




Community and Economic Development Planning Division

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PLANNING COMMISSION DATE: December 6, 2022

AGENDA ITEM: #2

DA		Development Agreement for residential subdivision project S #2014-001 in Bass Lake
APN	059-200-020	Applicant/Owner: Fagundes Dairy
CEQA		Exempt

REQUEST:

The applicant is requesting approval of a Development Agreement for a previously approved residential subdivision project to span over a 10-year time period.

LOCATION:

The project is located on the east side of Road 432, approximately 280 feet south of its intersection with Road 331 (no situs), Bass Lake.

ENVIRONMENTAL ASSESSMENT:

Mitigated Negative Declaration (MND #2014-26) was previously adopted for the subdivision project.



RECOMMENDATION: Staff recommends that the Planning Commission recommend approval of the Development Agreement to the Board of Supervisors.

GENERAL PLAN DESIGNATION (EXHIBIT A):

SITE: LDR (Low Density Residential)
SURROUNDING: LDR (Low Density Residential) and PI (Public Institutional)

ZONING (EXHIBIT B)

SITE: RUS (Residential Urban Single Family) District
SURROUNDING: RRM (Residential Rural Multi Family), RMS (Residential Mountain Single Family) and POS (Public Open Space) Districts

LAND USE:

SITE: Residential

SIZE OF PROPERTY: 9.62 acres

ACCESS (EXHIBIT B): Access to the site is via Road 432 and access easements

WILLIAMSON ACT:

The subject property is not subject to a Williamson Act (Agricultural Preserve) contract.

BACKGROUND AND PRIOR ACTIONS:

GP #2014-003, CZ #2014-003, S #2014-001, and MND #2014-26 for a 21-lot residential subdivision were approved by the Board of Supervisors on November 3, 2014. The proposed development agreement will allow for development of this project.

PROJECT DESCRIPTION:

The project request is for the property owner to enter into a Development Agreement with the County to allow for development of a 21-lot residential subdivision over a 10-year term.

ORDINANCES/POLICIES:

Madera County Code (Chapter 18.11.040) RRS (Residential, Rural, Single Family) – Land Use Regulations

Madera County General Plan Part 1, Land Use Designations

ANALYSIS:

S #2014-001 was approved in 2014. Subsequent to approval, time extension requests for the map were requested and approved. Property ownership has changed since the initial approval of the map and the current owner wishes to develop the project as approved. To allow for development rights to continue under the original approval, a Development Agreement is being requested pursuant to Government Code section 65864.

Development agreements are contracts approved by the Planning Commission and Board of Supervisors and entered into by the County and a developer to expressly define a development project's rules, regulations, commitments, and policies for a specific period of time. The purpose is to strengthen the public planning process by encouraging private participation in the achievement of comprehensive planning goals and reducing the economic costs of development.

The agreement recognizes that the project is a private development and that the county has no interest in the development except to exercise its governmental functions. The life

Development Agreement

of the tentative subdivision map (S #2014-001) will be extended to the 10-year term of this agreement. Without this agreement the tentative subdivision map will expire as all time extension requests pursuant to the Subdivision Map Act have already been requested and approved.

This Development Agreement requires two public hearings pursuant to Government Code section 65864; one before the Planning Commission who shall give a recommendation to the Board of Supervisors at the second hearing.

FINDINGS

The planning commission's recommendation shall include the determination whether or not the development agreement proposed:

1. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan. In 2014, a General Plan Amendment (GP #2014-003) and Rezone (CZ #2014-003) were approved along with the tentative map allowing for the development standards and lot sizes on the map. The original project analyzed all requirements for the map including all infrastructure needed to develop the property.

2. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located. The project meets the minimum lot size of the zone district (Residential Urban Single Family) which was previously approved for this development. This zone district includes requirements for utilizing community water and sewer systems.

3. Is in conformity with public convenience, general welfare and good land use practice. The project as mitigated and conditioned allow for a residential subdivision project that is consistent with land use regulations and development standards. It will allow for emergency access circulation through the project and will increase overall property value to the parcels.

