify and hold harmless the Developer, the Robert Green Company, Montage Hotels and Resorts, LLC, Ohana Real Estate Investors, Ohana Realty Corporation, Saggio Hills Development Company, LLC, their respective members, or party having interest in the Project, BSRECP III Joint US Origination, L.L.C., Broad Street Credit Holdings LLC, BCSSS Investments S.A.R.L., MPS Investments S.A.R.L. the Resort operator and their respective members, managers, trustees, partners, officers, directors, shareholders, employees, agents and representatives, consultants, Owners' lenders or party having interest in the Project, BSRECP III Joint US Origination, L.L.C., Broad Street Credit Holdings L.L.C., BCSSS Investments S.A.R.L. and MPS Investments S.A.R.L. from and against any claims, demands, causes of action, costs (including reasonable legal costs and expenses) and liabilities based on, arising from or attributable to any claim of defective design of the Fire Substation, except to the extent attributable to the gross negligence or intentional misconduct of the indemnified party.

6. Section 12 of Exhibit B to the Development Agreement is hereby amended in its entirety to read as follows:

12. Developer Public Improvement Contribution Payments.

(a) Developer Fire Substation Contribution. The Developer shall pay $1,750,000 towards the costs of designing and constructing the Fire Substation (with such payment being the **"Developer Fire Substation Contribution").**

The Parties acknowledge and agree that as of the execution of the Third Amendment the Developer has paid $150,414.00 for the costs and expenses of preparing the conceptual plans for the Fire Substation, and that such costs shall be included in and credited to the $1,750,000 of costs and expenses of designing and constructing the Fire Substation to be paid by the Developer as the Developer Fire Substation Contribution. Accordingly, within thirty (30) calendar days of completion of the final mass grading of the Fire Substation Land pursuant to Section 11 (a), Developer shall deposit the balance of the Developer Fire Substation Contribution in the amount of $1,599,586.00 into escrow pursuant to joint escrow instructions reasonably satisfactory to City, the Title Company and the Developer, and generally in the form attached hereto as Exhibit B-33 ("**Fire Substation Contribution Instructions**"), providing for the release of the Developer Fire Substation Contribution to City upon receipt of a statement, signed by the City, that a notice to proceed has been issued to the contractor for the construction of the Fire Substation, which shall occur no later than December 31, 2022, provided Developer completes the mass grading on the Fire Substation Land in accordance with Section 11 (a). Further, the City agrees that the Fire Substation will be completed no later than December 31, 2023.

The City and the Developer acknowledge and agree that the Developer Fire Substation Contribution is over and above, and shall not be reduced by, the amount of any costs and expenses that the Developer incurs in performing the mass grading work on the Fire Substation Land described in Section 11 above

(b) Developer Public Park Contribution. The Developer shall pay $3,000,000 towards the cost of designing and constructing the Public Park (with such payment being the "**Developer Public Park Contribution**"). The Parties acknowledge and agree that as of the execution of the Third Amendment, the Developer has paid $290,000.00 for the costs and expenses of preparing the conceptual plans for the Public Park, and that such costs shall be included in and credited to the $3,000,000 of costs and expenses of designing and constructing the Public Park to be paid by the Developer as the Developer Public Park Contribution. Accordingly, concurrent with the conveyance of fee title to the Public Park Land to the City in accordance with Section 10 (a), Developer shall pay to City the balance of the Developer Public Park Contribution in the amount of $2,710,000.00.

The City and the Developer acknowledge and agree that the Developer Public Park Contribution is over and above, and shall not be reduced by, the amount of any costs and expenses that the Developer incurs in performing the mass grading work on the Public Park Land described in Section 10 above, the Wetlands Mitigation, and payment of the Trail Design Costs and Trail Construction Costs described in Section 6 (b).

(c) Basis of Estimate of Multi-Use Trail Contribution, Affordable Housing Mass Grading Contribution, and Parkland Farms Sidewalk Contribution; Cost Escalation.

The Parties agree that the amount of the Multi-Use Trail Contribution, Affordable Housing Mass Grading Contribution and Parkland Farms Sidewalk Contribution to be developed by the Parties pursuant to Sections 6 (b), 7 and 16 (a), respectively, shall be based on current design standards of the City as of the date of this Third Amendment or as may be reflected in the Development Agreement (e.g. Exhibit B-4, B-5 and B-16), and current costs of construction in calendar year 2021.

Further, the Parties agree that the amount of the Multi-Use Trail Contribution, Affordable Housing Mass Grading Contribution, and Parkland Farms Sidewalk Contribution, as agreed to by the Parties or as may be determined by arbitration, shall be increased by two and three quarters percent (2.75%) upon payment of said amounts to City in accordance with Sections 6 (b), 7 and 16 (a), respectively.

(d) Pursuant to the Project Approvals and mitigation measures set forth in the FEIR, Developer shall pay to the City the sum of $307,189.00 for the Highway 101/Dry Creek Road Interchange improvements concurrent with the execution and recording in this Third Amendment in the Official Records.

7. Section 13 of Exhibit B to the Development Agreement is hereby amended in its entirety to read as follows:

13. Wetlands Mitigation. The City and the Developer acknowledge that the development of the project as contemplated herein will require the removal of certain existing wetlands from the Affordable Housing Land, the Public Park Land, the Fire Substation Land, the Resort Parcels and/or the Residential Parcels, and that mitigation of the effects of such removal will therefore be required. The Developer has, at its sole cost and expense, made application to and obtained an U.S. Army Corps of Engineers 404 Permit No. 1999024647N ("**404 Permit**"), Regional Water Quality Control Board Water Quality Certification WDID No. 1B06169WNSO ("**401 Certification**"), and California Department of Fish and Wildlife Lake and Streambed Alteration Agreement 1600-2013-0219-RS ("**1602 Agreement**") (collectively, "**Creek Restoration and Wetland Mitigation Permits**") for the project required to lawfully remove such existing wetlands and mitigate the removal thereof with the installation and "grow-in" of replacement wetlands. A memorandum prepared by Developer summarizing the size and location of existing wetlands on the Property, existing wetlands to remain, existing wetlands to be removed, replacement wetlands and their status as of December 4, 2018 ("**Wetlands Summary**"), is attached hereto as Exhibit B-39.The Parties acknowledge that mitigation required by the Creek Restoration and Wetland Mitigation Permits includes the creation of new additional wetlands on the Wetland Replacement Lands, as described in Section 10 (a), conceptually shown on Exhibit B-14 attached hereto, and identified as Areas 3, 6, 7 and 8 in the Wetlands Summary.

The City and Developer acknowledge that a portion of the contemplated wetland removal, creek restoration and mitigation has been completed by Developer and is subject to the required

mitigation monitoring period and that further creek restoration mitigation will be required by Developer for the improvements to Parkland Farms Boulevard. The Developer will remain responsible for completing the mitigation monitoring for those portions of creek restoration that it has executed and will complete the mitigation monitoring for creek restoration required as part of the Parkland Farms Boulevard improvements. It is further acknowledged that creek restoration mitigation will be required by the City as part of the Public Park and Multi-Use Trail improvements. Similarly, City will be responsible for completing the mitigation monitoring for those portions of creek restoration that it undertakes as part of the Public Park and Multi-Use Trail improvements.

The City shall grant the Developer appropriate easements and/or licenses over the Wetland Replacement Lands to allow the Developer to perform all the Wetlands Mitigation and such mitigation monitoring. The Developer and the City each acknowledge that as set forth in the 404 Permit, upon acceptance of the Wetlands Mitigation by the Army Corps of Engineers, that the Wetland Replacement Lands shall be subject to perpetual restrictions requiring that such lands remain wetlands pursuant to a Declaration of Establishment of Conditions, Covenants and Restrictions, as set forth in Attachment 4 to the 404 Permit (the "**Declaration**") and to be recorded in the Official Records. Further, prior to execution and recordation of the Declaration, Developer and City shall use best efforts to secure an amendment to the 404 Permit to eliminate the last sentence of Special Condition 11. However, following the recording of the Declaration in the Official Records, the City will assume financial responsibility for the long-term management and preservation of the retained existing and created wetland areas on the Wetland Replacement Lands.

Developer acknowledges that wetland mitigation and monitoring and creek restoration performed by it as of the date of the Third Amendment and that required by the Parkland Farms Boulevard improvements shall achieve full and complete compliance with all requirements of the Creek Restoration and Wetland Mitigation Permits, including the possibility of alternative or corrective actions, if on-site mitigation efforts as described herein are not accepted as "complete" by such agencies.

The Parties acknowledge that the 404 Permit expires on December 5, 2022; the 401 Certification expires December 5, 2023; and the 1602 Agreement expires December 31, 2022. The Parties further acknowledge that the wetland removal, replacement and mitigation monitoring work under the 404 Permit is to be completed by Developer and that the 401 Certification does not apply to any proposed development of the Fire Substation Land, Public Park Land or Affordable Housing Land and that any construction thereon will require submittal of development plans to the Regional Water Quality Control Board for an amendment to the 401 Certification. Accordingly, prior to the expiration of the 401 Certification or 1602 Agreement and with Developer's consent, City may apply for an extension of the 401 Certification or 1602 Agreement as may be necessary to facilitate the development of the Fire Substation Land, Public Park Land or Affordable Housing Land, provided City acknowledges and agrees that it shall be solely and exclusively liable and responsible

for all costs, fees, expenses, terms, conditions imposed upon or associated with any such permit extension.

8. Section 16 (a) of Exhibit B to the Development Agreement is hereby amended in its entirety to read as follows:

16. Infrastructure.

(a) Public Roads and Related Utilities. The Developer shall, at the Developer's sole cost and expense, design and construct the public roads and related municipal utilities to be located thereunder (collectively, the **"Public Roads and Related Utilities")** described in the public roads and related municipal utilities map attached hereto as Exhibit B-15. The map attached hereto as Exhibit B-15 shows the approximate locations of the Public Roads and Related Utilities. The exact locations of the Public Roads and Related Utilities shall be (i) generally consistent with the approximate locations shown on Exhibit B-15, (ii) determined based on consideration of topography, drainage, existing vegetation and other physical constraints, and (iii) shown on the final plans and specifications therefor as approved by the City. The Public Roads and Related Utilities shall be designed and constructed in accordance with the standards set forth in the Tentative Map, a Subdivision Improvements Agreement between the Developer and the City, the conceptual public roads design standards set forth on Exhibit B-16 -attached hereto, and the City Public Works Department standards, applicable as of the date of the Public Improvement Agreement For Public Roads And Related Utilities, in the form attached hereto as Exhibit B-35. The final design for the Public Roads and Related Utilities shall (i) be generally consistent with such conceptual road standards, (ii) based on consideration of topography, drainage, existing vegetation and other physical constraints, and (iii) shown in the plans and specifications for the Public Roads and Related Utilities approved by the City, applicable as of the date of the Public Improvement Agreement For Public Roads And Related Utilities, in the form attached hereto as Exhibit B-35.

Concurrent with the execution of the Third Amendment, Developer shall execute, acknowledge and deliver to City for recording in the official records of Sonoma County the Public Improvement Agreement For Public Roads And Related Utilities, in the form attached hereto as Exhibit B-35, governing (i) the design, construction and acceptance of improvements to Passalacqua Drive not covered by SIA-FM-1, comprising curbs, gutters and streetlights for the roadway segment from Healdsburg Avenue to Parcel 9 (Pump Station) and extension of the street and utilities to the boundary of Parcels 5 and 6, (ii) the process to modify the alignment of Parkland Farms Blvd, as generally depicted in Exhibit B-37, pursuant to summary vacation of the Offer of Dedication in accordance with Streets and Highways Code Section 8334 (c), recording of a lot line adjustment affecting Parcels 5, 6 and 11 ("**Lot Line Adjustment**"), and recording of an amended irrevocable offer of dedication of the modified roadway alignment ("**Amended Offer of Dedication**"), in the form attached hereto as Exhibit B-38, (iii) the design, construction and acceptance of street, utility, curb and gutter improvements to a modified alignment of Parkland Farms Blvd, and (iv) appropriate performance, payment and warranty bonds for said improvements. Said Public Improvement Agreement For Public Roads And Related Utilities will establish timeframes for the submittal, review and approval of improvement plans to enable construction work to commence on April 15,

2021. The improvement plans for Parkland Farms Blvd shall include the grading and removal of existing wetlands necessitated by the improvement of Parkland Farms Boulevard on the Affordable Housing Land and Public Road Parcel identified as Areas 10 and 11 in the Wetlands Summary, attached hereto as Exhibit B-39, and as contemplated by Section 16 (h), all necessary creek restoration in accordance with the FEIR, Creek Restoration and Wetland Mitigation Permits, and Exhibit B-27.

Concurrent with the preparation of the improvement plans for Parkland Farms Blvd., the City shall prepare a detailed engineer's estimate of the cost of construction of the sidewalks and streetlights to be omitted from the initial construction of Parkland Farms Blvd by Developer (the "**Parkland Farms Sidewalk Contribution**"), and submit the estimated Parkland Farms Sidewalk Contribution and all supporting documentation to Developer on or before April 15, 2021, for its review and approval.

Within thirty (30) calendar days after delivery of the estimated Parkland Farms Sidewalk Contribution to Developer as provided herein, the Parties shall meet and confer in good faith to establish and agree upon the Parkland Farms Sidewalk Contribution. Developer shall pay to City the agreed upon Parkland Farms Sidewalk Contribution concurrently with the conveyance of the Affordable Housing Land as provided in Section 7.

If the Parties have not reached agreement on the Parkland Farms Sidewalk Contribution within sixty (60) calendar days after delivery by City of the estimated Parkland Farms Sidewalk Contribution to Developer, then the matter shall be referred to and settled by binding arbitration in front of a single arbitrator administered by the American Arbitration Association under its Construction Industry Arbitration Rules and this Agreement. The award of the arbitrator shall be final as long as the award is rendered in conformity with, and applies, California statutory and decisional law and the terms of this Agreement and may be entered in any court having jurisdiction. The arbitrator shall be a retired superior or appellate court judge and shall have at least 10 years of experience in the construction industry. Hearings shall take place in the County of Sonoma, or such other location as agreed to by the arbitrator and the Parties, and at the time and place selected by the arbitrator; however, the arbitration shall commence no later than sixty (60) calendar days following referral of the matter to binding arbitration and the arbitrator shall render a decision within five (5) calendar days of commencement of the hearing. The arbitrator's compensation and other arbitration expenses shall be divided equally among the Parties and the arbitrator shall have no jurisdiction or authority to award otherwise. The Parties shall be solely responsible for their own attorney fees, costs and expenses, including expert witnesses, actually incurred in connection with any dispute arising out of this Agreement and the arbitrator shall have no jurisdiction or authority to award otherwise. Developer shall pay to City the Parkland Farms Sidewalk Contribution as determined by the arbitrator within thirty (30) calendar days following the date of the arbitrator's decision.

Title to the Related Utilities within the Public Roads shall be dedicated to the City by the Final Map(s) contemplated by the Tentative Map. Each such Final Map shall delineate the areas for the Related Utilities for such Final Map, and shall include both an offer to dedicate such areas to the

City for public use and an acceptance of such offer that complies with applicable law. The City agrees to accept any such offer of dedication of Related Utilities that is made in compliance with applicable law and the provisions of the Development Agreement at such time as such Related Utilities are completed in accordance with the Subdivision Improvement Agreement for each such Final Map. Title to the Public Roads shall be dedicated to the City in accordance with the Amended Offer of Dedication, in the form attached hereto as Exhibit B-38.

From and after the Developer's completion of the Public Roads and Related Utilities in accordance with the requirements of the Tentative Map, any related Subdivision Improvement Agreements and the Development Agreement, and the City's acceptance thereof, the related Public Roads and Related Utilities shall become public roads and municipal utilities and thereafter be operated, maintained and repaired by the City (except as provided in the Roadway Maintenance Easement Agreement (as defined below).

The City and the Developer acknowledge that (i) the public roadway area shown and described on the Tentative Map as "Passalacqua Road" is currently the subject of one or more easements for the benefit of lands located to the east of the Properly, (ii) such easements allow the use of such public roadway area for access to and from such lands in connection with the residential and agricultural uses thereon, (iii) the Developer will be required, on order to dedicate title to such public roadways areas to the City as contemplated herein, to cause such easements to be extinguished, and (iv) the owners of such lands may require, as a condition to such extinguishment, that the owners and occupants of such land have the right to use such roadway areas (in common with the public) for access to and from such lands (including without limitation, by vehicles transporting agricultural supplies and products), subject to compliance with the California Vehicle Code regarding the use of agricultural vehicles and equipment on public roadways. Accordingly, the Developer shall cause the roadway to be constructed on such public roadway area to be designed and constructed in a manner that complies with all applicable City standards and is also sufficient to accommodate such use, and the Final Map by which such public roadway area is dedicated to the City shall include notations and provisions, reasonably acceptable to both the City and the Developer, acknowledging and providing for such use of such roadway.

9. Section 16 (h) of Exhibit B to the Development Agreement is hereby amended in its entirety to read as follows:

16. Infrastructure.

….

(h) Creek Restoration. In connection with the construction of the Project, including, but not limited to, the Infrastructure described in this Section 16 (a) through (f), the Developer shall comply with and implement all creek mitigation and restoration measures as required in the FEIR, the Creek Restoration and Wetland Mitigation Permits, and the creek mitigation and restoration plans described in Exhibit B-27, attached. The foregoing notwithstanding, in consideration for the Affordable Housing Mass Grading Contribution, Public Park Contribution, and Multi-Use Trail Contribution, City shall be responsible for all creek mitigation and restoration measures as required

in the FEIR, the Creek Restoration and Wetland Mitigation Permits, and the creek mitigation and restoration plans described in Exhibit B-27, attached, in connection with the construction of the Public Park, Multi-Use Trail, and Affordable Housing improvements on Parcels 5, 6, 7 and 8.

10. Section 1 of the Second Insubstantial Amendment is hereby deleted in its entirety.

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

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

13. INCONSISTENCIES. In the event of any conflict or inconsistency between the provisions of this Third Amendment and the Development Agreement, First Insubstantial Amendment or Second Insubstantial Amendment, the provisions of this Third Amendment shall control.

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

15. STATUS OF AGREEMENT. Except as modified by this Third Amendment, the terms and provisions of the Development Agreement, First Insubstantial Amendment and Second Insubstantial Amendment shall remain in full force and effect.

16. COUNTERPARTS. This Third Amendment may be signed in counterparts by the Parties hereto and shall be the binding agreement of the Parties upon execution by each of them of one or more copies hereof.

17. RECORDING OF MEMORANDUM. Concurrent with the execution of this

Third Amendment, the Parties shall execute, acknowledge and record a Memorandum of Third Amendment, in the form attached hereto as Exhibit B-36, in the official records of Sonoma County.

18. AUTHORITY. Each of the persons signing this Third Amendment hereby represents and warrants that he or she is fully authorized to sign this Third Amendment on behalf of the Party for which he or she is signing.

IN WITNESS WHEREOF, the Parties hereto have affixed their signatures to this Third Amendment as of the date and year indicated below and effective as of the date and year first above written.

