

**SECOND INSUBSTANTIAL AMENDMENT TO  
DEVELOPMENT AGREEMENT**

This Second Insubstantial Amendment to Development Agreement (“**Second Insubstantial Amendment**”) is entered into this 30<sup>th</sup> day of May, 2019, by and between the City of Healdsburg, a California municipal corporation (the “**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. City and Developer are Parties to that certain Development Agreement, dated April 11, 2011; a Memorandum of Development Agreement was recorded in the Official Records of Sonoma County on April 27, 2011 as Instrument No. 2011037227 (“**Development Agreement**”). On April 5, 2016, the City and Developer entered into an Insubstantial Amendment to the Development Agreement (“**First Insubstantial Amendment**”).

B. Necessity for this Second Insubstantial Amendment is being driven, in part, by the desire to provide City additional time to undertake a public process related to the (i) need for and design of the Fire Substation and (ii) the final development plans for the Public Park Land (Parcel 8), which relates to the design and timing for construction of the Public Trails on Parcel 1 (Resort Parcel) and Parcel 2 (Residential Parcel). Further, the Parties desire to accommodate the placement of a gas regulator facility within an easement to be created on the Public Park Land (Parcel 8).

C. Currently, the City has no definitive plans for the development of the Affordable Housing Site and the ultimate improvements to be placed on the Public Park Land are being designed. While Developer has given the City a grading plan for both the Affordable Housing Site (Parcels 5 and 6) and the Public Park Land (Parcel 8), it well understands that ultimate development of these two facilities will depend on continued public input received by the City, the purpose of all of which is to achieve maximum public benefit.

D. Given the City’s on-going design work associated with the Public Park Land, the Parties desire to delay the timing of Developer’s obligation to install all of the improvements along Passalacqua Road and Parkland Farms Boulevard at this time. While Developer remains contractually obligated and fully intends to improve the entirety of Passalacqua Road and Parkland Farms Boulevard and to make the planned connection of Passalacqua Road with Parkland Farms Boulevard, the timing of completing those improvements is premature at this time and could result in construction of improvements which ultimately prove incompatible with the ultimate development plans for the Public Park Land and the Affordable Housing Land.

E. This Second Insubstantial Amendment is intended to provide for the continued and orderly development of the Sonoma Luxury Resort project and its public and private improvements and is entered into by the Parties in accordance with Section 9.3 of the Development Agreement governing Insubstantial Amendments.

## OPERATIVE PROVISIONS

City and Developer, for good and valuable consideration, agree as follows:

1. Construction of Passalacqua Road and Parkland Farms Boulevard; Mass Grading & Infrastructure of Affordable Housing Land and Public Park Land; and Public Trails.

The intent of the Parties is to coordinate the timing of Developer's obligation to commence and complete (i) construction of the remaining Public Roads & Related Utilities on Parcel 11 (also known as Passalacqua Road and Parkland Farms Boulevard), as identified and in accordance with Section 16(a) of Exhibit B to the Development Agreement, (ii) the mass grading of and infrastructure improvements to the Affordable Housing Land, as identified and in accordance with Section 7 of Exhibit B to the Development Agreement, (iii) the mass grading of and infrastructure improvements to the Public Park Land, as identified and in accordance with Section 10 of Exhibit B to the Development Agreement, and (iv) construction of the Public Trails, as identified and in accordance with Section 6(b) of Exhibit B to the Development Agreement (collectively, the "**Public Improvements**"), with, to the extent possible, the timing of the City's completion and adoption of a master plan for the Public Park on Parcel 8 and a development plan for the Affordable Housing Land on Parcels 5 and 6.

The foregoing notwithstanding, Developer acknowledges 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 on Parcel 8 or a development plan for the Affordable Housing Land on Parcels 5 and 6. Accordingly, if Developer has not commenced construction of the Public Improvements prior to May 1, 2022, then upon no less than thirty (30) days written notice from City, Developer shall immediately commence activities related to the construction of the Public Improvements and complete the Public Improvements no later than expiration of the Development Agreement.