4. Will be detrimental to the health, safety and general welfare. The project is designed to provide for adequate access, sewer system hook-ups are secured through the Public Works Department, and a will serve letter has already granted by the Bass Lake Water Company indicating they can and will provide water service to the project. As conditioned, this project will not be detrimental to the health, safety and general welfare of the community.

5. Will adversely affect the orderly development of property or the preservation of property values. Conditions of approval of the project and development standards required of the zoning will allow for orderly development of the property.

RECOMMENDATION:

Staff supports Planning Commission's recommendation of the proposed Development Agreement to the Board of Supervisors.

ATTACHMENTS:

1. Exhibit A. Development Agreement

RECORDING REQUESTED BY:

COUNTY OF MADERA

200 W. 4th Street

Madera, CA 93637

AND WHEN RECORDED MAIL TO:

County Clerk

County of Madera

200 W. 4th Street

Madera, CA 93637

Fagundes Dairy

PO Box 2717

Merced, CA 95344

No Recorder's Fee

Space Above For Recorder's Use

APN: 059-200-020

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
COUNTY OF MADERA
AND
FAGUNDES DAIRY
RELATING TO THE
RESIDENTIAL DEVELOPMENT**

October __, 2022

THIS DOCUMENT, EXCLUDING ITS TABLE OF CONTENTS BUT INCLUDING EXHIBITS, TOTALS ___ PAGES. EACH PAGE IS NUMBERED SEQUENTIALLY.

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**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE COUNTY OF MADERA AND FAGUNDES DAIRY RELATING TO THE
RESIDENTIAL DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT (“**Agreement**”), dated October _____, 2022, is made and entered into by and between the COUNTY OF MADERA, a political subdivision of the State of California (“**County**”), and FAGUNDES DAIRY, a California general partnership (“**Developer**”), pursuant to the authority of Article 2.5, Chapter 4, Division 1, Title 7 (§ 65864 et seq. of the Government Code) relating to Development Agreements. This Agreement is entered into with reference to the following facts:

RECITALS

1. In order to strengthen the public land use planning process, to encourage private participation in the process, to reduce the economic risk of development, and to reduce the waste of resources, the Legislature adopted the “**Development Agreement Law**” (§ 65864 et seq. of the Government Code).

2. The Development Agreement Law permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements, as authorized by the Development Agreement Law, can assure property developers they may proceed with projects assured that approvals granted by public agencies will not change during the period of development of their projects. Cities and counties are equally assured that costly infrastructure such as roads, sewers, schools, fire protection facilities, etc., will be available at the time development projects come on line.

3. Pursuant to the Development Agreement Law, the County has adopted rules and regulations establishing procedures and requirements for consideration of development agreements by Title 15 of the Madera County Code of Ordinances (“**Development Agreement Ordinance**”).

4. Developer has a legal or equitable interest in that certain real property comprised of vacant land located in the County of Madera and identified as Assessor’s Parcel Number 059-200-020, which is legally described on **Exhibit A** attached hereto (the “**Subject Property**”).

5. Developer desires to develop the Subject Property consistent with this Agreement and the following entitlements, permits, approvals, and actions that have been enacted or that are contemplated by the County Board of Supervisors, referred to collectively as “**Project Entitlements**.”

(a) By Resolution No. 2014-191, the County Board of Supervisors adopted Mitigated Negative Declaration #2014-26 and an amendment to its General Plan to change the designation of the Subject Property from PI (Public Institutional) to LDR (Low Density Residential);

(b) By Resolution No. 2014-192, the County Board of Supervisors adopted Tentative Subdivision Map S2014-001, a copy of which map is attached hereto in **Exhibit B** (the “**Tentative Subdivision Map**”), and all other rights, entitlements, and conditions of approval set forth therein (“**Conditions of Approval**”), which are attached hereto in **Exhibit C**;

(c) By Ordinance No. 525-758, the County Board of Supervisors amended Section 18.08/4-54 of Ordinance 525 to include the Subject Property as part of the Official Zoning Map;

6. County and Developer have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Law and the Development Agreement Ordinance.