DATED: _____, 2021

SONOMA LUXURY RESORT, LLC, a Delaware limited liability company

_____
John Ginochio, Chief Financial Officer

DATED: _____, 2021

CITY OF HEALDSBURG, a California municipal corporation

_____
Jeff Kay, City Manager

ATTEST:

_____
Raina Allan, City Clerk

APPROVED AS TO FORM:

_____
Samantha Zutler, City Attorney

EXHIBIT B-28

PUBLIC IMPROVEMENT AGREEMENT FOR NORTHWEST TRAIL

EXHIBIT B-28

Recording Requested by and
After Recordation Mail To:

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

Exempt from payment of Recording Fees (Government Code §27383) and Building Homes & Jobs Trust Fund Fee (Govt. Code §27388.1(a)(2)(D)).

PUBLIC IMPROVEMENT AGREEMENT FOR NORTHWEST TRAIL

THIS PUBLIC IMPROVEMENT AGREEMENT FOR NORTHWEST TRAIL (hereinafter referred to as this "**Agreement**") is made and entered into this _____ day of _____, 2021 ("**Effective Date**"), by and between Sonoma Luxury Resort, LLC, a Delaware limited liability company (hereinafter referred to as the "**Developer**") and the City of Healdsburg, a California municipal corporation in the County of Sonoma, State of California (hereinafter referred to as "**City**"). City and Developer are sometimes referred to in this Agreement as a "**Party**" or collectively as the "**Parties**". ("**City**" shall also be deemed to include the City Council of Healdsburg and any departments of the City of Healdsburg, as the context may indicate.)

RECITALS:

A. On April 11, 2011, under the authority of Ordinance No. 1107, the City and Developer entered into a Development Agreement; a Memorandum of Development Agreement was recorded in the Official Records of Sonoma County ("**Official Records**") on April 27, 2011 as Instrument No. 2011037227 ("**Development Agreement**"). The Development Agreement governs the development of approximately 258 acres of real property, with a 130-room luxury resort (the "**Resort**"), 70 single family residences (the "**Residences**"), dedication of land to the City for development of up to 150 affordable housing units (the "**Affordable Housing**"), dedication of land to the City for development of a public park (the "**Public Park**"), and construction and dedication of land and improvements to the City of Passalacqua Drive and Parkland Farms Blvd. (the "**Public Roads and Related Utilities**"), hiking and pedestrian-bicycle trails (the "**Public Trails**"), a fire substation (the "**Fire Substation**"), and a pump station (the "**Pump Station**")(collectively, the "**Project**").

B. In addition to the Development Agreement, the City has approved of the following entitlements governing the development of the Project on the Property:

1. On April 5, 2016, an Insubstantial Amendment To The Development Agreement Between The City Of Healdsburg And Sonoma Luxury Resort, LLC, Dated April 11, 2011 ("**First Insubstantial Amendment**");

2. On January 31, 2011, pursuant to Resolution No. 18-2011, the City conditionally approved the Saggio Hills Tentative Subdivision Map (TM06-04)("**Tentative Map**");

3. On April 4, 2016, pursuant to Resolution No. 19-2016, the first final map which was filed for record in the Official Records on May 23, 2018, in Book 795 of Maps at Pages 31-40, Document No. 2018-037508 ("**FM-1**");

4. On June 18, 2018, pursuant to Resolution No. 61-2018, the second final map which was filed for record in the Official Records on September 14, 2018, in Book 798 of Maps at Pages 29-35, Document No. 2018-065059 ("**FM-2**");

5. On June 18, 2018, pursuant to Resolution 61-2018, the third final map which was filed for record in the Official Records on September 14, 2018, in Book 798 of Maps at Pages 36-43, Document No. 2018-065061 ("**FM-3**").

C. In consideration of the approval and recording of FM-1, on April 20, 2018, City and Developer entered into an Agreement For Subdivision Improvements Saggio Hills First Final Map, which was filed for record in the Official Records on April 25, 2018, as Instrument No. 2018-028277 ("**SIA-FM-1**").

D. In connection with the Public Trails, Section 6(b) of Exhibit B to the Development Agreement provided that City agrees to accept an offer of dedication of the Public Trails "at such time as (i) the City approves the First Final Map (if such Public Trails are then completed), or (ii) such Public Trails are completed in accordance with the Subdivision Improvement Agreement for the First Final Map (if such Public Trails are not completed when such final map is approved)."

E. The Public Trails were not completed at the time the City approved FM-1. A portion of the Public Trails, however, constituting hiking trails across Parcel 1 (Resort Parcel) and Parcel 2 (Residential Parcel)(the "**Northwest Trail**"), were offered for dedication to the City pursuant to FM-1 (the "**Northwest Trail Easement**"). Yet, SIA-FM-1 did not include improvement plans nor bonds to secure the construction of the Northwest Trail as anticipated by the Development Agreement.

F. On May 30, 2019, an Insubstantial Amendment To The Development Agreement Between The City of Healdsburg and Sonoma Luxury Resort, LLC, Dated April 11, 2011 ("**Second Insubstantial Amendment"**) was executed by the Parties.

G. In accordance with the Second Insubstantial Amendment, the timing of construction of the Public Trails was extended in an effort to coordinate with the City's master planning efforts for the Public Park and Affordable Housing parcels.

H. Pursuant to SIA-FM-1, Developer recognized that, by approving FM-1, the City conferred substantial rights upon Developer, including the right to sell, lease, or finance lots within FM-1, subject to the requirements of the land use entitlements, including the Development Agreement. As a result, the City will be damaged to the extent of the cost of design, construction and bonding of the Northwest Trail on Parcels 1 and 2 of FM-1, if there is a failure by the Developer to perform its obligations under the land use entitlements, including the Development Agreement.

I. Subsequent to the execution of the Second Insubstantial Amendment, the Parties have continued to discuss refinements to the timing and scope of their respective obligations under the Development Agreement, as amended.

J. On _____, 2021, City and Developer entered into that certain Third Amendment to Development Agreement; a Memorandum of Third Amendment to Development Agreement was recorded in the Official Records on _____, 2021 as Instrument No. 2021-_____ ("**Third Amendment**").

K. The Third Amendment, in part, amended Section 6 (b) of Exhibit B to the Development Agreement to provide that City and Developer shall, concurrently with the execution of the Third Amendment, enter into this Agreement which shall govern the (i) process of relocating the

Northwest Trail Easement through summary vacation of the Northwest Trail Easement dedication on FM-1 in accordance with California Streets and Highways Code and grant of an amended Northwest Trail Easement ("**Amended Northwest Trail Easement**"), in the form attached as Exhibit B-29 to the Third Amendment, and (ii) design, construction, bonding and acceptance of the Northwest Trail ("**Northwest Trail Improvements**"), in the location of the Amended Northwest Trail Easement on that certain real property identified as Parcel 1 (Resort Parcel) and Parcel 2 (Residential Parcel) of FM-1, more particularly described in **Exhibit A** attached hereto and incorporated herein (the "**Property**").

L. The Development Agreement, as referred to herein, shall mean the Development Agreement as amended by the First Insubstantial Amendment, Second Insubstantial Amendment, and Third Amendment.

M. City has determined the Northwest Trail Improvements required by the terms of this Agreement constitute a public work subject to the requirements of California Labor Code §§ 1720 *et.seq*. ("**State Prevailing Wage Requirements**"). Developer acknowledges and agrees that it will be solely and exclusively responsible for compliance with the State Prevailing Wage Requirements in connection with the construction of the Northwest Trail Improvements and shall pay all workers prevailing wages for construction of the Northwest Trail Improvements in compliance with State Prevailing Wage Requirements.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to insure satisfactory performance by Developer of its obligations under the City of Healdsburg Municipal Code, Subdivision Map Act, and the Development Agreement, the City and Developer herby agree as follows:

1. INCORPORATION BY REFERENCE; DEFINED TERMS.

The Recitals set forth above are incorporated herein by this reference as if set forth in full, except where expressly modified herein. Defined terms, as used in this Agreement, shall have the meaning as set forth in the Development Agreement or as provided in this Agreement.

2. PURPOSE.

The purpose of this Agreement is to guarantee (i) the relocation of the Northwest Trail Easement as depicted on FM-1 to the Amended Northwest Trail Easement, and (ii) the design, construction, installation, and dedication of the Northwest Trail Improvements in the location of the Amended Northwest Trail Easement on the Property by Developer, at its expense.

3. SUMMARY VACATION OF NORTHWEST TRAIL EASEMENT; GRANT OF AMENDED NORTHWEST TRAIL EASEMENT. Within thirty (30) calendar days of the Northwest Trail Completion Date set forth in Section 4.C. of this Agreement, Developer shall cause the preparation of a legal description of the as-built alignment of the Northwest Trail ("**Amended Northwest Trail Legal Description**") for review and approval by City. Upon City's approval of the Amended Northwest Trail Legal Description, Developer shall execute, acknowledge and deliver to City Clerk the Amended Northwest Trail Easement, in the form attached as Exhibit B-29 to the Development Agreement, and the City Clerk shall append the Amended Northwest Trail Legal Description to the Amended Northwest Trail Easement. Within forty five (45) calendar days of City's approval of the Amended Northwest Trail Legal Description and receipt of the executed and acknowledged Amended Northwest Trail Easement, and as authorized by California Streets and Highways Code section 8333 (c), City shall schedule and notice in accordance with the Ralph M. Brown Act, for consideration and adoption by the City Council, a resolution of vacation conforming to Streets and Highways Code section 8335,

regarding the Northwest Trail Easement dedicated to City pursuant to FM-1 ("**Resolution of Vacation**"). Upon adoption of the Resolution of Vacation by the City Council, the City Clerk shall cause the Resolution of Vacation and Amended Northwest Trail Easement to be recorded concurrently in the Official Records.

4. NORTHWEST TRAIL IMPROVEMENTS.

A. Preparation of Northwest Trail Design-Build Plans and Cost Estimate. Within forty five (45) calendar days of the City's approval of this Agreement, Developer shall submit to City for its review, comment and approval, the project scope and objectives governing the design and construction of the Northwest Trail (the "**Northwest Trail Design-Build Plans**"), as well as a detailed estimate of the cost of constructing the Northwest Trail Improvements as provided in the Northwest Trail Design-Build Plans (the "**Cost Estimate**"). As required by Section 6 (b) of Exhibit B to the Development Agreement, the Northwest Trail Design-Build Plans shall be in accordance with the Area Plan and the standards for public trails set forth in Exhibit B-4 to the Development Agreement. City shall use good faith efforts to review the Northwest Trail Design-Build Plans and Cost Estimate and provide comments, if any, to Developer within thirty (30) calendar days of submission. Developer shall use good faith efforts to re-submit any required revisions for review and approval within thirty (30) calendar days after receipt of comments from City, if any, until said Northwest Trail Design-Build Plans and Cost Estimate are approved by the City Engineer. Developer and City shall use good faith efforts to complete the Northwest Trail Design-Build Plans and Cost Estimate within five (5) months of the City's approval of this Agreement.

Approval of the Northwest Trail Design-Build Plans by City does not release Developer of its responsibility to correct mistakes, errors, or omissions in the Northwest Trail Design-Build Plans that come to its attention. If, at any time, in the opinion of the City Engineer, in his/ her reasonable discretion, the Northwest Trail Design-Build Plans are deemed inadequate in any respect, Developer agrees to make such modifications, changes or revisions as directed by the City Engineer in order to complete the Northwest Trail Improvements in a good and workmanlike manner in accordance with accepted design and construction standards.

B. Duty to Install Northwest Trail Improvements. Developer shall design, construct, install and complete, or cause to be designed, constructed, installed and completed, at Developer's sole cost and expense, the Northwest Trail Improvements in accordance with the Northwest Trail Design-Build Plans and to the satisfaction of the City Engineer, in his/ her reasonable discretion. Developer shall also supply all labor and materials therefor, all in strict accordance with the terms and conditions of this Agreement. The construction, installation and completion of the Northwest Trail Improvements in accordance with the Northwest Trail Design-Build Plans, including all labor and materials furnished in connection therewith, are hereinafter referred to collectively as the "**Northwest Trail Improvement Work**."

C. Commencement and Completion of Northwest Trail Improvement Work. Subject to weather, regulatory approvals and other unanticipated occurrences as identified in Section 12.2 of the Development Agreement, Developer shall commence the Northwest Trail Improvement Work within sixty (60) calendar days after approval of the Northwest Trail Design-Build Plans and Cost Estimate by City ("**Commencement Date**"), but in no event shall Developer be required to commence construction prior to April 15, 2021. Upon commencement of the Northwest Trail Improvement Work, such work shall be prosecuted with due diligence to its completion. Subject to weather, regulatory approvals and other unanticipated occurrences as identified in Section 12.2 of the Development Agreement, Developer shall complete the Northwest Trail Improvement Work on or before nine (9) months after the Commencement Date ("**Northwest Trail Completion Date**"). The Northwest Trail Improvement Work shall be completed in a good and workmanlike manner in accordance with the Northwest Trail Design-Build Plans and accepted design and construction practices. The Northwest Trail Completion Date may be extended by the City in its discretion at the

request of Developer, which request shall be accompanied by a written assurance acceptable to the City Attorney that the security required by Section 6 shall remain enforceable throughout the term of the extension. All Northwest Trail Improvement Work shall be completed in compliance with all applicable federal, state and local laws, ordinances, rules, regulations and policies and shall be performed on a lien-free basis.

5. STANDARDS; PERFORMANCE OF NORTHWEST TRAIL IMPROVEMENT WORK.

Developer will do and perform, or cause to be done and performed, at Developer's sole cost and expense, in a good and workmanlike manner, and furnish all required materials, all to the satisfaction of the City Engineer, all of the Northwest Trail Improvements Work within the Property, in accordance with the conditions for the Tentative Map, the Northwest Trail Design-Build Plans, the City Code and the edition of the Healdsburg Public Works Standard Specifications and Details (the Healdsburg Public Works Standard Specifications and Details are hereinafter referred to as the "City Public Works Standards") applicable on the date of this Agreement, the Development Agreement, and with any changes that are necessary or required to complete the Northwest Trail Improvement Work to the satisfaction of the City Engineer.

Developer will do and perform, or cause to be done and performed, inspection of all Northwest Trail Improvements by a California licensed civil engineer or other qualified special inspector (hereinafter referred to as "Special Inspector"). Prior to approval and acceptance of the Northwest Trail Improvements by City, the Special Inspector shall provide a letter of review to the City evidencing that all Northwest Trail Improvements have been constructed in accordance with the Northwest Trail Design-Build Plans and all other governing regulations. All costs of checking said Northwest Trail Design-Build Plans and all inspections of the Northwest Trail Improvement Work shall be paid for by Developer. Any approval by the City Engineer shall not relieve Developer, or its engineers or architects from liability under this Agreement.

6. NORTHWEST TRAIL IMPROVEMENT SECURITY; PREVAILING WAGES.

Prior to commencement of the Northwest Trail Improvement Work, Developer shall furnish City with the following security in an amount equal to the Cost Estimate approved by the City Engineer pursuant to Section 4 above and in a form satisfactory to the City Attorney, and Developer shall comply with State Prevailing Wage Requirements in connection with the construction of the Northwest Trail Improvements:

A. Faithful Performance. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or any instrument of credit equivalent to one hundred percent (100%) of the Cost Estimate approved by the City Engineer pursuant to Section 4 above and sufficient to assure City that the Northwest Trail Improvements will be satisfactorily completed.

B. Labor and Materials. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to one hundred percent (100%) of the Cost Estimate approved by the City Engineer pursuant to Section 4 above and sufficient to assure City that Developer's contractors, subcontractors, and other persons furnishing labor, materials, or equipment on the Northwest Trail Improvements shall be paid therefor.

C. Alterations in Plans and Specifications. Developer shall enter into an agreement with all sureties providing security according to this paragraph, which shall specify that any alteration or alterations made in the Northwest Trail Design-Build Plans that are a part of this Agreement or any provision hereof shall not operate to release the surety or sureties from liability on any bond or bonds attached hereto and made a part hereof. Any security shall have an initial term of two (2) years. Further, the surety or sureties shall consent to any such alterations, and the sureties shall

waive the provisions of Section 2819 of the Civil Code of the State of California. Developer shall increase the dollar amount of bonds it has securing the Northwest Trail Improvements to reflect any alteration that results in an increase in the cost of the unfinished Northwest Trail Improvements above the Cost Estimate approved by the City Engineer pursuant to Section 4 above.

D. Release of Security. The Developer shall complete all Northwest Trail Improvements in accordance with the Northwest Trail Design-Build Plans prior to acceptance by the City and release of the required securities as provided in this paragraph. The Northwest Trail Improvements security for faithful performance shall not be released or reduced unless otherwise approved by the City Engineer. The security for labor and materials will be released in accordance with Section 66499.7 of the Government Code, as the same may be amended from time to time.

Any reductions authorized to be made in the amount of the Northwest Trail Improvements security shall be affected by a refund from any cash deposits made or a partial release of any surety bond or instrument of credit, within the limitations established by the Subdivision Map Act or local ordinance. Any security shall be in form and substance, and issued by an institution, satisfactory to City, and shall incorporate, either expressly or impliedly, the terms of Government Code §66499 et seq., which provides for recovery of enforcement costs. Developer covenants to keep in place during the entire period for which security is required in this Agreement the type and amounts of securities specified in subsections 6A and 6B above. Should any type or amount of such security be, or become, compromised, in the opinion of City, whether or not such compromise results from the actions or omissions of the Developer, upon request of City, Developer shall provide additional and/or replacement security.

E. Prevailing Wages. Developer acknowledges and agrees that it will be solely and exclusively responsible for compliance with all applicable provisions of the State Prevailing Wage Requirements in connection with the "construction", as defined in Labor Code §1720(a) (1) ("**Construction**"), of the Northwest Trail Improvements and shall pay all workers prevailing wages for Construction of the Northwest Trail Improvements in compliance with State Prevailing Wage Requirements.

Developer, as to the Construction of the Northwest Trail Improvements, shall indemnify, defend (with counsel acceptable to the City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors 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 (collectively a "Claim") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including all claims that may be made by contractors, subcontractors, or third party claimants pursuant to Labor Code sections 1726 and 1781), the failure to comply with any state or federal labor laws, regulations or standards, including the State Prevailing Wage Requirements, or any act or omission of Developer related to the payment or requirement of payment of prevailing wages. The foregoing indemnity shall survive any termination of this Agreement.

7. MAINTENANCE SECURITY.

A. Required Maintenance Security. The guarantee and conditions specified in Sections 15 and 16 of this Agreement shall be secured by a maintenance security which shall be delivered by the Developer to the City prior to the acceptance of the Northwest Trail Improvements by the City and before the release of other securities. Said maintenance security shall be in a form satisfactory to the City Attorney, for a period of twelve (12) months from the date of acceptance of the Northwest Trail Improvements by City, or longer if required pursuant to Section 16 below, and shall be a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general

surety business in the State of California, or an instrument of credit equivalent to ten percent (10%) of the Cost Estimate of the Northwest Trail Improvements.

B. Release of Maintenance Security. Said maintenance security, including any replacement security, shall remain in force until a written Release of Security is issued by the City Engineer. The following conditions must be satisfied before a written Release of Security shall be issued to release the maintenance security.

(1) Not later than twelve (12) months following acceptance of the Northwest Trail Improvements by City, Developer shall repair or reconstruct any defective Northwest Trail Improvements in accordance with Section 16 of this Agreement.

(2) If the period of time required to achieve satisfactory completion of the above conditions extends beyond twelve (12) months following acceptance of the Northwest Trail Improvements by City, then City has the right to require, and Developer shall provide, additional security to extend the period of the maintenance security until such time as the City Engineer approves completion of the above conditions. Approval of the above conditions shall be evidenced by a Release of Security issued by the City Engineer.