2. Dedication of Fire Substation Land. Sections 1.(f) and 11 of Exhibit B to the Development Agreement provide that Developer is to submit the Fire Substation Land Deed and Fire Substation Land Title Instructions relating to dedication of the Fire Substation Land (Parcel 10) within 10 days following City's approval of the First Final Map. The Parties acknowledge that City has approved the First Final Map, yet it is still working through the design for improvements to Parcel 10 and accordingly desire to defer the timing of Developer's obligation to place the Fire Substation Land Deed and Fire Substation Land Title Instructions into escrow. Therefore, notwithstanding anything in the Development Agreement to the contrary, Developer shall prepare, execute and submit the Fire Substation Land Deed and Fire Substation Land Title Instructions into escrow as contemplated in Section 11 of Exhibit B to the Development Agreement within ten (10) business days following receipt of written instructions from the City do so.

3. City Approval of Developer's Grant of PG&E Easement. The City agrees to Developer's execution and recording of an easement in favor of PG&E to authorize construction and maintenance of a gas regulator station and attendant improvements burdening a portion of the Public Park Parcel (Parcel 8), in the form attached hereto as Exhibit A ("**PG&E Easement**"),

notwithstanding any contrary provisions within the Development Agreement. Any revisions to the form of the PG&E Easement attached hereto shall require the prior written consent of City, which may be granted or withheld by City in its sole discretion.

4. Conflict. In the event of a conflict or inconsistency between the Development Agreement, First Insubstantial Amendment, or Second Insubstantial Amendment, the terms of the Second Insubstantial Amendment shall prevail. In the absence of a conflict, the terms and provisions of the Development Agreement and the First Insubstantial Amendment shall remain in full force and effect.

5. Interpretation. This Second Insubstantial Amendment shall be interpreted to give each of the provisions their plain and fair meaning. The Recitals set forth above are incorporated into this Second Insubstantial Amendment. The section headings used herein are solely for convenience and shall not be used to interpret this Second Insubstantial Amendment. The Parties acknowledge that this Second Insubstantial 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 Second Insubstantial Amendment, this Second Insubstantial 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.

6. Integration. This Second Insubstantial 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 Second Insubstantial Amendment. This Second Insubstantial Amendment shall not be amended or modified except by a written agreement executed by each of the Parties.

7. Severability. If any term, provision, condition or covenant of this Second Insubstantial 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 Second Insubstantial 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.

8. Status of Agreement. Except as modified by this Second Insubstantial Amendment, the terms and provisions of the Development Agreement and First Insubstantial Amendment shall remain in full force and effect.

9. Counterparts. This Second Insubstantial 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.

10. Recording of Memorandum. Concurrent with the execution of this Second Insubstantial Amendment, the Parties shall execute, acknowledge and record a Memorandum of Second Insubstantial Amendment, in the form attached hereto as Exhibit B, in the official records of Sonoma County.

11. Authority. Each of the persons signing this Second Insubstantial Amendment hereby represents and warrants that he or she has full power and authority to sign this Second Insubstantial 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 Second Insubstantial Amendment as of the date and year indicated below and effective as of the last date of execution by either Party.

DATED: May 30, 2019

**DEVELOPER:**

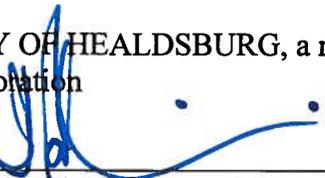
SONOMA LUXURY RESORT, LLC, a  
Delaware limited liability company

By:   
John Ginochio, Chief Financial Officer

DATED: May 30, 2019

**CITY:**

CITY OF HEALDSBURG, a municipal  
corporation

By:   
David Mickaelian, City Manager

**EXHIBIT A**  
**PG&E EASEMENT**  
**[ATTACHED]**

**EXHIBIT B**

**MEMORANDUM OF SECOND INSUBSTANTIAL AMENDMENT**

**[ATTACHED]**

RECORDING REQUESTED BY AND RETURN TO:

**PACIFIC GAS AND ELECTRIC COMPANY**  
245 Market Street, N10A, Room 1015  
P.O. Box 770000  
San Francisco, California 94177

Location: City/Uninc \_\_\_\_\_

Recording Fee \$ \_\_\_\_\_

Document Transfer Tax \$ \_\_\_\_\_

- This is a conveyance where the consideration and Value is less than \$100.00 (R&T 11911).
- Computed on Full Value of Property Conveyed, or
- Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale
- Exempt from the fee per GC 27388.1 (a) (2); This document is subject to Documentary Transfer Tax

\_\_\_\_\_  
Signature of declarant or agent determining tax

(SPACE ABOVE FOR RECORDER'S USE ONLY)

LD# 2409-09-10026

### EASEMENT DEED

(Portion of APN 091-310-008)

SONOMA LUXURY RESORT, LLC, a Delaware limited liability company (hereinafter, "**Grantor**"), in consideration of value paid by PACIFIC GAS & ELECTRIC COMPANY, a California Corporation (hereinafter, "**Grantee**"), the receipt whereof is hereby acknowledged, hereby grants to Grantee a non-exclusive easement within the hereinafter described easement area, lying within the Grantor's lands situate in the City of Healdsburg, County of Sonoma, State of California, and more particularly described in the legal description attached hereto as **EXHIBIT "A"** and depicted in the plat map attached hereto as **EXHIBIT "B"**, each incorporated herein by this reference (the "**Easement Area**").