7. The parties have, in good faith, negotiated the terms of this Agreement which carries out the legislative purpose set forth above and will assure the parties to this Agreement of mutually desirable development of the Subject Property.

8. By Resolution No. 2022-____, the County Board of Supervisors authorized the Chairman of the County Board of Supervisors to sign this Development Agreement on behalf of the County.

9. Having duly considered this Agreement and having held the noticed public hearings, County finds and declares that the provisions of this Agreement are consistent with the maps and text of the County’s General Plan.

TERMS AND CONDITIONS

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

GENERAL PROVISIONS

Section 1.1. The Project. The Project is a residential development known as _____ which presently has 21 residential lots and outlots approved pursuant to the Tentative Subdivision Map.

Section 1.2. Subject Property. The Project is located on the Subject Property.

Section 1.3. Definitions. As used in the Agreement, the following terms, phrases, and words shall have the meanings and be interpreted as set forth in this Section 1.3:

(a) Adopting Ordinance means Ordinance Number _____ entitled: "Development Agreement By and Between the County of Madera and Fagundes Dairy Relative to the Residential Development" dated _____ and effective _____, 2022 which approves this Agreement as required by Government Code section 65867.5.

(b) Assumption Agreement means an agreement substantially conforming to the model assumption agreement described in **Exhibit D**, or other agreement in a form approved by the County Counsel, executed by a Landowner with the Developer, expressly assuming various obligations relating to the development of the Project, or portion thereof.

(c) CEQA means the California Environmental Quality Act section 21000, et seq., of the Public Resources Code of the State of California.

(d) Certificate of Occupancy means either a certificate issued after inspections by the County authorizing a person or persons in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

(e) Collective Standards means this Agreement, the Planning Documents, and the Existing Land Use Regulations.

(f) County means the County of Madera, as administered by the County Board of Supervisors, or its designee.

(g) Developer means Fagundes Dairy, a California partnership or its successor in interest.

(h) Director means the Planning Director for the County of Madera.

(i) Effective Date means the effective date of the Adopting Ordinance.

(j) Existing Land Use Regulations mean the ordinances, resolutions, and regulations adopted by the County in effect on the Effective Date including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, the timing of development, of the Subject Property, including, the General Plan, the zoning ordinance and all other ordinances, codes, rules and regulations of the County establishing subdivision standards, park regulations, but excluding impact, development, utility and building and other permit fees.

(k) General Plan means the General Plan of the County, including the text and maps, as amended in connection with the Project.

(l) Landowner is a party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement.

(m) Planning Documents mean, and shall be limited to, those approvals set forth in Recital 5.

(n) Project means the anticipated development of the Subject Property as specified in Section 1.1 and as provided for in the provisions of this Agreement and all other incorporated exhibits.

Section 1.4. Exhibits. Exhibits to this Agreement are as follows:

Exhibit A	Legal Description of Subject Property
Exhibit B	Tentative Subdivision Map
Exhibit C	Conditions of Approval
Exhibit D	Assumption Agreement

Section 1.5. Incorporation of Recitals. Recitals 1 through 9 are incorporated herein, including all exhibits referred to in said Recitals. In the event of inconsistency between the Recitals and the provisions of Articles 1 through 6, the provisions of Articles 1 through 6 shall prevail.

Section 1.6. Parties to Agreement. The parties to this Agreement are:

(a) The County. The County of Madera is a municipality formed under the laws of the State of California exercising general governmental functions and power. The principal office of the County is located at 200 W. 4th Street, Madera, California 93637.

(b) Developer. Fagundes Dairy which has a legal interest in the Subject Property and whose principal office for the purpose of this Agreement is:

Fagundes Dairy
Attention: Fred Fagundes
PO Box 2717
Merced, CA 95344

(c) Landowner. From time to time, as provided in this Agreement, Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 1.7. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that County has no interest therein except as authorized in the exercise of its governmental functions. Nothing

in this Agreement shall preclude the Developer from forming any form of private investment entity for the purpose of completing any portion of the Project.

Section 1.8. Term of Agreement. This Agreement shall commence upon the Effective Date and shall continue in effect for ten (10) years from the Effective Date unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of Developer or Landowner. In the event of a legal challenge to the Planning Documents, the term shall be automatically extended by the period of time required to obtain final adjudication of the legal challenge.