8. INSURANCE REQUIREMENTS.

Developer shall procure and maintain for the life of this Agreement (including the one (1) year guarantee period as described in Section 7.A. and any extension thereof), insurance against claims for injuries to persons and damages to property which may arise from or in connection with the performance of the Northwest Trail Improvement Work hereunder by the Developer, its contractor, agents, representatives, employees or subcontractors. Said insurance shall be maintained in full force and effect until the written Release of Security is issued by the City Engineer. Additionally, completed operations coverage shall be maintained in full force and effect for three years after the acceptance date of the Northwest Trail Improvements. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

A. Minimum Scope of Insurance. Insurance coverage shall be at least as broad as:

(1) Insurance Services Office form number CG0001 covering Commercial General Liability on an "occurrence" basis.

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

(3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance. Developer shall maintain limits no less than:

(1) Comprehensive General Liability: $2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: $2,000,000 combined single limit per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of $1,000,000 per accident for bodily injury or disease.

C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverages

(a) The City, its officers, agents, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer, and with respect to liability arising out of activities performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10, 11 85 or later revised), or as a separate owner's policy.

(b) For any claims related to this project, the Developer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

(2) Workers' Compensation and Employer Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, agents, officials, employees and volunteers for losses arising from work performed by the Developer pursuant to this Agreement.

(3) All Coverages

(a) Insurance is to be placed with insurers with a current A.M. Best rating of "A:VII" or better, and who are either "admitted" by the California Department of Insurance or who are listed on the "List of Eligible Surplus Line Insurers" as maintained by the California Department of Insurance. (Note: The List of Eligible Surplus Line Insurers is also known as the "LESLI List").

(b) Developer shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. Initial certificates and endorsements are to be received and approved by the City before work commences. Updated certificates and endorsements are to be provided to the City prior to each policy expiration date. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

(c) Developer and/or Developer's general contractor shall include all subcontractors as insureds under their policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(d) Developer hereby grants to City a waiver of any right to subrogation that any insurer of Developer may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether the City has requested or received a waiver of subrogation endorsement from the insurer.

(e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(f) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Section 2782 of the Civil Code.

9. PERMITS AND FEES IN COMPLIANCE WITH CITY ORDINANCES.

Developer shall, at Developer's sole cost and expense, obtain all necessary approvals, permits and licenses for the Amended Northwest Trail Legal Description and construction of the Northwest Trail Improvements, give all necessary notices and pay all fees and taxes required by law. All application, development, connection, recording, and impact fees will be paid at the time provided for by the City Code unless otherwise provided for in the Development Agreement.

10. COST OF ENGINEERING AND INSPECTION.

Developer shall be required to pay all application, engineering and inspection fees, deposits and charges required for and incurred by City in connection with the review, approval, inspection and acceptance of the Amended Northwest Trail Legal Description, Northwest Trail Design-Build Plans, Cost Estimate and Northwest Trail Improvements.

11. COMMENCEMENT OF CONSTRUCTION.

Northwest Trail Improvement Work shall not commence on any portion of the Property as specified in this Agreement or as required by the City until the following items as prescribed by this Agreement have been satisfied:

A. Approval by the City Engineer of the Northwest Trail Design-Build Plans and Cost Estimate; which approval the City Engineer shall use good faith efforts to provide within the time requirements set forth in Section 4 above; and

B. Receipt by City of security required by Section 6 above and insurance certificate(s) required by Section 8, as approved by the City Attorney.

12. TIME OF ESSENCE/TIME FOR PERFORMANCE.

Time is of the essence for this Agreement; therefore, subject to the provisions of Section 12.2 of the Development Agreement, Developer hereby agrees to complete the Northwest Trail Improvements and satisfy all provisions of this Agreement within the time periods provided in Sections 3 and 4. Any extensions of time shall not relieve or reduce the surety's liability on the security provided to insure performance of this Agreement. The City shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension.

In the event that the Developer fails to satisfy all provisions of this Agreement, including satisfactory completion of the Northwest Trail Improvements within the required time periods, City services performed in connection with this Agreement shall be suspended, including but not limited to, Public Works engineering review, Public Works inspections, Building Department inspections, Electric Utility inspections, and issuance and final approval of building permits. These City services shall be resumed, in total or in part, only after the Developer has prepared and the City Engineer has approved a written proposal for the timely completion of the Northwest Trail Improvements pursuant to the provisions of this Agreement.

13. SUPERINTENDENCE BY DEVELOPER.

Developer shall give personal superintendence to the Northwest Trail Improvements Work or have a competent foreman or superintendent on the Northwest Trail Improvements Work at all times during progress, with authority to act for Developer.

14. INSPECTION BY CITY.

Developer shall at all times maintain proper facilities, and provide safe access for inspection by City to all parts of the Northwest Trail Improvements and to the shops wherein the Northwest Trail Improvements Work is in preparation throughout its construction. The City Engineer shall have the authority to reject all materials and workmanship that are not in accordance with the conditions of the Tentative Map, the Northwest Trail Design-Build Plans, the City Code, and the City Public Works Standards, and/or the Development Agreement, and all such materials and/or work shall be removed promptly by Developer and replaced to the satisfaction of the City without any expense to the City.

15. REPAIRS AND REPLACEMENTS.

Developer shall replace, or have replaced, or repair, or have repaired, as the case may be, all Northwest Trail Improvements or other improvements adjacent to the Northwest Trail Improvements Work which have been destroyed, damaged or are rejected by the City Engineer, and Developer shall replace or have replaced, repair or have repaired, as the case may be, or pay to the owner, the entire cost of replacement or repairs of any and all property destroyed, damaged or not acceptable to the City Engineer by reason of any Northwest Trail Improvements Work done or being done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or by any public or private corporation, or by any persons whomsoever, or by any combination of such owners. Any such repair or replacement shall be equal or better than the existing improvements and shall be completed in accordance with Northwest Trail Design-Build Plans, City Code, the Development Agreement, and City Public Works Standards and are subject to the approval of the City Engineer.

Should the Developer fail to act within fifteen (15) days of destruction, damage, or written notification of rejection by the City Engineer of any Northwest Trail Improvements or other improvements damaged by the Northwest Trail Improvements Work, or should the exigencies of the case require repairs or replacements to be made before the Developer can be notified or before the Developer has acted, the City may, at its option, do the necessary work, and the Developer and his surety shall be liable to the City for the direct cost of such work (including the cost of materials, engineering, inspection, testing and superintendence) plus twenty percent (20%) for normal overhead charges ("indirect costs") associated with the cost of performing such work.

16. REPAIR OR RECONSTRUCTION OF DEFECTIVE WORK.

The Developer shall guarantee the Northwest Trail Improvements constructed by him and all supplies, materials, and devices incorporated in, or attached to, the Northwest Trail Improvements Work, or otherwise delivered to the City as part of the Northwest Trail Improvements Work

pursuant to this Agreement to be free of defects in materials and workmanship for a period of one (1) year (except for those manufactured products where extended warranties have been provided, in which case the extended warranty period shall apply) following the date of acceptance of the Northwest Trail Improvements by the City. The Developer shall agree to make, at his own expense, any repairs or replacements or to reconstruct defects in material, or workmanship, or both, which become evident within said guarantee period. The Developer shall further agree to indemnify and hold harmless the City and City staff against and from all claims and liability arising from damage and injury due to said defects. Developer further covenants and agrees that when defects in design, workmanship, or materials actually appear during the one-year guarantee period, and have been corrected, the guarantee period shall automatically be extended for an additional year to insure that such defects have actually been corrected. Should the Developer fail to act promptly or in accordance with the written order of the City or should the exigencies of the case require repairs or replacements to be made before the Developer can be notified or before the Developer has acted, the City may, at its option, do the necessary work and the Developer and his surety shall be liable to the City for the direct cost of such work (including the cost of materials, engineering, inspection, testing and superintendence) plus twenty percent (20%) for indirect costs.

17. USE OF PUBLIC IMPROVEMENTS.

At all times prior to the City's acceptance of the Northwest Trail Improvements, the use of any or all Northwest Trail Improvements shall be at the sole and exclusive risk of Developer. The issuance of any building or occupancy permit by City for dwellings located within the Property shall not be construed in any manner to constitute a partial or final acceptance or approval of any or all such Northwest Trail Improvements by City. Developer agrees that City's Building Official may withhold the issuance of building or occupancy permits when the work or its progress may substantially and/or detrimentally affect public health, safety, or welfare, as determined by said Building Official. Any and all damages resulting from prosecution of the Northwest Trail Improvements Work shall be repaired by Developer at Developer's expense. Developer shall not create or construct any obstruction of the public right of way or public easements unless otherwise approved by the City Engineer. The Developer shall ensure that all materials and equipment are stored outside of the public right-of-way and public easements.

18. PUBLIC SAFETY.

Developer must at all times conduct the work of constructing the Northwest Trail Improvements in accordance with Construction Safety Orders of the Division of Industrial Safety, State of California and City Public Works Standards, to ensure the least possible obstruction to traffic and inconvenience to the general public, and adequate protection of persons and property in the vicinity of the Northwest Trail Improvements Work.

No pedestrian or vehicle access way may be closed to the public without first obtaining permission of the Engineer.

Should the Developer fail to provide public safety as specified or if, in the opinion of the City Engineer, the warning devices furnished by the Developer are not adequate, the City may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Developer's operations and the Developer will be liable to the City for all costs incurred including, but not limited to, administrative costs.

19. RECORD DRAWINGS.

Upon completion of the Northwest Trail Improvements, and prior to City acceptance of the Northwest Trail Improvements, the Developer shall provide or cause to be provided record drawings of the Northwest Trail Design-Build Plans. The final record drawings shall be completed

on mylar in accordance with City Public Works Standards, including surveying in place all accessible improvements and providing AutoCAD file to the satisfaction of the City Engineer.

20. NOTICE OF BREACH AND DEFAULT.

Subject to the notice and cure provisions in Section 12.1 of the Development Agreement, if Developer refuses or fails to make expected progress toward completion of the Northwest Trail Improvements, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the Developer should be adjudged bankrupt, or Developer should make a general assignment for the benefit of Developer's creditors, or if a receiver should be appointed in the event of Developer's insolvency, any such occurrences shall be deemed a material breach of this Agreement. If Developer, or any of Developer's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, including the provisions of this Section 19, such violation(s) shall constitute a default of this Agreement, and City may serve written notice of such default on Developer and Developer's surety. Any such notice of default shall be deemed "served" upon delivery, in the event of personal service, or upon deposit when delivery is by the U.S. Postal Service or other commercial courier, as described in Section 25, below.

21. DUTY OF SURETY UPON NOTICE OF DEFAULT.

In the event that City serves a Notice of Default upon Developer's surety, Developer's surety shall have the duty to take over and complete the Northwest Trail Improvements herein specified; provided, however, that if the surety, within five (5) calendar days after serving such notice by City, fails to provide City with a written acknowledgment that the surety will take over and complete such Northwest Trail Improvements, then by further written notice to the surety by City, City may elect to take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of the Developer and Developer's surety. Developer and Developer's surety shall be liable to the City for any cost or damages occasioned to the City thereby, including those costs and expenses described in Government Code §66499.4; and in such event, City, without liability for so doing, may take possession of, and utilize in completing the Northwest Trail Improvements, such materials, appliances, plant and other property belonging to Developer as may be on the site of the Northwest Trail Improvements Work and necessary therefor.

22. TITLE TO NORTHWEST TRAIL IMPROVEMENTS.

Developer warrants that it has the right, power and authority to, and in executing this Agreement does hereby, offer to dedicate, convey, and transfer to City fee title to and ownership of all Northwest Trail Improvements as provided in the Northwest Trail Design-Build Plans, without lien, encumbrance or other burden. Clear title to, and ownership of, said Northwest Trail Improvements constructed hereunder by Developer shall vest absolutely in City upon acceptance of such Northwest Trail Improvements by the City.

23. ACCEPTANCE OF NORTHWEST TRAIL IMPROVEMENTS BY CITY.

City shall only accept those Northwest Trail Improvements that have been constructed, installed, maintained, replaced, and/or repaired in accordance with all applicable federal, state, county and local laws, regulations and standards, including the conditions of the Tentative Map, Northwest Trail Design-Build Plans and City Public Works Standards. The determination of compliance with applicable federal, state, county and local laws, regulations and standards, including the conditions of the Tentative Map, Northwest Trail Design-Build Plans and City Public Works Standards shall be made by the City Engineer in his/her discretion. The offer of dedication of Northwest Trail Improvements by the Developer can be accepted only by resolution of the City Council, and only upon 100% completion of the Northwest Trail Improvements. The City shall act

to accept the dedication within forty five (45) calendar days after the determination by the City Engineer that the Northwest Trail Improvements have been completed.

24. DEVELOPER NOT AGENT OF CITY/NO ASSIGNMENT.

Neither Developer nor any of Developer's agents, contractors, or subcontractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement. This Agreement shall not be assigned by Developer without the prior written consent of City. Any attempted assignment without such prior written consent shall be null and void.

25. HOLD-HARMLESS AGREEMENT.

Developer hereby warrants that the design and construction of the Northwest Trail Improvements will not adversely affect any portion of adjacent properties and that all Northwest Trail Improvements Work will be performed in a proper manner. Developer agrees to indemnify, defend with counsel acceptable to City, and hold harmless City, its officers, officials, employees, agents, and volunteers, from and against any and all loss, claims, suits, liabilities, actions, damages, or causes of action of every kind, nature and description (collectively "Liability") directly or indirectly arising from any act or omission of Developer, its employees, agents, or independent contractors in connection with Developer's actions and obligations hereunder, except such Liabilities caused by the sole negligence or willful misconduct of City, provided as follows:

A. That City does not, and shall not, waive any rights against Developer that it may have by reason of the "Hold Harmless" provisions of this Agreement, by virtue of accepting this Agreement, by accepting any deposit made by Developer, or by approving any of the insurance policies described in Section 7 hereof.

B. That the Hold-Harmless provisions of this Agreement shall apply to all damages and claims for damages of every kind suffered or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this Section, regardless of whether City has prepared, supplied or approved of any portion of the Northwest Trail Design-Build Plans, or regardless of whether insurance policies as required in this Agreement shall have been determined to be applicable to any such damages or claims for damages.

C. In the event that legal action is initiated by either party to this Agreement, and said action seeks damages for breach of this Agreement or seeks to specifically enforce the terms of this Agreement, and, in the event judgment is entered in said action, the prevailing party shall be entitled to recover its attorneys' fees and court costs. If City is the prevailing party, City shall also be entitled to recover its attorneys' fees and costs in any action against Developer's surety on the bonds provided under Sections 5 and 6 hereof.

D. With respect to third party claims against the Developer, the Developer waives any and all rights of any type to express or implied indemnity against the City.

E. The hold harmless and indemnity provisions set forth in this Section 25 shall terminate upon the expiration of the ten (10) year statute of repose set forth in California Code of Civil Procedure §337.15 following acceptance of the Northwest Trail Improvements pursuant to Section 23 above.

26. NOTICE.

All notices herein required shall be in writing, and delivered in person to the addressee's normal place of business, or sent by registered mail, or other commercial courier where date and place of delivery can be confirmed, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City of Healdsburg
Attn: City Engineer
401 Grove Street
Healdsburg, CA 95448

Notices required to be given to Developer shall be addressed as follows:

Sonoma Luxury Resort, LLC
Attn: Michael G. Mohr
720 East University Avenue, Suite 200
Los Gatos, CA 95032

The Robert Green Company
Attn: Robert S. Green, Jr.
169 Saxony Road, Suite 113
Encinitas, CA 92024

Notices required to be given to the Developer's surety shall be as provided in the approved security instruments. Any Party may change such address by notice in writing to the other Parties and thereafter notices shall be addressed and transmitted to the new address.

27. SUCCESSORS IN INTEREST.

All of the terms, covenants and conditions contained here shall continue, and bind all successors-in-interest of Developer.

28. SEVERABILITY.

Every provision of this Agreement is intended to be severable. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

29. COUNTERPARTS.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITY:

CITY OF HEALDSBURG,
a California municipal corporation

By:_____

Name: Jeff Kay

Its: City Manager

Date: _____

APPROVED AS TO FORM:

By:_____
Samantha Zutler, City Attorney

DEVELOPER:

SONOMA LUXURY RESORT LLC, a
Delaware limited liability company

By:_____

Name: John Ginochio

Its: Chief Financial Officer

Date:_____

APPROVED AS TO FORM:

By:_____
Developer Attorney

ACKNOWLEDGMENT

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 _____)

On _____, 201__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (seal)

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 201__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain real property situated in the City of Healdsburg, County of Sonoma, State of California, and legally described as Parcel 1 and Parcel 2 of Saggio Hills per Map recorded May 23, 2018, in Book 795 of Maps at Pages 31-40, as Instrument No. 2018-037508, in the Official Records of Sonoma County, State of California.

EXHIBIT B-29

AMENDED NORTHWEST TRAIL EASEMENT

EXHIBIT B-29

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

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

The City of Healdsburg is Exempt from Recording Fees (Government Code §27383), and Building Homes & Jobs Trust Fund Fee (Govt. Code §27388.1(a)(2)(D)).
Assessor's Parcel #(s): XXX-XXX-XXX

Space above this line reserved for County Recorder's use

AMENDED NORTHWEST TRAIL EASEMENT

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, as of this ____ day of _____, 2021 ("**Effective Date**"), SONOMA LUXURY RESORT LLC, a Delaware limited liability company ("**Grantor**"), owner of certain real property situated in the City of Healdsburg, County of Sonoma, State of California, and legally described as Parcel 1 and Parcel 2 of Saggio Hills per Map recorded May 23, 2018, in Book 795 of Maps at Pages 31-40, as Instrument No. 2018-037508, in the Official Records of Sonoma County, State of California ("**Property**"), hereby GRANTS AND CONVEYS to the CITY OF HEALDSBURG, a California municipal corporation ("**Grantee**"), its successors and assigns, and all those taking by, under or through Grantee, a permanent, nonexclusive easement in gross to enter in, on, over, under and upon, exit from, traverse, and otherwise use the area of the Property legally described and depicted in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Easement Area**") for Access Purposes, and the Easement Area plus five feet (5') on either side of the Easement Area (the "**Construction and Maintenance Easement Area**") for Construction and Maintenance Purposes (collectively, the "**Easement**"). Grantor and Grantee are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

The Easement Area shall be used only for Access Purposes and the Construction and Maintenance Easement Area shall only be used for Maintenance Purposes (collectively, "**Easement Rights**"). "**Access Purposes**" means use of the Easement Area as a public pedestrian and hiking corridor and right of way for pedestrian, hiking and associated uses. "**Maintenance Purposes**" means use of the Construction and Maintenance Easement Area for Construction and Maintenance Work or Routine Maintenance Work as defined herein. "**Construction and Maintenance Work**" means installing, constructing, improving, repairing, replacing, reconstructing, inspecting, and maintaining (and any work performed in connection therewith), a paved and/or gravel trail for public pedestrian and hiking access, ingress and egress, related drainage improvements, any and all underground utility lines and fixtures for utilities such as water, lighting, emergency telephone call boxes, and other improvements. "**Routine Maintenance Work**" means litter removal, graffiti removal, cleaning, power washing, painting, bulb replacement and electrical repairs. Grantee shall cause all improvements

within the Easement Area to be designed, constructed, installed and maintained in accordance with all applicable codes and regulations.