Grantee acknowledges that the Easement Area encumbers real property situated in the City of Healdsburg, County of Sonoma, State of California, described as Parcel 8 on Final Map filed in the Official Records of Sonoma County on May 23, 2018, in Book 795 of Maps at Pages 31-40, Instrument No. 2018-037508 (the "**Public Park Property**"), which Grantor is contractually obligated to transfer to the City of Healdsburg, a California municipal corporation ("**City**"), for use as a public park pursuant to the terms of that certain Development Agreement between City and Grantor, dated April 11, 2011, as evidenced by a Memorandum of Development Agreement recorded in the Official Records of Sonoma County on April 27, 2011, as Instrument No. 2011037227, and amended by the First Insubstantial Amendment to Development Agreement dated April 5, 2016, and the Second Insubstantial Amendment to Development Agreement dated May \_\_\_, 2019.

Subject to the obligation of Grantee to secure an encroachment permit from City in accordance with the provisions of the Healdsburg Municipal Code, Grantor hereby grants to Grantee the following rights:

(a) the right, from time to time, to excavate for, construct, reconstruct, replace (of the initial or any other size), remove, maintain, inspect, and use facilities and associated equipment for public utility purposes, on, over, and under the Easement Area; together with the right, as Grantee shall from time to time deem necessary to discharge gas into the atmosphere, and to pave the Easement Area;

(b) the right, from time to time, to excavate for, construct, reconstruct, replace (of the initial or any other size), remove, maintain, inspect, and use facilities and associated equipment for public utility purposes, including, but not limited to electric, gas, and communication facilities on, over, and under the Easement Area;

(c) subject to the obligation of Grantee to secure all necessary tree removal permits, the right, from time to time, to trim or to cut down, any and all trees, roots, brush, vines, and to remove any associated supporting structures now or hereafter within said Easement Area; which now or hereafter in the opinion of Grantee may interfere with or be a hazard to the facilities installed hereunder, or as Grantee deems necessary to comply with applicable state or federal regulations;

(d) the right to mark the location of said Easement Area and facilities by suitable markers set in the ground; provided that the markers shall be placed in a manner which will not interfere with any reasonable use Grantor shall make of said Easement Area;

(e) the right of ingress to and egress from the Easement Area via Healdsburg Avenue, only. However, if ingress to and egress from the Easement Area via Healdsburg Avenue is not available, Grantee may gain ingress to and egress from the Easement Area through the Public Park Property provided (i) Grantee secures prior City approval as part of an encroachment permit, except in cases of emergency in which event Grantee shall subsequently secure an encroachment permit from City as soon as reasonably possible (ii) the route of ingress to and egress from the Easement Area is chosen to minimize disturbance to the Public Park Property, and (iii) Grantee commits in writing to make any necessary repairs to return the Public Park Property as close as practicable to its condition existing prior to Grantee's access thereto.

In consideration of the rights granted herein by Grantor, Grantee hereby covenants and agrees as follows:

(a) to secure encroachment permits from the City in connection with its activities in the Easement Area pursuant to this Easement Deed, as set forth above, and to comply with all terms and conditions of said encroachment permits;

(b) to secure tree removal permits from City, as necessary, in connection with its activities in the Easement Area pursuant to this Easement Deed, as set forth above, and to comply with all terms and conditions of said tree removal permits;

(c) to promptly backfill any excavations made by it on said Easement Area;

(d) to repair any damage it shall do to the Easement Area, Public Park Property, Healdsburg Avenue and any other property by exercising the rights granted herein; and

(e) to indemnify and hold harmless Grantor from any and all loss, damages or liability connected with Grantee's occupation of said premises or resulting from the injury to or death of any person, or damage to or loss or destruction of any property arising out of Grantee's negligent acts or omissions or willful misconduct; provided, however, that this indemnity shall not extend to that portion of such loss or damage that shall have been caused by Grantor's comparative negligence or willful misconduct.