Section 1.9. Priority of Enactment. In the event of conflict between the Agreement, the Planning Documents and the Existing Land Use Regulations, the parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (1) the Agreement; (2) the Planning Documents; and (3) the Existing Land Use Regulations.

Section 1.10. Assignment and Assumption. Developer shall have the right to sell, assign, or transfer this Agreement with all the rights, title, and interests therein to any person, firm, or corporation at any time during the term of this Agreement. The conditions and covenants set forth in this Agreement and incorporated herein by exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The right to sell, assign, or transfer is subject to approval by the Planning Director. Such approval shall not be unreasonably withheld and the decision to approve or disapprove shall be made in writing within fifteen (15) days from the date that Developer submits the Assumption Agreement (**Exhibit D**) to the Planning Director. Developer shall provide County with the Assumption Agreement (**Exhibit D**) as provided for in Section 6.1. If approved by the Planning Director such approval not to be unreasonably withheld, and if not granted, shall be based on written objective standards, express written assumption by such purchaser, assignee or transferee, to the satisfaction of the County Counsel, of the obligations and other terms and conditions of this Agreement with respect to the Subject Property or such portion thereof sold, assigned or transferred, shall relieve the Developer selling, assigning, or transferring such interest of such obligations so expressly assumed.

Section 1.11. Covenants Running With the Land. Each and every purchaser, assignee, or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned, or transferred to it. Provided however, notwithstanding

anything to the contrary above, if any such sale, assignment or transfer relates to a completed residential building, which has been approved by the County for occupancy, the automatic termination provisions of Section 5.1 herein shall apply thereto and the rights and obligations of Developer hereunder shall not run with respect to such portion of the Subject Property sold, assigned, or transferred and shall not be binding upon such purchaser, assignee or transferee.

Section 1.12. Amendment to Agreement (Developer and County).

This Agreement may be amended by mutual consent of the parties in writing, in accordance with the provisions of Government Code section 65868, provided that: any amendment which relates to the term, permitted uses, density, intensity of use, height and size of proposed buildings, or provisions for reservation and dedication of land shall require a noticed public hearing before the parties may execute an amendment. Unless otherwise provided by law, all other amendments may be approved without a noticed public hearing.

Section 1.13. Reserved Discretionary Approvals. Each discretionary approval by the County, including without limitation, preliminary and final development plans, preliminary and final improvements plans, building permits, variances, lot line adjustments, grading permits, encroachment permits, site plan approvals, and the accompanying Conditions of Approval (**Exhibit C**) that will accomplish the goals, objectives, policies, and plans referenced, described, implied, and shown in the Agreement and obtained by the Developer for the Project after the Effective Date, shall automatically become part of the Project Entitlements, which vest hereunder, as each such approval becomes effective following formal action by the County. In reviewing and approving such applications, the County reserves the right to exercise its discretion as set forth in applicable provisions of the Development Agreement Law, the General Plan and County Code in effect as of the date of said applications.

ARTICLE 2

PROJECT DEVELOPMENT

Section 2.1. Vested Rights of Developer. During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and County agrees, that the development rights, obligations, terms, and conditions specified in the Collective Standards are fully vested in the Developer and may not be changed or modified by the County except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, or as expressly consented thereto by the Developer to the extent such proposed change or modification is applicable thereto or as permitted or required by Government Code §65866, or other applicable state or federal law.

Section 2.2. Permitted Uses and Development Standards. The Project's permitted uses, the density and intensity of use, the maximum height and

size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, subdivision standards, development guidelines and standards, and other conditions of development for the Subject Property shall be those set forth in the Collective Standards. The parties hereto intend that the Collective Standards shall serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to the development, subdivision, and occupancy of the Project. All development shall be in substantive conformity with the Collective Standards to the approval of the Planning Director. Except as otherwise stated in this Agreement, subsequent approvals undertaken pursuant to and in conformity with the Project approved concurrently with the adoption of this Agreement, shall not be conditioned upon adherence to other ordinances, rules, regulations, or requirements except as permitted or required by Government Code §65866 or other applicable law.