No equestrian uses, bicycles, motorcycles or motorized vehicles shall be permitted to use the Easement Area or Construction and Maintenance Easement Area, save and except for public safety and emergency vehicles (police, fire and ambulance services), and normal construction and maintenance vehicles.

Grantee shall operate, maintain and use the Easement Area and Construction and Maintenance Easement Area with reasonable diligence and care, keep it free of trash and in good condition and repair. Grantee or its designee will in good faith take reasonable steps to resolve any damage or maintenance issue that Grantor brings to Grantee's attention that relates to improvements constructed and installed on the Property that are impacted by improvements or activities on the Easement Area.

Grantee agrees to indemnify, defend with counsel selected by Grantee, and hold harmless Grantor, its officers, officials, employees, agents, and volunteers ("**Indemnitee**"), from and against any and all loss, claims, suits, liabilities, actions, damages, or causes of action of every kind, nature and description ("**Liabilities**"), directly or indirectly arising from any act or omission of City, its employees, agents, or independent contractors in connection with Grantee's exercise of Easement Rights on the Easement, save and except such Liabilities caused by the sole negligence or willful misconduct of an Indemnitee.

Grantor shall operate, maintain and use the Property with reasonable diligence and care, keep it free of trash and in good condition and repair. Grantor or its designee will in good faith take reasonable steps to resolve any damage or maintenance issue that Grantee brings to Grantor's attention that relates to improvements constructed and installed on the Easement Area that are impacted by improvements or activities on Grantor's Property.

Grantor may, with the prior consent of Grantee, intermittently close portions of the Easement Area during construction activities on the Property, if, and for so long as, public safety concerns warrant as determined by Grantee.

Grantor warrants to City that:

A. The Easement Area and Construction and Maintenance Easement Area are, as of the date this Easement is executed, free and clear of all liens or, if it is not, that Grantor has obtained and will record before or concurrently with the recording of this Easement, a legally binding subordination of any mortgage, lien, or other encumbrance affecting the Easement Area and Construction and Maintenance Easement Area as of the date of this Easement.

B. To the best of Grantor's actual knowledge, no one has the legally enforceable right (for example, under a lease, easement or right-of-way agreement in

existence as of the date this Easement is executed by Grantor) to prevent the use of the Easement burdening the Easement Area and Construction and Maintenance Easement Area for the purposes contemplated by Grantee herein.

C. To the best of Grantor's knowledge, the Easement Area and Construction and Maintenance Easement Area are not contaminated with materials identified as hazardous or toxic waste under applicable federal or state law and no such materials have been stored or generated within the Easement Area or Construction and Maintenance Easement Area, nor does Grantor have a reasonable basis, as of the date of this Easement, to suspect that such contamination may have occurred previously.

Grantee may assign any of its rights and responsibilities hereunder to design, install, construct, improve, repair, replace, reconstruct, operate, maintain and use the Easement, as permitted herein, to another public entity whose purpose includes the use, operation and maintenance of publicly accessible pedestrian and hiking trails as determined by City (hereinafter, the "**Assignee**"). Grantee and Assignee shall execute and record an agreement in the official records of Sonoma County wherein Grantee shall assign all rights and obligations of Grantee under this Easement to Assignee, and Assignee shall assume all rights and obligations of Grantee under this Easement and agree to be bound by the terms and conditions set forth in this Easement.

The benefits and burdens of this Easement shall run with the title to the Property and shall inure to the benefit of and bind the Parties hereto, and each of them, as well as their respective heirs, assigns and successors in interest.

Each Party shall have the right (but not the obligation) to prosecute any proceedings at law or in equity against any other Party, or any other person or entity, violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Easement in order to prevent such party, person or entity from violating or attempting to violate or defaulting in the performance of any of the provisions of this Easement or to recover damages for any such violation or default. It is agreed that damages would be an inadequate remedy for violation of this Easement by any Party and, therefore, injunctive or other appropriate equitable relief shall be available to the other Party. The remedies available shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Easement. The result of every action or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against any party, either public or private, shall be applicable against every such result and may be exercised by any Party.

No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Easement shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions or conditions hereof.

In the event that any action is brought by either Party hereto as against the other Party for the enforcement or declaration of any right or remedy in or under this Easement or for the breach of any covenant or condition of this Easement, venue for any proceeding to enforce or interpret this Easement shall be in the Superior Court of the County of Sonoma, State of California, and the prevailing Party shall be entitled to recover, and the other Party agrees to pay (in addition to any other relief that may be granted) all fees and costs to be fixed by the court therein including, but not limited to, reasonable attorneys' fees.

Notwithstanding anything in this Easement to the contrary, including rights of the general public to use the Easement Area for Access Purposes, nothing herein is intended to create any third party benefit and there are no third party beneficiaries of this Easement or the Easement Rights.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Easement as of the Effective Date first written above.

CITY:

CITY OF HEALDSBURG,
a California municipal corporation

By:_____

Name: Jeff Kay

Its: City Manager

Date: _____

APPROVED AS TO FORM:

By:_____
Samantha Zutler, City Attorney

DEVELOPER:

SONOMA LUXURY RESORT LLC, a
Delaware limited liability company

By:_____

Name: John Ginochio

Its: Chief Financial Officer

Date:_____

APPROVED AS TO FORM:

By:_____
Developer Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF EASEMENT AREA

[***to be inserted***]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property situated in the City of Healdsburg, County of Sonoma, State of California, conveyed by AMENDED NORTHWEST TRAIL EASEMENT, dated _____, 2021 ("**Easement Deed**"), from SONOMA LUXURY RESORT LLC, a Delaware limited liability company ("**Grantor**") to CITY OF HEALDSBURG, a California municipal corporation ("**Grantee**"), is hereby accepted by the undersigned officer or agent on behalf of the Grantee, pursuant to authority conferred by Resolution No. _____, adopted by the City Council of the City of Healdsburg on _____, 20___, and the Grantee consents to recordation of the Easement Deed by its duly authorized officer.

CITY OF HEALDSBURG,
a California municipal corporation

By: _____
Name: Jeff Kay
Its: City Manager
Date: _____, 2021

EXHIBIT B-30

MULTI-USE TRAIL EASEMENT

EXHIBIT B-30

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

City of Healdsburg
401 Grove Street
Healdsburg, California 9495448

The City of Healdsburg is Exempt from Recording Fees (Government Code §27383), Documentary Transfer Tax and City Transfer Tax (Rev. & Taxation Code §11922 and Healdsburg Municipal Code §3.16.050), and Building Homes & Jobs Trust Fund Fee (Govt. Code §27388.1(a)(2)(D)).

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MULTI-USE TRAIL EASEMENT

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, as of this ____ day of _____, 2021 ("**Effective Date**"), SONOMA LUXURY RESORT LLC, a Delaware limited liability company ("**Grantor**"), owner of certain real property situated in the City of Healdsburg, County of Sonoma, State of California, and legally described as Parcel 7 of Saggio Hills per Map recorded May 23, 2018, in Book 795 of Maps at Pages 31-40, as Instrument No. 2018-037508, in the Official Records of Sonoma County, State of California ("**Property**"), hereby GRANTS AND CONVEYS to the CITY OF HEALDSBURG, a California municipal corporation ("**Grantee**"), its successors and assigns, and all those taking by, under or through Grantee, a permanent, nonexclusive easement in gross to enter in, on, over, under and upon, exit from, traverse, and otherwise use the area of the Property legally described and depicted in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Multi-Use Trail Easement**") for Access Purposes, and the Multi-Use Trail Easement plus five feet (5') on either side of the Multi-Use Trail Easement (the "**Construction and Maintenance Easement**") for Construction and Maintenance Purposes (collectively, the Multi-Use Trail Easement and Construction and Maintenance Easement is referred to herein as the "**Easement**"). Grantor and Grantee are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

The Multi-Use Trail Easement shall be used only for Access Purposes and the Construction and Maintenance Easement shall only be used for Maintenance Purposes (collectively, "**Easement Rights**"). "**Access Purposes**" means use of the Multi-Use Trail Easement as a public pedestrian and bicycle corridor and right of way for pedestrians, bicycles and associated uses. "**Maintenance Purposes**" means use of the Construction and Maintenance Easement for Construction and Maintenance Work or Routine Maintenance Work as defined herein. "**Construction and Maintenance Work**" means installing, constructing, improving, repairing, replacing, reconstructing, inspecting, and maintaining (and any work performed in connection therewith), a paved and/or gravel trail for public pedestrian and bicycle access,

ingress and egress, related drainage improvements, any and all underground utility lines and fixtures for utilities such as water, lighting, emergency telephone call boxes, and other improvements. "**Routine Maintenance Work**" means litter removal, graffiti removal, cleaning, power washing, painting, bulb replacement and electrical repairs. Grantee shall cause all improvements within the Multi-Use Trail Easement to be designed, constructed, installed and maintained in accordance with all applicable codes and regulations.

No equestrian use, motorcycles or motorized vehicles shall be permitted to use the Easement, save and except for public safety and emergency vehicles (police, fire and ambulance services), and normal construction and maintenance vehicles.

Grantee shall operate, maintain and use the Easement with reasonable diligence and care, keep it free of trash and in good condition and repair. Grantee or its designee will in good faith take reasonable steps to resolve any damage or maintenance issue that Grantor brings to Grantee's attention that relates to improvements constructed and installed on the Property that are impacted by improvements or activities on the Easement.

Grantee agrees to indemnify, defend with counsel selected by Grantee, and hold harmless Grantor, its officers, officials, employees, agents, and volunteers ("**Indemnitee**"), from and against any and all loss, claims, suits, liabilities, actions, damages, or causes of action of every kind, nature and description ("**Liabilities**"), directly or indirectly arising from any act or omission of City, its employees, agents, or independent contractors in connection with Grantee's exercise of Easement Rights on the Easement, save and except such Liabilities caused by the sole negligence or willful misconduct of an Indemnitee.

Grantor shall operate, maintain and use the Property with reasonable diligence and care, keep it free of trash and in good condition and repair. Grantor or its designee will in good faith take reasonable steps to resolve any damage or maintenance issue that Grantee brings to Grantor's attention that relates to improvements constructed and installed on the Easement that are impacted by improvements or activities on Grantor's Property.

Grantor may, with the prior consent of Grantee, intermittently close portions of the Easement during construction activities on the Property, if, and for so long as, public safety concerns warrant as determined by Grantee.

Grantor warrants to City that:

A. The Easement is, as of the date this Easement is executed, free and clear of all liens or, if it is not, that Grantor has obtained and will record before or concurrently with the recording of this Easement, a legally binding subordination of any mortgage, lien, or other encumbrance affecting the Easement.

B. To the best of Grantor's actual knowledge, no one has the legally enforceable right (for example, under a lease, easement or right-of-way agreement in existence as of the date this Easement is executed by Grantor) to prevent the use of the Easement for the purposes contemplated by Grantee herein.

C. To the best of Grantor's knowledge, the Easement is not contaminated with materials identified as hazardous or toxic waste under applicable federal or state law and no such materials have been stored or generated within the Easement, nor does Grantor have a reasonable basis, as of the date of this Easement, to suspect that such contamination may have occurred previously.

Grantee may assign any of its rights and responsibilities hereunder to design, install, construct, improve, repair, replace, reconstruct, operate, maintain and use the Easement, as permitted herein, to another public entity whose purpose includes the use, operation and maintenance of publicly accessible pedestrian and bicycle trails as determined by City (hereinafter, the "**Assignee**"). Grantee and Assignee shall execute and record an agreement in the official records of Sonoma County wherein Grantee shall assign all rights and obligations of Grantee under this Easement to Assignee, and Assignee shall assume all rights and obligations of Grantee under this Easement and agree to be bound by the terms and conditions set forth in this Easement.

The benefits and burdens of this Easement shall run with the title to the Property and shall inure to the benefit of and bind the Parties hereto, and each of them, as well as their respective heirs, assigns and successors in interest.

Each Party shall have the right (but not the obligation) to prosecute any proceedings at law or in equity against any other Party, or any other person or entity, violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Easement in order to prevent such party, person or entity from violating or attempting to violate or defaulting in the performance of any of the provisions of this Easement or to recover damages for any such violation or default. It is agreed that damages would be an inadequate remedy for violation of this Easement by any Party and, therefore, injunctive or other appropriate equitable relief shall be available to the other Party. The remedies available shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Easement. The result of every action or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against any party, either public or private, shall be applicable against every such result and may be exercised by any Party.

No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Easement shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions or conditions hereof.

In the event that any action is brought by either Party hereto as against the other Party for the enforcement or declaration of any right or remedy in or under this Easement or for the breach of any covenant or condition of this Easement, venue for any proceeding to enforce or interpret this Easement shall be in the Superior Court of the County of Sonoma, State of California, and the prevailing Party shall be entitled to recover, and the other Party agrees to pay (in addition to

any other relief that may be granted) all fees and costs to be fixed by the court therein including, but not limited to, reasonable attorneys' fees.

Notwithstanding anything in this Easement to the contrary, including rights of the general public to use the Multi-Use Trail Easement for Access Purposes, nothing herein is intended to create any third party benefit and there are no third party beneficiaries of this Easement or the Easement Rights.

IN WITNESS WHEREOF, Developer has executed this Multi-Use Trail Easement as of the _____ day of _____, 20__.

SONOMA LUXURY RESORT LLC,
a Delaware limited liability company

By: _____
Name: John Ginochio
Its: Chief Financial Officer

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 _____)

On _____, 20__ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (seal)

EXHIBIT A

LEGAL DESCRIPTION OF MULTI-USE TRAIL EASEMENT

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property situated in the City of Healdsburg, County of Sonoma, State of California, conveyed by MULTI-USE TRAIL EASEMENT, dated _____, 2021 ("**Easement Deed**"), from SONOMA LUXURY RESORT LLC, a Delaware limited liability company ("**Grantor**") to CITY OF HEALDSBURG, a California municipal corporation ("**Grantee**"), is hereby accepted by the undersigned officer or agent on behalf of the Grantee, pursuant to authority conferred by Resolution No. _____, adopted by the City Council of the City of Healdsburg on _____, 20___, and the Grantee consents to recordation of the Easement Deed by its duly authorized officer.

CITY OF HEALDSBURG,
a California municipal corporation

By: _____
Name: Jeff Kay
Its: City Manager
Date: _____, 2021

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 _____)

On _____, 20__ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (seal)

EXHIBIT B-31

AMENDED AFFORDABLE HOUSING LAND TITLE INSTRUCTIONS

EXHIBIT B-31

_____, 2021

VIA EMAIL TO CBURCHARD@STEWART.COM

Stewart Title Guaranty Company
Commercial Services
7676 Hazard Center Drive, 14th Floor
San Diego, CA 94108
Attention: Carla Burchard, Commercial
Escrow Officer

Re: Amended Affordable Housing Land Title Instructions – Parcels 5 & 6 of Saggio Hills
Sonoma Luxury Resort LLC ("**Grantor**"); City of Healdsburg ("**Grantee**")
Order No.: 18000480635 and 18000480636

Dear Ms. Burchard:

On May 17, 2019, Grantor and Grantee submitted joint instructions to you in connection with the above referenced order. Please be advised that the instructions in this letter shall repeal and replace the instructions previously provided to you.

Reference is hereby made to that certain Development Agreement between Sonoma Luxury Resort LLC, a Delaware limited liability company ("**Grantor**"), and the City of Healdsburg, a California municipal corporation ("**City**"), dated April 11, 2011, as amended by that certain Third Amendment to Development Agreement, by and between Grantor and City, dated _____, 2021 (collectively, the "**Development Agreement**") for the dedication of certain real property referred to as the Affordable Housing Land and located on Parcel 5 and Parcel 6 of Saggio Hills per Map recorded May 23, 2018 in Book 795, Pages 31-40 as Instrument No. 2018-037508, of Official Records, in the City of Healdsburg, County of Sonoma, in the State of California (the "**Parcel 5 Property**" and "**Parcel 6 Property**", respectively, and collectively referred to herein as the "**Property**").

The Parcel 5 Property is identified and legally described as Parcel One in the Preliminary Title Report ("**Parcel 5 Title Commitment**"), issued by Stewart Title Guaranty Company ("**Title Company**"), dated August 27, 2018, Order No. 18000480635. The Parcel 6 Property is identified and legally described as Parcel One in the Preliminary Title Report ("**Parcel 6 Title**

Commitment"), issued by Title Company and dated August 28, 2018, Order No. 18000480636. Please note that the City is not acquiring and will not accept an appurtenant interest in the easements described as Parcel Two and Parcel Three in each of the Parcel 5 Title Commitment and Parcel 6 Title Commitment.

This letter represents the joint escrow instructions of Grantor and Grantee to Title Company pertaining to the Property.

The Title Company has previously received directly from Grantor one (1) original of the Grant Deed, substantially in the form of Exhibit B-6 to the Development Agreement, for conveyance of the Property from Grantor to Grantee (the "**Grant Deed**"), executed and acknowledged by Grantor.

The Grant Deed is being delivered to you to be held by you in escrow, subject to strict compliance with the instructions set forth below. Acceptance by you of this escrow shall constitute a contractual obligation with Grantor and Grantee for compliance with the terms of this letter.

The Grant Deed shall not be released from escrow until each of the following conditions is satisfied:

1. You have executed this letter in the space provided below and delivered the same to Grantor, care of the undersigned, Robert S. Green, Jr., by email to robert@therobertgreencompany.com, and to Grantee, care of the undersigned, City Attorney, Samantha Zutler, by email to szutler@bwslaw.com.

2. You have received the Grant Deed from Grantor and confirmed same has been executed by Grantor and acknowledged.

3. You have received a statement signed by the Grantor and Grantee ("**Grantor-Grantee Statement**") stating that Grantor has completed the replacement wetlands (including the one growing season "grow-in").

4. Within ten (10) days following receipt of the Grantor-Grantee Statement, Title Company shall provide to Grantor and Grantee a Settlement Statement to close escrow.

5. Within thirty (30) days following receipt of the Settlement Statement, Grantor shall (i) cause the execution, acknowledgement and delivery of documents to Title Company sufficient to effect the release and reconveyance of any and all liens secured by the Property, and (ii) deposit with Title Company sufficient funds, as identified on the Settlement Statement, for the cost of the premium for an ALTA

Owner's Policy of title insurance insuring fee title to the Property in Grantee for the amount of $7,150,000.00.

6. Within thirty (30) days following receipt of the Settlement Statement, Grantee shall have deposited with Title Company sufficient funds, as identified on the Settlement Statement, to close escrow.

7. You have received one (1) fully executed and acknowledged original Certificate of Acceptance of the Grant Deed from Grantee and attached it to the original Grant Deed provided by Grantor.

8. You have received such additional documentation executed and acknowledged by Grantor and Grantee, as necessary, required by Title Company to facilitate the close of escrow contemplated in these joint instructions.

9. Title Company is in a position to issue an ALTA Owner's Policy of title insurance in the amount of $7,150,000, insuring fee title to the Property described in the Grant Deed in favor of Grantee in accordance with the Parcel 5 Title Commitment and Parcel 6 Title Commitment, subject to (x) the restrictions set forth in the Grant Deed; but excluding (i) any appurtenant interest in the easements described as Parcel Two and Parcel Three in each of the Parcel 5 Title Commitment and Parcel 6 Title Commitment, (ii) items A, B and C in Schedule B-Taxes in each of the Parcel 5 Title Commitment and Parcel 6 Title Commitment, (iii) exceptions 11, 15, 16, 17, 18, 19, 20, 21 and 22 of Schedule B of the Parcel 5 Title Commitment, and (iv) exceptions 6, 15, 16, 17, 18, 19, 20 and 21 of Schedule B of the Parcel 6 Title Commitment (the "**Title Policy**").