Grantor hereby covenants and agrees:

(a) not to place or construct, nor allow a third party to place or construct, any building or other structure, or store flammable substances, or drill or operate any well, or construct any reservoir or other obstruction within said Easement Area, or diminish or substantially add to the ground level within said Easement Area, or construct any fences that will interfere with the maintenance and operation of said facilities.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all rights and covenants shall apply to and run with the land.

Dated \_\_\_\_\_, 20\_\_\_\_\_.

SONOMA LUXURY RESORT, LLC, a Delaware limited liability company

\_\_\_\_\_  
By

\_\_\_\_\_  
Print Name & Title

PACIFIC GAS & ELECTRIC COMPANY, a California Corporation

\_\_\_\_\_  
By

\_\_\_\_\_  
Print Name & Title

LEGAL DESCRIPTION  
EXHIBIT "A"

Lying within the City of Healdsburg, County of Sonoma, State of California, and being a portion of Parcel 8 of the lands of Sonoma Luxury Resort LLC as shown on that Final Map entitled Saggio Hills, filed for record in Book 795 of Maps at pages 31-40, Sonoma County Records, and being more particularly described as follows:

Commencing at a ½" iron pipe tagged PLS 5143 on the southeasterly Right of Way of Healdsburg Avenue said point being the westerly common corner to Parcel 8 and Parcel 10 as shown on said map of Saggio Hills; thence northeasterly along said Right of Way of Healdsburg Avenue, North 45°26'04" East, 186.55 feet to the Point of Beginning; thence continuing northeasterly along said Right of Way of Healdsburg Avenue, North 45°26'04" East, 55.00 feet; thence leaving said Right of Way, South 44°33'56" East, 13.00 feet, thence South 45°26'04" West, 55.00 feet; thence North 44°33'56" West, 13.00 feet to the Right of Way of Healdsburg Avenue and said Point of beginning.

Basis of Bearings being North 45°26'04" East, 412.45 feet between found ½" iron pipes tagged PLS 5143 marking the northwesterly line of Parcel 8, as shown on that Map of Saggio Hills, filed for record in Book 795 of Maps, at Pages 31-40, Sonoma County Record, Sonoma County, California

Being a portion of APN 091-310-008

Containing 715.00 square feet ±.

This description prepared by Carlile • Macy.

See Exhibit "B" for graphic depiction.