Section 2.3. Life of Tentative Subdivision and Parcel Maps. The life of the Tentative Subdivision Map is extended for the term of this Agreement.

Section 2.4. Amendments. Any amendments to the Tentative Subdivision Map or Project Entitlements agreed to by the Developer and County do not require an amendment to this Agreement.

Section 2.5. No Conflicting Enactments. Except as permitted or required by state or federal law, neither the County nor any agency of the County shall enact and apply to the Subject Property any ordinance, resolution, or other measure that relates to the rate, timing, or sequencing of the development of the Subject Property on all or any part of the Subject Property that is in conflict with this Agreement, or any amendments thereto, or that reduces the development rights provided by this Agreement. Without limiting the foregoing general statement, and for all purposes pursuant to this Agreement generally, and this Section 2.5 specifically, and except as permitted or required by state or federal law, an ordinance, resolution, or other measure shall be deemed to conflict with this Agreement if the ordinance, resolution, or measure seeks to accomplish any one or more of the following results, either with specific reference to this Subject Property or as part of a general enactment that applies to this Subject Property would or could:

(a) Limit or reduce the density or intensity of the Project development granted by the Collective Standards or otherwise require any reduction in the height, number, size or square footage of lots, structures or buildings;

(b) Expand or increase Developer's obligations under the Collective Standards with respect to the provision of parking spaces, streets, roadways, and/or any other public or private improvements or structures;

(c) Directly limit public services or facilities otherwise available (e.g., water, drainage, sewer, or sewage treatment capacity) to, within or available for use by the Project;

(d) Limit or control in any manner the timing or phasing of the construction/development of the Project allowed by the Collective Standards;

(e) Limit the location of buildings, structures, grading, or other improvements relating to the development of the Project in a manner which is inconsistent with or more restrictive than the Collective Standards;

(f) Limit the processing of applications for or procurement of Subsequent Approvals;

Section 2.6. Changes to Existing Land Use Regulations. Only the following changes to the Existing Land Use Regulations shall apply to the development of the Subject Property:

(a) Land use regulations, ordinances, policies, programs, resolutions, adopted or undertaken by County in order to comply with regional, state, or federal laws, plans, or regulations, provided that in the event that such regional, state, or federal laws, plans or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provision or provisions shall be modified or suspended as may be necessary to comply with such regional, state or federal laws or regulations.

(b) County land use regulations, ordinances, policies, programs, resolutions, adopted after the Effective Date, that are not in conflict with the terms and conditions for development of the Subject Property established by this Agreement or otherwise applicable Existing Land Use Regulations and which do not impose additional burdens on such development.

(c) County land use regulations, ordinances, policies, programs, resolutions, or fees adopted after the Effective Date, which are in conflict with the Existing Land Use Regulations, but the application of which to the development of the Subject Property has been consented to in writing by the Developer and/or the applicable Landowner either through this Agreement or by later separate document.

Section 2.7. Application, Impact, Development, Processing, Permit, and Inspection Fees. Application fees, impact fees, development fees, processing fees, permit fees, and inspection fees that are revised during the term of this Agreement shall apply to the Project pursuant to this Agreement, provided that such revised fees apply generally to similar private projects or works within County.

Section 2.8. Timing of Development. The parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition, and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers to have the rate of development determined by Developer. Accordingly, the timing, sequencing, and phasing of the development is solely the responsibility of Developer, and the County Board of Supervisors shall not impose, by ordinance, resolution, or otherwise, any restrictions on such timing, sequencing, or phasing of development within the Subject Property. Furthermore, the timing of the construction of acquired facilities, also depends on numerous factors relating to the need of the County or the subject property for the acquired facilities and the timing and sequence of construction of such facilities shall be as provided for in the Acquisition Agreement. The parties shall attempt to reach mutual agreement relating to the timing and sequence of construction of the acquired facilities. Developer may seek to phase the final subdivision maps as the Developer determines in its sole discretion. The County may impose reasonable conditions on the phasing of final maps as permitted by the Subdivision Map Act (California Government Code Section 66410 et seq.) or other applicable law.