Upon satisfaction of the conditions set forth above, you are authorized and directed to immediately take the following actions in the following order (time being of the essence), but you shall not take any of such actions until you are unconditionally and irrevocably committed to take all of such actions:

1. Record the original Grant Deed in the Sonoma County Records.

2. Send to the City at the following address: City of Healdsburg, 401 Grove Street, Healdsburg, California 95448, Attention: City Clerk, within five (5) business days following the close of escrow, one (1) conformed copy of the recorded Grant Deed and the original Title Policy.

3. Send to the City Attorney, Samantha Zutler, at the following address: Burke Williams & Sorensen LLP, 101 Howard, Suite 400, San Francisco, CA 94105-

6125, within five (5) business days following the close of escrow, one (1) conformed copy of the recorded Grant Deed and a copy of the Title Policy.

4 Send to the Grantor at the following address: Sonoma Luxury Resorts LLC, 720 East University Avenue, Suite 200, Los Gatos, California 95302, within five (5) business days following the close of escrow, one (1) conformed copy of the recorded Grant Deed.

These joint instructions may not be modified unless you receive additional written instructions from the Grantor and Grantee.

Very truly yours,

"Grantee"

_____
Samantha W. Zutler, City Attorney

"Grantor"

SONOMA LUXURY RESORT LLC
a Delaware limited liability company

By: The Robert Green Company, a California corporation
Its: Authorized Representative

By: _____
Robert S. Green, Jr.
President

Enclosures

The foregoing is hereby accepted and agreed to:

STEWART TITLE GUARANTY COMPANY

By:_____
Carla Burchard
Commercial Escrow Officer

EXHIBIT B-32

AMENDED PUBLIC PARK LAND TITLE INSTRUCTIONS

EXHIBIT B-32

_____, 2021

VIA EMAIL TO CBURCHARD@STEWART.COM

Stewart Title Guaranty Company
Commercial Services
7676 Hazard Center Drive, 14th Floor
San Diego, CA 94108
Attention: Carla Burchard, Commercial
Escrow Officer

Re: Amended Public Park Land Title Instructions – Parcel 8 of Saggio Hills
Sonoma Luxury Resort LLC ("**Grantor**"); City of Healdsburg ("**Grantee**")
Order No.: 18000480638

Dear Ms. Burchard:

On May 17, 2019, Grantor and Grantee submitted joint instructions to you in connection with the above referenced order. Please be advised that the instructions in this letter shall repeal and replace the instructions previously provided to you.

Reference is hereby made to that certain Development Agreement between Sonoma Luxury Resort LLC, a Delaware limited liability company ("**Grantor**"), and the City of Healdsburg, a California municipal corporation ("**City**"), dated April 11, 2011, as amended by that certain Third Amendment to Development Agreement, by and between Grantor and City, dated _____, 2021 (collectively, the "**Development Agreement**") for the dedication of certain real property referred to as the Public Park Land and located on Parcel 8 of Saggio Hills per Map recorded May 23, 2018 in Book 795, Pages 31-40 as Instrument No. 2018-037508, of Official Records, in the City of Healdsburg, County of Sonoma, in the State of California (the "**Property**").

The Property is identified and legally described as Parcel One in the Preliminary Title Report ("**Title Commitment**"), issued by Stewart Title Guaranty Company ("**Title Company**") dated August 28, 2018, Order No. 18000480638. Please note that Grantee is not acquiring and will not accept an appurtenant interest in the easements described as Parcel Two and Parcel Three in the Title Commitment.

This letter represents the joint escrow instructions of Grantor and Grantee to Title Company pertaining to the Property.

The Title Company has previously received directly from Grantor one (1) original of the Grant Deed, substantially in the form of Exhibit B-8 to the Development Agreement, for conveyance of the Property from Grantor to Grantee (the "**Grant Deed**"), executed and acknowledged by Grantor.

The Grant Deed is being delivered to you to be held by you in escrow, subject to strict compliance with the instructions set forth below. Acceptance by you of this escrow shall constitute a contractual obligation with Grantor and Grantee for compliance with the terms of this letter.

The Grant Deed shall not be released from escrow until each of the following conditions is satisfied:

1. You have executed this letter in the space provided below and delivered the same to Grantor, care of the undersigned, Robert S. Green, Jr., by email to robert@therobertgreencompany.com, and to Grantee, care of the undersigned, City Attorney, Samantha Zutler, by email to szutler@bwslaw.com.

2. You have received the Grant Deed from Grantor and confirmed same has been executed by Grantor and acknowledged.

3. Within ten (10) days following receipt of a written request from Grantee, Title Company shall provide to Grantor and Grantee a Settlement Statement to close escrow.

4. You have received a statement signed by the City Attorney, Samantha Zutler, stating that (i) Grantor has completed the mass grading of the Property pursuant to Section 10(a) of Exhibit B to the Development Agreement and Grantee has accepted the same as being complete, and (ii) you are authorized to close this escrow.

5. Within thirty (30) days following receipt of the Settlement Statement, Grantor shall (i) cause the execution, acknowledgement and delivery of documents to Title Company sufficient to effect the release and reconveyance of any and all liens secured by the Property, (ii) deposit with Title Company sufficient funds, as identified on the Settlement Statement, for the cost of the premium for an ALTA Owner's Policy of title insurance insuring fee title to the Property in Grantee for the amount of $6,475,000.00, and (iii) deposit with Title Company, subject to the

prior review and approval of Grantee, the legal description of the portion of the Property located west of Foss Creek to be inserted as Exhibit D to the Grant Deed.

6. Within thirty (30) days following receipt of the Settlement Statement, Grantee shall have deposited with Title Company sufficient funds, as identified on the Settlement Statement, to close escrow.

7. You have received one (1) fully executed and acknowledged original Certificate of Acceptance of the Grant Deed from Grantee and attached it to the original Grant Deed provided by Grantor.

8. You have received such additional documentation executed and acknowledged by Grantor and Grantee, as necessary, required by Title Company to facilitate the close of escrow contemplated in these joint instructions.

9. Title Company is in a position to issue an ALTA Owner's Policy of title insurance in the amount of $6,475,000, insuring fee title to the Property described in the Grant Deed in favor of Grantee in accordance with the Title Commitment, subject to (x) the restrictions set forth in the Grant Deed, and (y) the Easement Deed between Grantor and PG&E, dated October 10, 2019, and recorded in the Official Records of Sonoma County on May 14, 2020, Instrument No. 2020036718; but excluding (i) any appurtenant interest in the easements described as Parcel Two and Parcel Three in the Title Commitment, (ii) items A, B and C in Schedule B-Taxes in the Title Commitment, and (iii) exceptions 15, 16, 17, 18, 19, 20, 21 and 22 of Schedule B of the Title Commitment (the "**Title Policy**").

Upon satisfaction of the conditions set forth above, you are authorized and directed to immediately take the following actions in the following order (time being of the essence), but you shall not take any of such actions until you are unconditionally and irrevocably committed to take all of such actions:

1. Record the Grant Deed in the Sonoma County Records.

2. Send to the City at the following address: City of Healdsburg, 401 Grove Street, Healdsburg, California 95448, Attention: City Clerk, within five (5) business days following the close of escrow, one (1) conformed copy of the recorded Grant Deed and the original Title Policy.

3. Send to the City Attorney, Samantha Zutler, at the following address: Burke Williams & Sorensen LLP, 101 Howard, Suite 400, San Francisco, CA 94105-6125, within five (5) business days following the close of escrow, one (1) conformed copy of the recorded Grant Deed and a copy of the Title Policy.

4. Send to the Grantor at the following address: Sonoma Luxury Resorts LLC, 720 East University Avenue, Suite 200, Los Gatos, California 95302, within five (5) business days following the close of escrow, one (1) conformed copy of the recorded Grant Deed.

These joint instructions may not be modified unless you receive additional written instructions from the Grantor and Grantee.

Very truly yours,

"Grantee"

_____
Samantha W. Zutler, City Attorney

"Grantor"

SONOMA LUXURY RESORT LLC
a Delaware limited liability company

By: The Robert Green Company, a California corporation
Its: Authorized Representative

By: _____
Robert S. Green, Jr.
President

Enclosures

The foregoing is hereby accepted and agreed to:

STEWART TITLE GUARANTY COMPANY

By:_____
Carla Burchard
Commercial Escrow Officer

EXHIBIT B-33

FIRE SUBSTATION CONTRIBUTION INSTRUCTIONS

EXHIBIT B-33

_____ __, 202_

VIA EMAIL TO CBURCHARD@STEWART.COM

Stewart Title Guaranty Company
Commercial Services
7676 Hazard Center Drive, 14th Floor
San Diego, CA 94108
Attention: Carla Burchard, Commercial
Escrow Officer

Re: Joint Escrow Instructions – Fire Substation Contribution - Saggio Hills
Sonoma Luxury Resort LLC ("**Developer**"); City of Healdsburg ("**City**")
Order No.: _____[obtain order/escrow number from Title Company and insert here]

Dear Ms. Burchard:

Reference is hereby made to Section 12 (a) of Exhibit B of that certain Development Agreement between Sonoma Luxury Resort LLC, a Delaware limited liability company ("**Developer**"), and the City of Healdsburg, a California municipal corporation ("**City**"), dated April 11, 2011; a Memorandum of Development Agreement was recorded in the Official Records of Sonoma County, California (the "**Official Records**"), on April 27, 2011 as Instrument No. 2011037227; as amended on April 5, 2016, pursuant to an Insubstantial Amendment To The Development Agreement Between The City Of Healdsburg And Sonoma Luxury Resort, LLC, Dated April 11, 2011; as amended on May 30, 2019, pursuant to a Second Insubstantial Amendment To Development Agreement, by and between the City and Developer, and a Memorandum of Second Insubstantial Amendment to Development Agreement, of the same date, recorded in the Official Records on August 5, 2019, at Instrument No. 2019053988; and as amended on _____, 2021, pursuant to a Third Amendment to Development Agreement, by and between City and Developer, and a Memorandum of Third Amendment to Development Agreement, dated _____, 2021, recorded in the Official Records on _____, 2021 as Instrument No. 2021-_____ (collectively, the "**Development Agreement**"), providing for the payment by Developer of the amount of $1,599,586.00 to City to assist with the costs of constructing the fire substation ("**Fire Substation Contribution**").

This letter represents the joint escrow instructions of Developer and City to Title Company pertaining to the Fire Substation Contribution.

The Title Company will receive directly from Grantor wired funds in the amount of $1,599,586.00 concurrently with the final execution by Developer and City of these joint escrow instructions. In accordance with prior direction provided by Title Company, the Fire Substation Contribution will be wired to: [obtain wiring instructions from Title Company and insert here].

The Fire Substation Contribution is being delivered to you to be held by you in an interest bearing account, subject to strict compliance with the instructions set forth below. Acceptance by you of this escrow shall constitute a contractual obligation with Developer and City for compliance with the terms of these instructions.

Interest earned on the Fire Substation Contribution deposited pursuant to these instructions shall inure to the sole benefit of and may be used by the City. Title Company shall provide to City, on a quarterly basis, a statement of the account showing the then current principal balance and interest earned.

Any expenses, fees or costs incurred or charged by Title Company to establish and manage this escrow shall be borne solely by Developer. Title Company shall send Developer an invoice on a quarterly basis for such expenses, fees or costs incurred by Title Company. In no event shall any expenses, fees or costs of Title Company be satisfied from the Fire Substation Contribution or any interest earned thereon.

The Fire Substation Contribution shall not be disbursed, in whole or in part, until each of the following conditions are satisfied:

1. The City has provided a written statement to you advising that a notice to proceed has been issued to the contractor for the construction of the Fire Substation, with a copy provided to Developer, and demand for the distribution of all of the Fire Substation Contribution.

2. The City provides to you with written authorization to release to Developer an acknowledgement that disbursement of the Fire Substation Contribution provided for herein satisfies in full the Developer's financial obligation relative to the Fire Substation under the terms of the Development Agreement.

Upon satisfaction of the condition set forth above, Title Company is authorized and directed to immediately take the following actions in the following order (time being of the essence), but you shall not take any of such actions until you are unconditionally and irrevocably committed to take all of such actions:

1. Disburse to the City no later than 10 calendar days after receipt by Title Company of the written demand made by City, the Fire Substation Contribution.

2. Unless the City provides wiring instructions in its written demand, disburse the Fire Substation Contribution via cashiers check made payable to the "City of Healdsburg" at the following address: City of Healdsburg, 401 Grove Street, Healdsburg, California 95448, Attention: City Manager.

3. Send a copy of the written demand and evidence of payment of the Fire Substation Contribution to the City Attorney, Samantha Zutler, at the following address: Burke Williams & Sorensen LLP, 101 Howard, Suite 400, San Francisco, CA 94105-6125.

4 Send a copy of the written demand and evidence of payment of the Fire Substation Contribution to the Developer at the following address: Sonoma Luxury Resorts LLC, 720 East University Avenue, Suite 200, Los Gatos, California 95302.

These joint instructions may not be modified unless you receive additional written instructions from the Developer and City.

Very truly yours,

"City"

_____
Samantha W. Zutler, City Attorney

"Developer"

SONOMA LUXURY RESORT LLC
a Delaware limited liability company

By: The Robert Green Company, a California corporation
Its: Authorized Representative

By: _____
Robert S. Green, Jr.
President

Enclosures

The foregoing is hereby accepted and agreed to:

STEWART TITLE GUARANTY COMPANY

By:_____
Carla Burchard
Commercial Escrow Officer

EXHIBIT B-34

FIRE SUBSTATION LAND TITLE INSTRUCTIONS

EXHIBIT B-34

_____, 2021

VIA EMAIL TO CBURCHARD@STEWART.COM

Stewart Title Guaranty Company
Commercial Services
7676 Hazard Center Drive, 14th Floor
San Diego, CA 94108
Attention: Carla Burchard, Commercial
Escrow Officer

Re: Fire Substation Land Title Instructions – Parcel 10 of Saggio Hills
Sonoma Luxury Resort LLC ("**Grantor**"); City of Healdsburg ("**Grantee**")
Order No.: 18000480639

Dear Ms. Burchard:

Reference is hereby made to that certain Development Agreement (the "**Development Agreement**") between Sonoma Luxury Resort LLC, a Delaware limited liability company ("**Grantor**"), and the City of Healdsburg, a California municipal corporation ("**City**"), dated April 11, 2011, as amended by that certain Third Amendment to Development Agreement (the "**Third Amendment**"), for the dedication of certain real property referred to as the fire substation land and located on Parcel 10 of Saggio Hills per Map recorded May 23, 2018 in Book 795, Pages 31-40 as Instrument No. 2018-037508, of Official Records, in the City of Healdsburg, County of Sonoma, in the State of California (the "**Property**").

The Property is identified and legally described as Parcel One in the Preliminary Title Report ("**Title Commitment**"), issued by Stewart Title Guaranty Company ("**Title Company**") dated August 28, 2018, Order No. 18000480639. Please note that Grantee is not acquiring an appurtenant interest in the easements described as Parcel Two and Parcel Three in the Title Commitment.

This letter represents the joint escrow instructions of Grantor and Grantee to Title Company pertaining to the Property.

The Title Company will receive directly from Grantor one (1) original of the Grant Deed, in the form of Exhibit B-11 to the Development Agreement, for conveyance of the Property from Grantor to Grantee (the "**Grant Deed**"), executed and acknowledged by Grantor.

The Grant Deed is being delivered to you to be held by you in escrow, subject to strict compliance with the instructions set forth below. Acceptance by you of this escrow shall

constitute a contractual obligation with Grantor and Grantee for compliance with the terms of this letter.

The Grant Deed shall not be released from escrow until each of the following conditions is satisfied:

1. You have executed this letter in the space provided below and delivered the same to Grantor, care of the undersigned, Robert S. Green, Jr., by email to robert@therobertgreencompany.com, and to Grantee, care of the undersigned, City Attorney, Samantha Zutler, by email to szutler@bwslaw.com.

2. You have received the Grant Deed from Grantor and confirmed same has been executed by Grantor and acknowledged.

3. Within ten (10) days following receipt of a written request from Grantee, Title Company shall provide to Grantor and Grantee a Settlement Statement to close escrow.

4. Within thirty (30) days following receipt of the Settlement Statement, Grantor shall (i) cause the execution, acknowledgement and delivery of documents to Title Company sufficient to effect the release and reconveyance of any and all liens secured by the Property, and (ii) deposit with Title Company sufficient funds, as identified on the Settlement Statement, for the cost of the premium for an ALTA Owner's Policy of title insurance insuring fee title to the Property in Grantee for the amount of $5,600,000.00.

5. Within thirty (30) days following receipt of the Settlement Statement, Grantee shall have deposited with Title Company sufficient funds, as identified on the Settlement Statement, to close escrow.

6. You have received one (1) fully executed and acknowledged original Certificate of Acceptance of the Grant Deed from Grantee and attached it to the original Grant Deed provided by Grantor.

7. You have received a statement signed by the City Attorney, Samantha Zutler, stating that (i) Grantor has completed the mass grading of the Property pursuant to Section 11(a) of Exhibit B to the Development Agreement and Grantee has accepted the same as being complete, and (ii) you are authorized to close this escrow.

8. You have received such additional documentation executed and acknowledged by Grantor and Grantee, as necessary, required by Title Company to facilitate the close of escrow contemplated in these joint instructions.

9. Title Company is in a position to issue an ALTA Owner's Policy of title insurance in the amount of $5,600,000, insuring fee title to the Property described in the Grant Deed in favor of Grantee in accordance with the Title Commitment, subject to (x) any easement, restriction, condition or covenant recorded after the date of the Title Commitment with the prior consent of Grantee, and (y) the restrictions set forth in the Grant Deed; but excluding (i) any appurtenant interest in the easements described as Parcel Two and Parcel Three in the Title Commitment, (ii) items A, B and C in Schedule B-Taxes in the Title Commitment, and (iii) exceptions 15, 16, 17, 18, 19, 20, 21 and 22 of Schedule B of the Title Commitment (the "**Title Policy**").

Upon satisfaction or waiver of the conditions set forth above, you are authorized and directed to immediately take the following actions in the following order (time being of the essence), but you shall not take any of such actions until you are unconditionally and irrevocably committed to take all of such actions, as may be modified by Grantee's waiver of one or more conditions:

1. Record the original Grant Deed in the Sonoma County Records.

2. Send to the City at the following address: City of Healdsburg, 401 Grove Street, Healdsburg, California 95448, Attention: City Clerk, within five (5) business days following the close of escrow, one (1) conformed copy of the recorded Grant Deed and the original Title Policy.

3. Send to the City Attorney, Samantha Zutler, at the following address: Burke Williams & Sorensen LLP, 101 Howard, Suite 400, San Francisco, CA 94105-6125, within five (5) business days following the close of escrow, one (1) conformed copy of the recorded Grant Deed and a copy of the Title Policy.