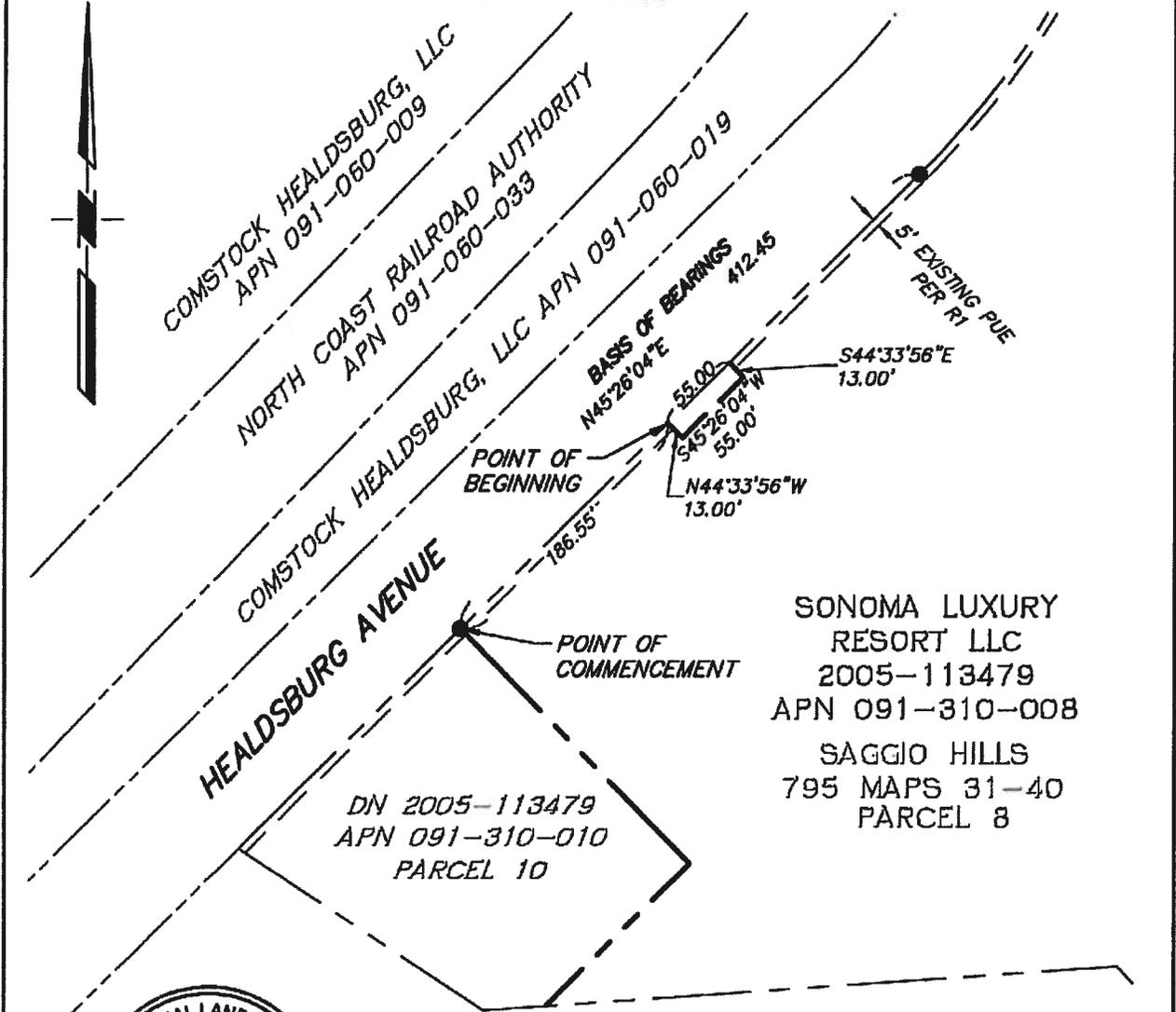
  
James Lee Smith  
PLS 8185



3/21/2019  
Date

END OF DESCRIPTION

**EXHIBIT 'B'**  
**PG&E EASEMENT**



RECORD OF SURVEY  
607 MAPS, 29

CITY OF HEALDSBURG  
DN 1997-039902  
APN 091-040-062

**BASIS OF BEARINGS:**  
MAP OF SAGGIO HILLS FILED FOR RECORD IN BOOK 795,  
PAGES 31-40

**LEGEND**

	PARCEL BOUNDARY LINE
	EASEMENT LINE
	1/2" IRON PIPE, PLS 5143
SCR	SONOMA COUNTY RECORDS
R1	MAP BOOK 795, 31-40

APPLICANT: SONOMA LUXURY RESORT LLC				SCALE: 1"=100'	DATE: 3/19/2019
RANCHO SOTOYOME	TOWNSHIP 09 NORTH	RANGE 09 WEST	MERIDIAN M.D.B.&M.	COUNTY OF: SONOMA	CITY OF: HEALDSBURG
PLAT MAP BOOK 795 OF MAPS, PAGES 31-40, REFERENCES: SCR				PG&E	DIVISION: SONOMA COUNTY
F.B.:		DR. BY: PR		CH. BY: JLS	
AUTHORIZATION:			DRAWING NO.:		

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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

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Exempt From Recording Fees Per Government Code §27383 And      SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Building Homes & Jobs Trust Fund Fee Per Government Code §27388.1(a)(2)(D)

**MEMORANDUM OF SECOND INSUBSTANTIAL AMENDMENT TO  
DEVELOPMENT AGREEMENT**

This Memorandum of Second Insubstantial Amendment to Development Agreement (the "**Memorandum**") is made as of May \_\_\_\_, 2019, 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; a Memorandum of Development Agreement was recorded in the Official Records of Sonoma County on April 27, 2011 as Instrument No. 2011037227.
2. Concurrently herewith, City and Developer have entered into that certain Second Insubstantial Amendment To Development Agreement (the "**Second Amendment**"), with respect to real property known as the Saggio Hills Project (the "**Property**") and legally described in Exhibit A attached hereto.
3. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Second Amendment relating to the Property.
4. Reference is hereby made to the entire Second Amendment for any and all purposes. A true copy of the Second 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: David Mickaelian

Its: City Manager

APPROVED AS TO FORM:

ATTEST:

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

\_\_\_\_\_  
Stephanie A. Williams, City Clerk

SONOMA LUXURY RESORT, LLC, a  
Delaware limited liability company

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

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

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



**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.