Section 2.9. Obligation and Rights of Mortgage Lenders. The holder of any mortgage, deed of trust, or other security arrangement with respect to the Subject Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Subject Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Subject Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Subject Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Subject Property, or such portion thereof, which accrue prior and subsequent to the time such holder comes into possession. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Subject Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

ARTICLE 3

ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

Section 3.1. County Approvals. Subject to Developer's compliance with applicable regulations, and except as otherwise required by applicable state or federal law, the County is bound to permit the uses on the Subject Property that are consistent with the Collective Standards. The County agrees to review and act upon, grant, and implement the land use and building approvals, including, but

not limited to, development plans, subdivision improvement plans and agreements, building plans and permits, specifications, landscape plans, grading plans and permits, final subdivision maps (including phased final subdivision maps), amendments to maps, lot line adjustments, re-subdivisions, and certificates of occupancy (collectively "**County Approvals**"), in the manner reasonably necessary or desirable to accomplish the goals, objectives, policies, standards, and plans described in the Collective Standards. County Approvals shall include any applications, permits, and approvals required to complete the infrastructure and improvements necessary to develop the Subject Property (collectively, the "**Improvements**"), in accordance with the Collective Standards, including, without limitation, those related to: (i) clearing the Subject Property; (ii) grading the Subject Property; (iii) construction of roads, storm drainage facilities, sewer facilities and other utility facilities and connections; (iv) construction of water treatment and delivery facilities and storage tanks; and (v) construction of all residential structures and all structures and facilities accessory thereto, subject to the limitations set forth in the Collective Standards.

Section 3.2. Duty to Grant and Implement. County's obligation to review and act upon grant and implement the County Approvals set forth above shall not infringe upon the County's right to withhold such County Approvals for failure to conform to the Collective Standards, or to applicable state or federal law.

Section 3.3. Timely Processing. The aforementioned County Approvals and any environmental review required thereon shall be reviewed and acted upon granted in an expeditious manner. In particular:

(a) Improvement plans shall be acted on within sixty (60) working days of acceptance as complete pursuant to Government Code section 66456.2, unless the time limits are extended by mutual consent of County and Developer.

(b) All other permits, including permits relating to improvement plans, building permits, PD, and encroachment permits, shall be acted on within (60) working days of submittal, unless the time limits are extended by mutual consent of County and Developer.

Section 3.4. Acquisition of Easements and Rights-of-Way for Public Improvements. With regard to property acquisitions and dedications for the purpose of constructing any public improvements, the County shall use its best efforts to include as a condition of approval of other development projects adjacent to the Project, that such adjacent projects shall dedicate easements and rights-of-way necessary for the Project's infrastructure improvements, as feasible, and Developer shall use and document its reasonable efforts to obtain easements and rights-of-way where the County is unable, due to lack of immediate jurisdiction, to require a dedication. If Developer is unable to acquire such easements or rights-of-way within a reasonable timeframe and after the exercise of reasonable diligence, then Developer shall request that County initiate and exercise its power

of eminent domain in accordance with Government Code Section 66462.5 to acquire such easements and/or rights-of-way. Developer shall advance all costs and expenses which may be incurred through a condemnation action to acquire the easements and rights-of-way, including but not limited to, payment of the fair market value or negotiated settlement of the subject property, the cost of removing any existing structures and/or relocation expenses if necessary to construct the requirement improvements, and all appraisal, expert, legal, staff and administrative costs, as well as condemnation proceedings, if any. Developer shall indemnify the County, its elected and appointed officers, officials, employees, agents, representatives, and volunteers against any adverse determination, adjudication or monetary award to a plaintiff in an eminent domain proceeding conducted pursuant to the provisions of this Agreement, by a court of competent jurisdiction.