Excepting Grantee's ability to waive one or more of the conditions to the close of escrow set forth above, these joint instructions may not be modified unless you receive additional written instructions, which may in the form of an email, from the Grantor and Grantee. However, Grantor and Grantee may individually submit supplemental instructions to Title Company which do not conflict with or impair the effectiveness of these joint instructions.

Very truly yours,

"Grantee"

_____
Samantha W. Zutler, City Attorney

"Grantor"

SONOMA LUXURY RESORT LLC
a Delaware limited liability company

By: The Robert Green Company, a California corporation
Its: Authorized Representative

By: _____
Robert S. Green, Jr.
President

Enclosures

The foregoing is hereby accepted and agreed to:

STEWART TITLE GUARANTY COMPANY

By:_____
Carla Burchard
Commercial Escrow Officer

EXHIBIT B-35

PUBLIC IMPROVEMENT AGREEMENT FOR PUBLIC ROADS AND RELATED UTILITIES

EXHIBIT B-35

Recording Requested by and
After Recordation Mail To:

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

Exempt from payment of Recording Fees (Government Code §27383) and Building Homes & Jobs Trust Fund Fee (Govt. Code §27388.1(a)(2)(D)).

PUBLIC IMPROVEMENT AGREEMENT FOR PUBLIC ROADS AND RELATED UTILITIES

THIS PUBLIC IMPROVEMENT AGREEMENT FOR PUBLIC ROADS AND RELATED UTILITIES (hereinafter referred to as this "**Agreement**") is made and entered into this ____ day of , 2021 ("**Effective Date**"), by and between Sonoma Luxury Resort, LLC, a Delaware limited liability company (hereinafter referred to as the "**Developer**") and the City of Healdsburg, a California municipal corporation in the County of Sonoma, State of California (hereinafter referred to as "**City**"). City and Developer are sometimes referred to in this Agreement as a "**Party**" or collectively as the "**Parties**". ("**City**" shall also be deemed to include the City Council of Healdsburg and any departments of the City of Healdsburg, as the context may indicate.)

RECITALS:

A. On April 11, 2011, under the authority of Ordinance No. 1107, the City and Developer entered into a Development Agreement; a Memorandum of Development Agreement was recorded in the Official Records of Sonoma County on April 27, 2011 as Instrument No. 2011037227 ("**Development Agreement**"). The Development Agreement governs the development of approximately 258 acres of real property, with a 130-room luxury resort (the "**Resort**"), 70 single family residences (the "**Residences**"), dedication of land to the City for development of up to 150 affordable housing units (the "**Affordable Housing**"), dedication of land to the City for development of a public park (the "**Public Park**"), and construction and dedication of land and improvements to the City of Passalacqua Drive and Parkland Farms Blvd. (the "**Public Roads and Related Utilities**"), hiking and pedestrian-bicycle trails (the "**Public Trails**"), a fire substation (the "**Fire Substation**"), and a pump station (the "**Pump Station**")(collectively, the "**Project**").

B. In addition to the Development Agreement, the City has approved of the following entitlements governing the development of the Project on the Property:

1. On April 5, 2016, an Insubstantial Amendment To The Development Agreement Between The City Of Healdsburg And Sonoma Luxury Resort, LLC, Dated April 11, 2011 ("**First Insubstantial Amendment**");

2. On January 31, 2011, pursuant to Resolution No. 18-2011, the City conditionally approved the Saggio Hills Tentative Subdivision Map (TM06-04)("**Tentative Map**");

3. On April 4, 2016, pursuant to Resolution No. 19-2016, the first final map which was filed for record in the Official Records of Sonoma County on May 23, 2018, in Book 795 of Maps at Pages 31-40, Document No. 2018-037508 ("**FM-1**");

4. On June 18, 2018, pursuant to Resolution No. 61-2018, the second final map which was filed for record in the Official Records of Sonoma County on September 14, 2018, in Book 798 of Maps at Pages 29-35, Document No. 2018-065059 ("**FM-2**");

5. On June 18, 2018, pursuant to Resolution 61-2018, the third final map which was filed for record in the Official Records of Sonoma County on September 14, 2018, in Book 798 of Maps at Pages 36-43, Document No. 2018-065061 ("**FM-3**").

C. In consideration of the approval and recording of FM-1, on April 20, 2018, City and Developer entered into an Agreement For Subdivision Improvements Saggio Hills First Final Map, which was filed for record in the Official Records of Sonoma County on April 25, 2018, as Instrument No. 2018-028277 ("**SIA-FM-1**").

D. In connection with the Public Roads and Related Utilities, pursuant to Section 16 (a) of Exhibit B to the Development Agreement, Developer is obligated to design and construct the Public Roads and Related Utilities as described and depicted in Exhibit B-15 to the Development Agreement. Further, title to the Public Roads and Related Utilities is to be dedicated to the City.

E. FM-1 created Parcel 11 to encompass the public right of way known as Passalacqua Drive and Parkland Farms Blvd. (the "**Public Roadway Property**"), more particularly described in the legal description attached hereto as **Exhibit A**, and Developer executed, acknowledged and recorded an Irrevocable Offer Of Dedication For Public Roads in favor of the City related to the Public Roadway Property, dated May 15, 2019, and recorded June 4, 2019, in the Official Records at Instrument No. 2019037260 (the "**Offer of Dedication**").

F. SIA-FM-1 provides plans and bonding for the construction of Passalacqua Drive and Related Utilities, however, (i) the improvements constructed by Developer on Passalacqua Drive are incomplete and not in accordance with the Tentative Map, comprising curbs, gutters and streetlights for the roadway segment from Healdsburg Avenue to Parcel 9 (Pump Station) and extension of the street and utilities to the boundary of Parcels 5 and 6, and (ii) there are no such plans or bonding provided for Parkland Farms Blvd and Related Utilities as required by the Development Agreement (the "**Remaining Roadway Improvements**").

G. On May 30, 2019, an Insubstantial Amendment To The Development Agreement Between The City of Healdsburg and Sonoma Luxury Resort, LLC, Dated April 11, 2011 ("**Second Insubstantial Amendment"**) was executed by the Parties.

H. In accordance with the Second Insubstantial Amendment, the timing of construction of the Remaining Roadway Improvements was extended in an effort to coordinate with the City's master planning efforts for the Public Park and Affordable Housing parcels.

I. Pursuant to SIA-FM-1, Developer recognized that, by approving FM-1, the City conferred substantial rights upon Developer, including the right to sell, lease, or finance lots within FM-1, subject to the requirements of the land use entitlements, including the Development Agreement. As a result, the City will be damaged to the extent of the cost of design, construction and bonding of the Remaining Roadway Improvements if there is a failure by the Developer to perform its obligations under the land use entitlements, including the Development Agreement.

J. Subsequent to the execution of the Second Insubstantial Amendment, the Parties have continued to discuss refinements to the timing and scope of their respective obligations under the Development Agreement, as amended.

K. On _____, 2021, City and Developer entered into that certain Third Amendment to Development Agreement; a Memorandum of Third Amendment to Development Agreement was recorded in the Official Records on _____, 2021 as Instrument No. 2021-_____ ("**Third Amendment**").

L. The Third Amendment, in part, amended Section 16 (a) of Exhibit B to the Development Agreement to address the Remaining Roadway Improvements and provide that City and Developer shall, concurrently with the execution of the Third Amendment, enter into this Agreement which shall govern (i) the design, construction and acceptance of improvements to Passalacqua Drive not covered by SIA-FM-1, comprising curbs, gutters and streetlights for the roadway segment from Healdsburg Avenue to Parcel 9 (Pump Station) and extension of the street and utilities to the boundary of Parcels 5 and 6 (the "**Passalacqua Drive Improvements**"), (ii) the process to modify the alignment of Parkland Farms Blvd, as generally depicted in **Exhibit B-37** to the Third Amendment, pursuant to summary vacation of the Offer of Dedication in accordance with Streets and Highways Code Section 8334 (c), recording of a lot line adjustment affecting Parcels 5, 6 and 11, and recording of an amended irrevocable offer of dedication of the modified roadway alignment ("**Amended Offer of Dedication**"), in the form attached as **Exhibit B-38** to the Third Amendment, (iii) the design, construction and acceptance of street, utility, curb and gutter improvements to a modified alignment of Parkland Farms Blvd ("**Parkland Farms Improvements**"), (iv) appropriate performance, payment and warranty bonds for said improvements, and (v) establish timeframes for the submittal, review and approval of improvement plans to enable construction work to commence by April 15, 2021.

M. The Development Agreement, as referred to herein, shall mean the Development Agreement as amended by the First Insubstantial Amendment, Second Insubstantial Amendment, and Third Amendment.

N. City has determined the Passalacqua Drive Improvements and Parkland Farms Improvements (collectively, the "**Improvements**") required by the terms of this Agreement constitute a public work subject to the requirements of California Labor Code §§ 1720 *et.seq.* (the "**State Prevailing Wage Requirements**"). Developer acknowledges and agrees that it will be solely and exclusively responsible for compliance with the State Prevailing Wage Requirements in connection with the construction of the Improvements and shall pay all workers prevailing wages for construction of the Improvements in compliance with State Prevailing Wage Requirements.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to insure satisfactory performance by Developer of its obligations under the City of Healdsburg Municipal Code, Subdivision Map Act, and the Development Agreement, the City and Developer herby agree as follows:

1. **INCORPORATION BY REFERENCE; DEFINED TERMS**.

The Recitals set forth above are incorporated herein by this reference as if set forth in full, except where expressly modified herein. Defined terms, as used in this Agreement, shall have the meaning as set forth in the Development Agreement or as provided in this Agreement.

2. **PURPOSE**.

The purpose of this Agreement is to guarantee the design, construction, installation, and dedication of the Improvements on the Amended Public Roadway Parcel by Developer, at its expense.

3. **SUMMARY VACATION; LOT LINE ADJUSTMENT: PARCELS 5, 6 AND 11; AMENDED OFFER OF DEDICATION.**

Within forty-five (45) calendar days of the approval of the Parkland Farms Improvement Plans and Specifications by City in accordance with Section 4.B. below, Developer shall cause the preparation of a lot line adjustment as between the Public Roadway Property (Parcel 11) and Parcels 5 and 6 ("**Lot Line Adjustment**"), in order to reflect the realignment of Parkland Farms Boulevard as generally depicted in Exhibit B-37 to the Development Agreement ("**Amended Public Roadway Property**") for review and approval by City. Upon City's approval of the Lot Line Adjustment, which shall include a plat map and legal description of the Public Roadway Parcel (Parcel 11) and Parcels 5 and 6, as adjusted, Developer shall execute, acknowledge and deliver to City Clerk the Lot Line Adjustment, along with an amended irrevocable offer of dedication of the Amended Public Roadway Property ("**Amended Offer of Dedication**"), in the form attached as Exhibit B-38 to the Development Agreement. Within forty five (45) calendar days of City's receipt of the fully executed and acknowledged Lot Line Adjustment and Amended Offer of Dedication, and as authorized by California Streets and Highways Code section 8333 (c), City shall schedule and notice in accordance with the Ralph M. Brown Act, for consideration and adoption by the City Council, a resolution of vacation conforming to Streets and Highways Code section 8335, regarding the Offer of Dedication ("**Resolution of Vacation**"). Upon adoption of the Resolution of Vacation by the City Council, the City Clerk shall cause the Resolution of Vacation, Lot Line Adjustment and Amended Offer of Dedication to be recorded concurrently in the Official Records.

4. **IMPROVEMENTS.**

A. Preparation of Passalacqua Drive Improvements. Within thirty (30) calendar days of the Effective Date of this Agreement, Developer shall submit to City for its review, comment and approval, detailed plans and specifications of the Passalacqua Drive Improvements on the Public Roadway Parcel ("**Passalacqua Improvement Plans and Specifications**"), as well as a detailed estimate of the cost of constructing the Passalacqua Drive Improvements on the Public Roadway Parcel review in accordance with the Passalacqua Improvement Plans and Specifications ("**Passalacqua Cost Estimate**"). As required by Section 16 (a) of Exhibit B to the Development Agreement, the Passalacqua Improvement Plans and Specifications shall be in accordance with the conditions of the Tentative Map, the conceptual public roads design standards set forth in Exhibit B-16 of the Development Agreement, and City standards applicable on the date of this Agreement. City shall use good faith efforts to review the Passalacqua Improvement Plans and Specifications and Passalacqua Cost Estimate and provide comments, if any, to Developer within thirty (30) calendar days of submission. Developer shall use good faith efforts to re-submit any required revisions for review and approval within fifteen (15) calendar days after receipt of comments from City, if any, until said Passalacqua Improvement Plans and Specifications and Cost Estimate are approved by the City Engineer. Developer and City shall use good faith efforts to complete the Passalacqua Improvement Plans and Specifications and Passalacqua Cost Estimate by April 15, 2021.

Approval of the Passalacqua Improvement Plans and Specifications by City does not release Developer of its responsibility to correct mistakes, errors, or omissions in the Passalacqua Improvement Plans and Specifications that come to its attention. If, at any time, in the opinion of the City Engineer, in his/ her reasonable discretion, the Passalacqua Improvement Plans and Specifications are deemed inadequate in any respect, Developer agrees to make such modifications, changes or revisions as directed by the City Engineer in order to complete the Passalacqua Improvement Plans and Specifications in a good and workmanlike manner in accordance with accepted design and construction standards.

B. Preparation of Parkland Farms Improvements. Within forty-five (45) calendar days of the Effective Date of this Agreement, Developer shall submit to City for its review, comment and approval, detailed plans and specifications of the Parkland Farms Improvements on the Amended Public Roadway Parcel ("**Parkland Farms Improvement Plans and Specifications**"), as well as a detailed estimate of the cost of constructing the Parkland Farms Improvements on the Amended Public Roadway Parcel in accordance with the Parkland Farms Improvement Plans and Specifications ("**Parkland Farms Cost Estimate**"). The Parkland Farms Improvement Plans and Specifications shall include plat maps and legal descriptions of the Amended Public Roadway Property and Parcels 5 and 6, as adjusted, to reflect the realignment of Parkland Farms Boulevard as generally depicted in Exhibit B-37 to the Development Agreement, and as will be required for preparation, processing and recording of the Lot Line Adjustment and Amended Offer of Dedication.

As required by Section 16 (a) of Exhibit B to the Development Agreement, the Parkland Farms Improvement Plans and Specifications shall be in accordance with the conditions of the Tentative Map, the conceptual public roads design standards set forth in Exhibit B-16 of the Development Agreement, and City standards applicable on the date of this Agreement. City shall use good faith efforts to review the Parkland Farms Improvement Plans and Specifications and Parkland Farms Cost Estimate and provide comments, if any, to Developer within thirty (30) calendar days of submission. Developer shall use good faith efforts to re-submit any required revisions for review and approval within fifteen (15) calendar days after receipt of comments from City, if any, until said Parkland Farms Improvement Plans and Specifications and Parkland Farms Cost Estimate are approved by the City Engineer. Developer and City shall use good faith efforts to complete the Parkland Farms Plans and Specifications and Parkland Farms Cost Estimate by April 15, 2021.

Approval of the Parkland Farms Improvement Plans and Specifications by City does not release Developer of its responsibility to correct mistakes, errors, or omissions in the Parkland Farms Improvement Plans and Specifications that come to its attention. If, at any time, in the opinion of the City Engineer, in his/ her reasonable discretion, the Parkland Farms Improvement Plans and Specifications are deemed inadequate in any respect, Developer agrees to make such modifications, changes or revisions as directed by the City Engineer in order to complete the Parkland Farms Improvement Plans and Specifications in a good and workmanlike manner in accordance with accepted design and construction standards.

C. Duty to Install Improvements. Developer shall design, construct, install and complete, or cause to be designed, constructed, installed and completed, at Developer's sole cost and expense, the Improvements in accordance with the Passalacqua Improvement Plans and Specifications and Parkland Farms Improvement Plans and Specifications to the satisfaction of the City Engineer, in his/ her reasonable discretion. Developer shall also supply all labor and materials therefor, all in strict accordance with the terms and conditions of this Agreement. The construction, installation and completion of the Improvements in accordance with the Passalacqua Improvement Plans and

Specifications and Parkland Farms Improvement Plans and Specifications, including all labor and materials furnished in connection therewith, are hereinafter referred to collectively as the "**Improvement Work**."

D. Commencement and Completion of Improvement Work. Subject to weather, regulatory approvals and other unanticipated occurrences as identified in Section 12.2 of the Development Agreement, Developer shall commence the Improvement Work within sixty (60) calendar days after approval of the Passalacqua Improvement Plans and Specifications and Passalacqua Cost Estimate and the Parkland Farms Improvement Plans and Specifications and Parkland Farms Cost Estimate, respectively, by City ("**Commencement Date**"). Upon commencement of the Improvement Work, such work shall be prosecuted with due diligence to its completion. Subject to weather, regulatory approvals and other unanticipated occurrences as identified in Section 12.2 of the Development Agreement, Developer shall complete the Improvement Work on or before six (6) months after the Commencement Date ("**Completion Date**"). The Improvement Work shall be completed in a good and workmanlike manner in accordance with the Passalacqua Improvement Plans and Specifications and Parkland Farms Improvement Plans and Specifications and accepted design and construction practices. The Completion Date may be extended by the City in its sole discretion at the request of Developer, which request shall be accompanied by a written assurance acceptable to the City Attorney that the security required by Section 5 shall remain enforceable throughout the term of the extension. All Improvement Work shall be completed in compliance with all applicable federal, state and local laws, ordinances, rules, regulations and policies and shall be performed on a lien-free basis.

4. **STANDARDS; PERFORMANCE OF IMPROVEMENT WORK**. Developer will do and perform, or cause to be done and performed, at Developer's sole cost and expense, in a good and workmanlike manner, and furnish all required materials, all to the satisfaction of the City Engineer, all of the Improvement Work within the Amended Public Roadway Property, in accordance with the conditions for the Tentative Map, the Passalacqua Improvement Plans and Specifications, Parkland Farms Improvement Plans and Specifications, the City Code and edition of the Healdsburg Public Works Standard Specifications and Details (the Healdsburg Public Works Standard Specifications and Details are hereinafter referred to as the "City Public Works Standards") applicable on the date of this Agreement, the Development Agreement, and with any changes that are necessary or required to complete the Improvement Work to the satisfaction of the City Engineer.

Developer will do and perform, or cause to be done and performed, inspection of all Improvements by a California licensed civil engineer or other qualified special inspector (hereinafter referred to as "**Special Inspector**"). Prior to approval and acceptance of the Improvements by City, the Special Inspector shall provide a letter of review to the City evidencing that all Improvements have been constructed in accordance with the Passalacqua Improvement Plans and Specifications, Parkland Farms Improvement Plans and Specifications and all other governing regulations applicable on the date of this Agreement. All costs of checking the Passalacqua Improvement Plans and Specifications, Parkland Farms Improvement Plans and Specifications, and all inspections of the Improvement Work shall be paid for by Developer. Any approval by the City Engineer shall not relieve Developer, or its engineers or architects from liability under this Agreement.

5. **IMPROVEMENT SECURITY; PREVAILING WAGES.** Prior to commencement of the Improvement Work, Developer shall furnish City with the following security in an amount equal to the Passalacqua Cost Estimate and Parkland Farms Cost Estimate approved by the City Engineer pursuant to Section 3 above and in a form satisfactory to the City Attorney, and Developer shall

comply with State Prevailing Wage Requirements in connection with the construction of the Improvements:

A. Faithful Performance. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or any instrument of credit equivalent to one hundred percent (100%) of the Passalacqua Cost Estimate and Parkland Farms Cost Estimate approved by the City Engineer pursuant to Section 3 above and sufficient to assure City that the Improvements will be satisfactorily completed.

B. Labor and Materials. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to one hundred percent (100%) of the Passalacqua Cost Estimate and Parkland Farms Cost Estimate approved by the City Engineer pursuant to Section 3 above and sufficient to assure City that Developer's contractors, subcontractors, and other persons furnishing labor, materials, or equipment on the Improvements shall be paid therefor.

C. Alterations in Plans and Specifications. Developer shall enter into an agreement with all sureties providing security according to this paragraph, which shall specify that any alteration or alterations made in the Passalacqua Improvement Plans and Specifications and Parkland Farms Improvement Plans and Specifications that are a part of this Agreement or any provision hereof shall not operate to release the surety or sureties from liability on any bond or bonds attached hereto and made a part hereof. Any security shall have an initial term of two (2) years. Further, the surety or sureties shall consent to any such alterations, and the sureties to said bonds shall waive the provisions of Section 2819 of the Civil Code of the State of California. Developer shall increase the dollar amount of bonds it has securing the Improvements to reflect any alteration that results in an increase in the cost of the unfinished Improvements above the Passlacqua Cost Estimate and Parkland Farms Cost Estimate approved by the City Engineer pursuant to Section 3 above.

D. Release of Security. The Developer shall complete all Improvements in accordance with the Passalacqua Improvement Plans and Specifications and Parkland Farms Improvement Plans and Specifications prior to acceptance by the City and release of the required securities as provided in this paragraph. The Improvements security for faithful performance shall not be released or reduced unless otherwise approved by the City Engineer. The security for labor and materials will be released in accordance with Section 66499.7 of the Government Code, as the same may be amended from time to time.

Any reductions authorized to be made in the amount of the Improvements security shall be affected by a refund from any cash deposits made or a partial release of any surety bond or instrument of credit, within the limitations established by the Subdivision Map Act or local ordinance. Any security shall be in form and substance, and issued by an institution, satisfactory to City, and shall incorporate, either expressly or impliedly, the terms of Government Code §66499 et seq., which provides for recovery of enforcement costs. Developer covenants to keep in place during the entire period for which security is required in this Agreement the type and amounts of securities specified in subsections 5A and 5B above. Should any type or amount of such security be, or become, compromised, in the opinion of City, whether or not such compromise results from the actions or omissions of the Developer, upon request of City, Developer shall provide additional and/or replacement security.

E. Prevailing Wages. Developer acknowledges and agrees that it will be solely and exclusively responsible for compliance with all applicable provisions of the State Prevailing Wage Requirements in connection with the "construction", as defined in Labor Code §1720(a)(1)

("**Construction**"), of the Improvements and shall pay all workers prevailing wages for Construction of the Improvements in compliance with State Prevailing Wage Requirements.

Developer, as to the Construction of the Improvements, shall indemnify, defend (with counsel acceptable to the City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors 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 (collectively a "**Claim**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including all claims that may be made by contractors, subcontractors, or third party claimants pursuant to Labor Code sections 1726 and 1781), the failure to comply with any state or federal labor laws, regulations or standards, including the State Prevailing Wage Requirements, or any act or omission of Developer related to the payment or requirement of payment of prevailing wages. The foregoing indemnity shall survive any termination of this Agreement.

6. **MAINTENANCE SECURITY.**

A. Required Maintenance Security. The guarantee and conditions specified in Sections 14 and 15 of this Agreement shall be secured by a maintenance security which shall be delivered by the Developer to the City prior to the acceptance of the Improvements by the City and before the release of other securities. Said maintenance security shall be in a form satisfactory to the City Attorney, for a period of twelve (12) months from the date of acceptance of the Improvements by City, or longer if required pursuant to Section 15 below, and shall be a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to ten percent (10%) of the Passalacqua Cost Estimate and Parkland Farms Cost Estimate of the Improvements.

B. Release of Maintenance Security. Said maintenance security, including any replacement security, shall remain in force until a written Release of Security is issued by the City Engineer. The following conditions must be satisfied before a written Release of Security shall be issued to release the maintenance security:

(1) Not later than twelve (12) months following acceptance of the Improvements by City, Developer shall repair or reconstruct any defective Improvements in accordance with Section 15 of this Agreement.

(2) If the period of time required to achieve satisfactory completion of the above conditions extends beyond twelve (12) months following acceptance of the Improvements by City, then City has the right to require, and Developer shall provide, additional security to extend the period of the maintenance security until such time as the City Engineer approves completion of the above conditions. Approval of the above conditions shall be evidenced by a Release of Security issued by the City Engineer.

7. INSURANCE REQUIREMENTS. Developer shall procure and maintain for the life of this Agreement (including the one (1) year guarantee period as described in Section 6A and any extension thereof), insurance against claims for injuries to persons and damages to property which may arise from or in connection with the performance of the Improvement Work hereunder by the Developer, its contractor, agents, representatives, employees or subcontractors. Said insurance shall

be maintained in full force and effect until the written Release of Security is issued by the City Engineer. Additionally, completed operations coverage shall be maintained in full force and effect for three years after the acceptance date of the Improvements. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

A. Minimum Scope of Insurance. Insurance coverage shall be at least as broad as:

(1) Insurance Services Office form number CG0001 covering Commercial General Liability on an "occurrence" basis.

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

(3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance. Developer shall maintain limits no less than:

(1) Comprehensive General Liability: $2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: $2,000,000 combined single limit per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of $1,000,000 per accident for bodily injury or disease.

C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverages

(a) The City, its officers, agents, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer, and with respect to liability arising out of activities performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or

operations. General liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10, 11 85 or later revised), or as a separate owner's policy.

(b) For any claims related to this project, the Developer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

(2) Workers' Compensation and Employer Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, agents, officials, employees and volunteers for losses arising from work performed by the Developer pursuant to this Agreement.

(3) All Coverages

(a) Insurance is to be placed with insurers with a current A.M. Best rating of "A:VII" or better, and who are either "admitted" by the California Department of Insurance or who are listed on the "List of Eligible Surplus Line Insurers" as maintained by the California Department of Insurance. (Note: The List of Eligible Surplus Line Insurers is also known as the "LESLI List").

(b) Developer shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. Initial certificates and endorsements are to be received and approved by the City before work commences. Updated certificates and endorsements are to be provided to the City prior to each policy expiration date. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

(c) Developer and/or Developer's general contractor shall include all subcontractors as insureds under their policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(d) Developer hereby grants to City a waiver of any right to subrogation that any insurer of Developer may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether the City has requested or received a waiver of subrogation endorsement from the insurer.

(e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(f) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Section 2782 of the Civil Code.

8. PERMITS AND FEES IN COMPLIANCE WITH CITY ORDINANCES.

Developer shall, at Developer's sole cost and expense, obtain all necessary permits and licenses for the construction of the Improvements, give all necessary notices and pay all fees and taxes required by law. All development, connection, and impact fees will be paid at the time provided for by the City Code, unless otherwise provided for in the Development Agreement.

9. COST OF ENGINEERING AND INSPECTION.

Developer shall be required to pay all engineering and inspection fees, deposits and charges in accordance with the Development Agreement.

10. COMMENCEMENT OF CONSTRUCTION.

A. Passalacqua Drive Improvements. Passalacqua Drive Improvements shall not commence as specified in this Agreement or as required by the City until the following items as prescribed by this Agreement have been satisfied:

1. Approval by the City Engineer of the Passalacqua Improvement Plans and Specifications and Passalacqua Cost Estimate, which approval the City Engineer shall use good faith efforts to provide within the time requirements set forth in Section 4.A above.

2. Receipt by City of security required by Section 5 above in the amount of the Passalacqua Cost Estimate and insurance certificate(s) required by Section 7, as approved by the City Attorney.

B. Parkland Farms Improvements. Parkland Farms Improvements shall not commence as specified in this Agreement or as required by the City until the following items as prescribed by this Agreement have been satisfied:

1. Approval by the City Engineer of the Parkland Farms Improvement Plans and Specifications and Parkland Farms Cost Estimate, which approval the City Engineer shall use good faith efforts to provide within the time requirements set forth in Section 4.B above.

2. Receipt by City of security required by Section 5 above in the amount of the Parkland Farms Cost Estimate and insurance certificate(s) required by Section 7, as approved by the City Attorney.

11. TIME OF ESSENCE/TIME FOR PERFORMANCE.

Time is of the essence for this Agreement; therefore, subject to Section 12.2 of the Development Agreement, Developer hereby agrees to complete the Improvements and satisfy all provisions of this Agreement within the time periods provided in Sections 3 and 4. Any extensions of time shall not relieve or reduce the surety's liability on the security provided to insure performance of this Agreement. The City shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension.

In the event that the Developer fails to satisfy all provisions of this Agreement, including satisfactory completion of the Improvements within the required time periods, City services performed in connection with this Agreement shall be suspended, including but not limited to, Public Works engineering review, Public Works inspections, Building Department inspections, Electric Utility inspections, and issuance and final approval of building permits. These City services shall be resumed, in total or in part, only after the Developer has prepared and the City Engineer has approved a written proposal for the timely completion of the Improvements pursuant to the provisions of this Agreement.

12. SUPERINTENDENCE BY DEVELOPER.

Developer shall give personal superintendence to the Improvement Work or have a competent foreman or superintendent on the Improvement Work at all times during progress, with authority to act for Developer.

13. INSPECTION BY CITY.

Developer shall at all times maintain proper facilities, and provide safe access for inspection by City to all parts of the Improvements and to the shops wherein the Improvement Work is in preparation throughout its construction. The City Engineer shall have the authority to reject all materials and workmanship that are not in accordance with the conditions of the Tentative Map, the Passalacqua Improvement Plans and Specifications, Parkland Farms Improvement Plans and Specifications, the City Code, and the City Public Works Standards, and/or the Development Agreement, and all such materials and/or work shall be removed promptly by Developer and replaced to the satisfaction of the City without any expense to the City.

14. REPAIRS AND REPLACEMENTS.

Developer shall replace, or have replaced, or repair, or have repaired, as the case may be, all Improvements or other improvements adjacent to the Improvement Work which have been destroyed, damaged or are rejected by the City Engineer, and Developer shall replace or have replaced, repair or have repaired, as the case may be, or pay to the owner, the entire cost of replacement or repairs of any and all property destroyed, damaged or not acceptable to the City Engineer by reason of any Improvement Work done or being done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or by any public or private corporation, or by any persons whomsoever, or by any combination of such owners. Any such repair or replacement shall be equal or better than the existing improvements and shall be completed in accordance with Passalacqua Improvement Plans and Specifications, Parkland Farm Improvement Plans and Specifications, City Code, the Development Agreement, and City Public Works Standards and are subject to the approval of the City Engineer.

Should the Developer fail to act within fifteen (15) days of destruction, damage, or written notification of rejection by the City Engineer of any Improvements or other improvements damaged by the Improvement Work, or should the exigencies of the case require repairs or replacements to be made before the Developer can be notified or before the Developer has acted, the City may, at its option, do the necessary work, and the Developer and his surety shall be liable to the City for the direct cost of such work (including the cost of materials, engineering, inspection, testing and superintendence) plus twenty percent (20%) for normal overhead charges ("indirect costs") associated with the cost of performing such work.

15. REPAIR OR RECONSTRUCTION OF DEFECTIVE WORK.

The Developer shall guarantee the Improvements constructed by him and all supplies, materials, and devices incorporated in, or attached to, the Improvement Work, or otherwise delivered to the City as part of the Improvement Work pursuant to this Agreement to be free of defects in materials and workmanship for a period of one (1) year (except for those manufactured products where extended warranties have been provided, in which case the extended warranty period shall apply) following the date of acceptance of the Improvements by the City. The Developer shall agree to make, at his own expense, any repairs or replacements or to reconstruct defects in material, or workmanship, or both, which become evident within said guarantee period. The Developer shall further agree to indemnify and hold harmless the City and City staff against and from all claims and

liability arising from damage and injury due to said defects. Developer further covenants and agrees that when defects in design, workmanship, or materials actually appear during the one-year guarantee period, and have been corrected, the guarantee period shall automatically be extended for an additional year to insure that such defects have actually been corrected. Should the Developer fail to act promptly or in accordance with the written order of the City or should the exigencies of the case require repairs or replacements to be made before the Developer can be notified or before the Developer has acted, the City may, at its option, do the necessary work and the Developer and his surety shall be liable to the City for the direct cost of such work (including the cost of materials, engineering, inspection, testing and superintendence) plus twenty percent (20%) for indirect costs.

16. USE OF IMPROVEMENTS.

At all times prior to the City's acceptance of the Improvements, the use of any or all Improvements shall be at the sole and exclusive risk of Developer. The issuance of any building or occupancy permit by City for dwellings located within the Project shall not be construed in any manner to constitute a partial or final acceptance or approval of any or all such Improvements by City. Developer agrees that City's Building Official may withhold the issuance of building or occupancy permits when the work or its progress may substantially and/or detrimentally affect public health, safety, or welfare, as determined by said Building Official. Any and all damages resulting from prosecution of the Improvement Work shall be repaired by Developer at Developer's expense. Developer shall not create or construct any obstruction of the public right of way or public easements unless otherwise approved by the City Engineer. The Developer shall ensure that all materials and equipment are stored outside of the public right-of-way and public easements.

17. PUBLIC SAFETY.

Developer must at all times conduct the work of constructing the Improvements in accordance with Construction Safety Orders of the Division of Industrial Safety, State of California and City Public Works Standards, to ensure the least possible obstruction to traffic and inconvenience to the general public, and adequate protection of persons and property in the vicinity of the Improvement Work.

No pedestrian or vehicle access way may be closed to the public without first obtaining permission of the Engineer.

Should the Developer fail to provide public safety as specified or if, in the opinion of the City Engineer, the warning devices furnished by the Developer are not adequate, the City may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Developer's operations and the Developer will be liable to the City for all costs incurred including, but not limited to, administrative costs.

18. RECORD DRAWINGS.

Upon completion of the Improvements, and prior to City acceptance of the Improvements, the Developer shall provide or cause to be provided record drawings of the Passalacqua Improvement Plans and Specifications and Parkland Farms Improvement Plans and Specifications. The final record drawings shall be completed on mylar in accordance with City Public Works Standards, including surveying in place of all accessible improvements and providing AutoCAD file to the satisfaction of the City Engineer.

19. NOTICE OF BREACH AND DEFAULT.

Subject to the notice and cure provisions in Section 12.1 of the Development Agreement, if Developer refuses or fails to make expected progress toward completion of the Improvements, or

any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the Developer should be adjudged bankrupt, or Developer should make a general assignment for the benefit of Developer's creditors, or if a receiver should be appointed in the event of Developer's insolvency, any such occurrences shall be deemed a material breach of this Agreement. If Developer, or any of Developer's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, including the provisions of this Section 19, such violation(s) shall constitute a default of this Agreement, and City may serve written notice of such default on Developer and Developer's surety. Any such notice of default shall be deemed "served" upon delivery, in the event of personal service, or upon deposit when delivery is by the U.S. Postal Service or other commercial courier, as described in Section 25, below.

20. DUTY OF SURETY UPON NOTICE OF DEFAULT.

In the event that City serves a Notice of Default upon Developer's surety, Developer's surety shall have the duty to take over and complete the Improvements herein specified; provided, however, that if the surety, within five (5) calendar days after serving such notice by City, fails to provide City with a written acknowledgment that the surety will take over and complete such Improvements, then by further written notice to the surety by City, City may elect to take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of the Developer and Developer's surety. Developer and Developer's surety shall be liable to the City for any cost or damages occasioned to the City thereby, including those costs and expenses described in Government Code §66499.4; and in such event, City, without liability for so doing, may take possession of, and utilize in completing the Improvements, such materials, appliances, plant and other property belonging to Developer as may be on the site of the Improvement Work and necessary therefor.

21. TITLE TO IMPROVEMENTS.

Developer warrants that it has the right, power and authority to, and in executing this Agreement does hereby, offer to dedicate, convey, and transfer to City fee title to and ownership of all Improvements as provided in the Passalacqua Improvement Plans and Specifications and Parkland Farms Improvement Plans and Specifications, without lien, encumbrance or other burden. Clear title to, and ownership of, said Improvements constructed hereunder by Developer shall vest absolutely in City upon acceptance of such Improvements by the City.

22. ACCEPTANCE OF IMPROVEMENTS BY CITY.

City shall only accept those Improvements that have been constructed, installed, maintained, replaced, and/or repaired in accordance with all applicable federal, state, county and local laws, regulations and standards, including the conditions of the Tentative Map, Passalacqua Improvement Plans and Specifications, Parkland Farms Improvement Plans and Specifications and City Public Works Standards. The determination of compliance with applicable federal, state, county and local laws, regulations and standards, including the conditions of the Tentative Map, Passalacqua Improvement Plans and Specifications, Parkland Farms Improvement Plans and Specifications, and City Public Works Standards shall be made by the City Engineer in his/her discretion. The offer of dedication of Improvements by the Developer can be accepted only by resolution of the City Council, and only upon 100% completion of the Improvements. The City Council shall act to accept

the dedication within forty five (45) calendar days after the determination by the City Engineer that the Improvements have been completed.

23. DEVELOPER NOT AGENT OF CITY/NO ASSIGNMENT.

Neither Developer nor any of Developer's agents, contractors, or subcontractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement. This Agreement shall not be assigned by Developer without the prior written consent of City. Any attempted assignment without such prior written consent shall be null and void.

24. HOLD-HARMLESS AGREEMENT.

Developer hereby warrants that the design and construction of the Improvements will not adversely affect any portion of adjacent properties and that all Improvement Work will be performed in a proper manner. Developer agrees to indemnify, defend with counsel acceptable to City, and hold harmless City, its officers, officials, employees, agents, and volunteers, from and against any and all loss, claims, suits, liabilities, actions, damages, or causes of action of every kind, nature and description (collectively "Liability") directly or indirectly arising from any act or omission of Developer, its employees, agents, or independent contractors in connection with the design and construction of the Improvements, except such Liabilities caused by the sole negligence or willful misconduct of City, provided as follows:

(a) That City does not, and shall not, waive any rights against Developer that it may have by reason of the "Hold Harmless" provisions of this Agreement, by virtue of accepting this Agreement, by accepting any deposit made by Developer, or by approving any of the insurance policies described in Section 7 hereof.

(b) That the Hold-Harmless provisions of this Agreement shall apply to all damages and claims for damages of every kind suffered or alleged to have been suffered, by reason of the design and construction of the Improvements, regardless of whether City has prepared, supplied or approved of any portion of the Passalacqua Improvement Plans and Specifications or Parkland Farms Improvement Plans and Specifications, or regardless of whether insurance policies as required in this Agreement shall have been determined to be applicable to any such damages or claims for damages.

(c) In the event that legal action is initiated by either party to this Agreement, and said action seeks damages for breach of this Agreement or seeks to specifically enforce the terms of this Agreement, and, in the event judgment is entered in said action, the prevailing party shall be entitled to recover its attorneys' fees and court costs. If City is the prevailing party, City shall also be entitled to recover its attorneys' fees and costs in any action against Developer's surety on the bonds provided under Sections 5 and 6 hereof.

(d) With respect to third party claims against the Developer, the Developer waives any and all rights of any type to express or implied indemnity against the City.

(e) The hold harmless and indemnity provisions set forth in this Section 24 shall terminate upon the expiration of the ten (10) year statute of repose set forth in California Code of Civil Procedure §337.15 following acceptance of the Improvements pursuant to Section 22 above.

25. NOTICE.

All notices herein required shall be in writing, and delivered in person to the addressee's normal place of business, or sent by registered mail, or other commercial courier where date and place of delivery can be confirmed, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City of Healdsburg
Attn: City Engineer
401 Grove Street
Healdsburg, CA 95448

Notices required to be given to Developer shall be addressed as follows:

Sonoma Luxury Resort, LLC
Attn: Michael G. Mohr
720 East University Avenue, Suite 200
Los Gatos, CA 95032

The Robert Green Company
Attn: Robert S. Green, Jr.
169 Saxony Road, Suite 113
Encinitas, CA 92024

Notices required to be given to the Developer's surety shall be as provided in the approved security instruments. Any Party may change such address by notice in writing to the other Parties and thereafter notices shall be addressed and transmitted to the new address.

26. SUCCESSORS IN INTEREST.

All of the terms, covenants and conditions contained here shall continue, and bind all successors-in-interest of Developer.

27. SEVERABILITY.

Every provision of this Agreement is intended to be severable. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

28. COUNTERPARTS.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITY:

CITY OF HEALDSBURG,
a California municipal corporation

By:_____

Name: Jeff Kay

Its: City Manager

Date: _____

APPROVED AS TO FORM:

By:_____
Samantha Zutler, City Attorney

DEVELOPER:

SONOMA LUXURY RESORT LLC, a
Delaware limited liability company

By:_____

Name: John Ginochio

Its: Chief Financial Officer

Date:_____

APPROVED AS TO FORM:

By:_____
Developer Attorney

ACKNOWLEDGMENT

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 _____)

On _____, 201__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (seal)

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 201__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF PUBLIC ROADWAY PROPERTY

All that certain real property lying within the City of Healdsburg, County of Sonoma, State of California, and being Parcel 11 as shown on map titled "Saggio Hills" and filed for record in Book 795 of Maps at Pages 31-40, Document No. 2018-037508, Sonoma County Records.

EXHIBIT B-36

MEMORANDUM OF THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

EXHIBIT B-36

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

Exempt from Recording Fees per Government Code §27383 And Building Homes & Jobs Trust Fund Fee Per Government Code §27388.1(a) (2) (D)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Memorandum of Third Amendment to Development Agreement (the "**Memorandum**") is made as of _____, 2021, by and between the CITY OF HEALDSBURG, a California municipal corporation ("**City**"), and SONOMA LUXURY RESORT, LLC, a Delaware limited liability company ("**Developer**"), who agree as follows:

1. City and Developer are parties to that certain Development Agreement dated as of April 11, 2011, under the authority of Ordinance No. 1107 ("**Development Agreement**"); a Memorandum of Development Agreement was recorded in the Official Records of Sonoma County on April 27, 2011 as Instrument No. 2011037227.

2. On April 5, 2016, City and Developer entered into an Insubstantial Amendment To The Development Agreement ("**First Insubstantial Amendment**").

3. On May 30, 2019, City and Developer entered into a Second Insubstantial Amendment To Development Agreement ("**Second Insubstantial Amendment**"), and a Memorandum of Second Insubstantial Amendment to Development Agreement, of the same date, was recorded in the Official Records on August 5, 2019, at Instrument No. 2019053988.

4. Concurrently herewith, City and Developer have entered into that certain Third Amendment To Development Agreement (the "**Third Amendment**"), with respect to real property known as the Saggio Hills Project (the "**Property**") and legally described in Exhibit A attached hereto.

5. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Third Amendment relating to the Property.

6. Reference is hereby made to the entire Third Amendment for any and all purposes. A true copy of the Third Amendment is on file in the Office of the City Clerk, City of Healdsburg, 401 Grove Street, Healdsburg, California 95448.

IN WITNESS WHEREOF, City and Developer have executed this Memorandum as of the date set forth above.

CITY OF HEALDSBURG, a California municipal corporation

By:_____

Print Name: Jeff Kay

Its: City Manager

APPROVED AS TO FORM:

_____
Samantha Zutler, City Attorney

ATTEST:

_____
Raina Allan, City Clerk

SONOMA LUXURY RESORT, LLC, a Delaware limited liability company

By: _____

Print Name: John Ginochio

Its: Chief Financial Officer

ACKNOWLEDGMENT

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)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

_____

(Notary Signature)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Parcels 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 of Saggio Hills per Map recorded May 23, 2018 in Book 795, Pages 31-40 as Instrument No. 2018-037508, of Official Records, in the City of Healdsburg, County of Sonoma, in the State of California.

EXHIBIT B-37

DEPICTION OF REALIGNED PARKLAND FARMS BOULEVARD


35' SETBACK
TOP OF BANK
35' SETBACK
TOP OF BANK
35' SETBACK
TOP OF BANK
35' SETBACK
TOP OF BANK
35' SETBACK
TOP OF BANK
Legend
City Limits
Scenic Ridgeline
Creek Setback
35' SETBACK
TOP OF BANK
Road Alignment
Potential Realignment
Existing
Approximately 7.6 Acres Total
N

EXHIBIT B-38

AMEDED OFFER OF DEDICATION

EXHIBIT B-38

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

City of Healdsburg
401 Grove Street
Healdsburg, California 9495448

The City of Healdsburg is Exempt from Recording Fees (Government Code §27383), Documentary Transfer Tax and City Transfer Tax (Rev. & Taxation Code §11922 and Healdsburg Municipal Code §3.16.050), and Building Homes & Jobs Trust Fund Fee (Govt. Code §27388.1(a)(2)(D)).

(Space above this line for Recorder's use)

AMENDED IRREVOCABLE OFFER OF DEDICATION FOR PUBLIC ROADS

THE UNDERSIGNED, SONOMA LUXURY RESORT LLC, a Delaware limited liability company ("**Developer**"), being the present title owner of record of the herein described real property, does hereby make, pursuant to California Government Code Section 7050, an amended irrevocable offer of dedication to the City of Healdsburg, a California municipal corporation ("**City**") of the fee title to the real property situated in the City of Healdsburg, County of Sonoma, State of California, described in Exhibit A ("**Public Roads**") attached hereto and incorporated herein by this reference.

A. This Amended Irrevocable Offer of Dedication For Public Roads ("**Amended Offer of Dedication**") is made by Developer pursuant to the terms of Section 16(a) of Exhibit B of that certain Development Agreement dated April 11, 2011, entered into by and among Developer and City; a Memorandum of Development Agreement was recorded in the Official Records of Sonoma County, California (the "**Official Records**"), on April 27, 2011 as Instrument No. 2011037227; as amended on April 5, 2016, pursuant to an Insubstantial Amendment To The Development Agreement Between The City Of Healdsburg And Sonoma Luxury Resort, LLC, Dated April 11, 2011 ("**First Amendment**"); as amended on May 30, 2019, pursuant to a Second Insubstantial Amendment To Development Agreement, by and between the City and Developer, and a Memorandum of Second Insubstantial Amendment to Development Agreement, of the same date, recorded in the Official Records on August 5, 2019, at Instrument No. 2019053988 ("**Second Amendment**"); and as amended on _____, 2021, pursuant to a Third Amendment to Development Agreement, by and between City and Developer, and a Memorandum of Third Amendment to Development Agreement, dated _____, 2021, recorded in the Official Records on _____, 2021 as Instrument No. 2021-_____ ("**Third Amendment**") (collectively, the "**Development Agreement**").

B. Developer previously made an Irrevocable Offer of Dedication For Public Roads to City dated May 15, 2019, and recorded in the Official Records on June 4, 2019, at Instrument No. 2019037260, of real property described therein ("**Offer of Dedication**"). Pursuant to the

Third Amendment executed by and between Developer and City, City has adopted and recorded a resolution vacating the Offer of Dedication in accordance with Streets and Highways Code Section 8334 (c).

C. Developer now makes this Amended Offer of Dedication of the Public Roads described and attached to this Amended Offer of Dedication as Exhibit A.

D. City shall have the right to record this Amended Offer of Dedication in the Official Records upon its execution and delivery by Developer. At such time as City may accept the foregoing amended irrevocable offer of dedication, the acceptance thereof shall be made by executing and recording the Acceptance of Amended Irrevocable Offer of Dedication (the "**Acceptance**") attached hereto as Exhibit B and incorporated herein by this reference. City may accept all or portions of the Public Roads through recordation of one or more Acceptances.

IN WITNESS WHEREOF, Developer has executed this Amended Irrevocable Offer Of Dedication For Public Roads as of the _____ day of _____, 2021.

SONOMA LUXURY RESORT LLC,
a Delaware limited liability company

By: _____
Name: John Ginochio
Its: Chief Financial Officer

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 _____)

On _____, 201__ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (seal)

EXHIBIT A

LEGAL DESCRIPTION OF PUBLIC ROADS

The real property referred to herein is situated in the State of California, County of Sonoma, City of Healdsburg and described as follows:

[Insert amended legal description]

EXHIBIT B

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

City of Healdsburg
401 Grove Street
Healdsburg, California 9495448

The City of Healdsburg is Exempt from Recording Fees (Government Code §27383), Documentary Transfer Tax and City Transfer Tax (Rev. & Taxation Code §11922 and Healdsburg Municipal Code §3.16.050), and Building Homes & Jobs Trust Fund Fee (Govt. Code §27388.1(a)(2)(D)).

(Space above this line for Recorder's use)

ACCEPTANCE OF AMENDED IRREVOCABLE OFFER OF DEDICATION FOR PUBLIC ROADS

THE UNDERSIGNED, CITY OF HEALDSBURG, a California municipal corporation ("**City**"), is in receipt of an Amended Irrevocable Offer Of Dedication For Public Roads ("**Amended Offer of Dedication**") by Sonoma Luxury Resort LLC, a Delaware limited liability company ("**Developer**"), pertaining to certain real property situated in the City of Healdsburg, County of Sonoma, State of California, and described in Exhibit A ("**Public Roads**") attached to said Amended Offer of Dedication dated as of _____ ____, 2021, and recorded in the Official Records of Sonoma County, California (the "**Official Records**") on _____, 2021, as Document No. _____.

The Amended Offer of Dedication was made by Developer pursuant to the terms of Section 16(a) of Exhibit B of that certain Development Agreement dated April 11, 2011, entered into by and among Developer and City; a Memorandum of Development Agreement was recorded in the Official Records of Sonoma County, California (the "**Official Records**"), on April 27, 2011 as Instrument No. 2011037227; as amended on April 5, 2016, pursuant to an Insubstantial Amendment To The Development Agreement Between The City Of Healdsburg And Sonoma Luxury Resort, LLC, Dated April 11, 2011 ("**First Amendment**"); as amended on May 30, 2019, pursuant to a Second Insubstantial Amendment To Development Agreement, by and between the City and Developer, and a Memorandum of Second Insubstantial Amendment to Development Agreement, of the same date, recorded in the Official Records on August 5, 2019, at Instrument No. 2019053988 ("**Second Amendment**"); and as amended on _____, 2021, pursuant to a Third Amendment to Development Agreement, by and between City and Developer, and a Memorandum of Third Amendment to Development Agreement, dated _____, 2021, recorded in the Official Records on _____, 2021 as Instrument No. 2021-_____ ("**Third Amendment**") (collectively, the "**Development Agreement**")

By executing this Acceptance of Amended Irrevocable Offer of Dedication for Public Roads and by causing the recordation thereof, City hereby accepts the Amended Offer of

Dedication of that certain real property situated in the City of Healdsburg, County of Sonoma, State of California, described in Exhibit A ("**Public Roads**") attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, City has executed this Amended Acceptance of Irrevocable Offer of Dedication for Public Roads as of the _____ day of _____, 20__.

CITY OF HEALDSBURG,
a California municipal corporation

By:_____
Name:_____
Its: City Manager

APPROVED AS TO FORM AND CONTENT:

By:_____
Name: _____
Its: City Attorney

ATTEST:

By:_____
Name: _____
Its: City Clerk

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 _____)

On _____, 201__ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (seal)

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 201__ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____ (seal)

EXHIBIT A

LEGAL DESCRIPTION OF PUBLIC ROADS

The real property referred to herein is situated in the State of California, County of Sonoma, City of Healdsburg and described as follows:

[Insert legal description of amended roadway]

EXHIBIT B-39

WETLANDS SUMMARY

Sonoma Luxury Resort, LLC

DATE: December 4th, 2018

TO: Gil Falcone, M.S. – North Cost Regional Water Quality Control Board

cc: Charlie Patterson, Project Biologist and Jim Fain, Carlile Macy

FROM: Sonoma Luxury, Resort, LLC (Owner/Developer)

SUBJECT: Montage Healdsburg (Formerly Saggio Hills) 2018 Wetlands Summary

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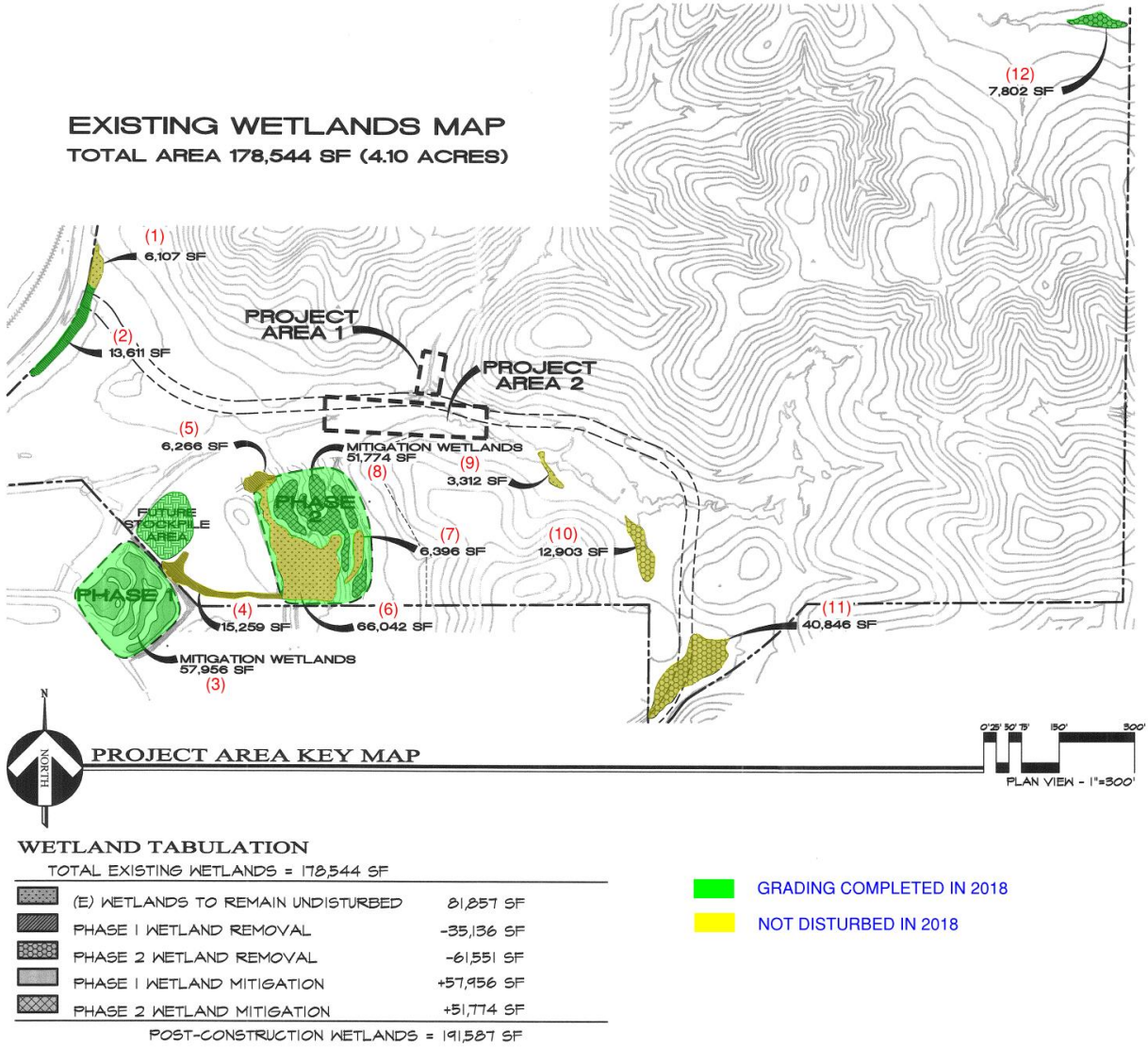
This memo is to summarize the construction activity related to the Wetlands on the Montage Healdsburg project (formerly Saggio Hills) located in Healdsburg, CA.

Reference will be made based on the below wetlands plan:



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Phase 1 and 2 wetlands have been constructed. There is no additional work contemplated other than potential future removal of wetlands 4, 5, 10 and 11 (refer to Table 1). This work started on August 9th of 2018 and was substantially complete by August 23rd, 2018. Our Contractor -Ghilotti/Engelke worked on an accelerated schedule to complete in a short amount of time to ensure minimal disruptions to the Parkland Farms neighbors. Shortly after grading completion, BMP's were implemented to protect the perimeter and Biologist Charlie Patterson spread the wetlands seed mix for germination with the Fall rains.

TABLE 1:

SONOMA LUXURY RESORT, LLC 12/4/2018

MH - WETLANDS CALCULATIONS

Wetland Tabulation as of December 2018:

178,544	Pre-Existing Wetlands
81,857	Pre-Existing Wetlands to Remain Undisturbed Long Term (1, 6, 7, 9)
75,274	Pre-Existing Wetlands Currently in Place Slated for Future Removal (4, 5, 10, 11) - Timing TBD
-13,611	Phase 1 Wetland Removal (2)
-7,802	Phase 2 Wetland Removal (12)
57,956	Phase 1 Wetland Mitigation (3)
51,774	Phase 2 Wetland Mitigation (8)
245,448	TOTAL AREA OF CURRENT EXISTING WETLANDS

#	SIZE SF	NEW/ EXISTING	PLANNED TO REMAIN IN PLACE	CURRENTLY IN PLACE	COMMENTS
HEALDSBURG AVE:					
1	6,107	EXISTING	YES	YES	Bordering vineyard & HBG Ave
2	13,611	EXISTING	NO	NO	Removed due to HBG Ave road widening
SOUTH OF FOSS CREEK:					
3	57,956	NEW	N/A	YES	Phase 1 Wetlands Area
4	15,259	EXISTING	NO	YES	Slated for future removal penindg City Park plan
5	6,266	EXISTING	NO	YES	Slated for future removal penindg City Park plan
6	66,042	EXISTING	YES	YES	Phase 2 Wetlands Area
7	6,396	NEW	N/A	YES	Phase 2 Wetlands Area
8	51,774	NEW	N/A	YES	Phase 2 Wetlands Area
9	3,312	EXISTING	YES	YES	Planned to remain long term
10	12,903	EXISTING	NO	YES	In proposed future residential site
11	40,846	EXISTING	NO	YES	In proposed future residential site
RESORT:					
12	7,802	EXISTING	NO	NO	Removed due to resort improvements

Completed Wetlands looking SW towards Parkland Farms Neighborhood:

After Large Rain Event:

Sonoma Luxury Resort, LLC
(END OF MEMO)