Section 3.5. Dedications. Developer shall offer and the County shall accept such dedications for all required public lands upon completion of the improvements to be installed therein, or when otherwise provided herein, as follows:

(a) Rights-of Way. Developer shall dedicate its interest in any and all public road rights-of-way without expense to the County, at no cost to the County or any other public agency, and the County shall accept such dedication upon the recordation of the final map for the corresponding subdivision. Such rights-of-way or property to be conveyed to County pursuant to the Project Entitlements shall be delivered by Developer free of any liens, encumbrances, special taxes, or assessments, not approved by County, and shall be excluded from any covenants, conditions, and restrictions on the Subject Property.

(b) Public Utility Easements. Developer shall dedicate its interest in any and all improvements to water lines, water tanks, pump stations, sewer lines, storm drains, storm retention basins and other public utilities for public utility purposes, as required by the public utilities having jurisdiction and County's Engineer, in a form approved by County's Engineer, to the County, at no cost to the County or any other public agency, and the County shall accept such dedication. The easements shall be effective upon recordation of said form.

(c) All Dedications. Such rights-of-way or property to be dedicated to County pursuant to the Project Entitlements shall be delivered by Developer free of any liens, encumbrances, special taxes, or assessments, not approved by County, and shall be excluded from any covenants, conditions and restrictions on the Property.

Section 3.6. Reimbursements for Oversizing. Whenever new development, not including the Project, uses water, wastewater, storm drain lines or any other utilities, public improvements or public services, the County shall include as a condition of approval, that such other new development will be subject to the provisions of the Madera County Code related to infrastructure

reimbursement agreements.

ARTICLE 4

DEFAULT

Section 4.1. General Provisions.

(a) Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement to perform any term or provision of this Agreement, shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be cured. During any such thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

(b) After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at his option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to California Government Code section 65868 and any regulations of the County implementing said Government Code section. Following notice of intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review in the manner set forth in Government Code sections 65865, 65867, and 65868 and County regulations implementing said sections by the County within thirty (30) calendar days.

(c) Following consideration of the evidence presented in said review before the County, either party alleging the default by the other party or Landowner may institute legal proceedings or may give written notice of termination of this Agreement to the other party; provided, however, a Landowner may only give such notice with respect to such portion of the Subject Property in which Landowner owns an interest.

(d) Evidence of default may also arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1. If either party or Landowner determines that a party or Landowner is in default following the completion of the normally scheduled periodic review, said party or Landowner may give written notice of termination of this Agreement specifying in said notice the alleged nature of the default, and potential actions to cure said default where appropriate. If the alleged default is not cured in thirty (30) days or within such longer period specified in the notice, or the defaulting party or Landowner waives its right to cure such alleged default, this Agreement may be terminated by County as to the Developer or Landowner and the property in which the Developer or Landowner owns an interest.

Section 4.2. Annual Review. County shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with the terms of this Agreement. Such periodic review by the Planning Director shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. Failure to complete said review within the prescribed period shall be deemed a finding of good faith substantial compliance for that period. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. A finding by County of good faith compliance by Developer and Landowner with the terms of the Agreement shall conclusively determine said issue up to and including the date of said review. Any party may appeal a determination by the Planning Director to the County Board of Supervisors by filing a written appeal with the Clerk of the County Board of Supervisors within ten (10) days of the determination. The County shall deposit in the mail or fax to Developer and/or Landowner a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least seven (7) days prior to such periodic review.

Section 4.3. Estoppel Certificates. County shall at any time upon not less than thirty (30) days prior written notice from Developer, execute, acknowledge and deliver to Developer, lender or investor, an Estoppel Certificate in writing which certifies that this Agreement is in full force, has not been terminated and is enforceable in accordance with its terms.

Section 4.4. Developer Default Limited to Property/Entity; Separate Obligations of Owners. Except as may be specified in Section 4.1, no default hereunder in performance of a covenant or obligation with respect to a particular portion of the Subject Property shall constitute a default applicable to any other portion of the Subject Property, and any remedy arising by reason of such default shall be applicable solely to the portion of property where the default has occurred. Similarly, the obligations of the Developer and Landowners shall be severable and no default hereunder in performance of a covenant or obligation by any one of them shall constitute a default applicable to any other owner who is not affiliated with such defaulting owner, and any remedy arising by reason of such default shall be solely applicable to the defaulting owner and the portion of the Subject Property owned thereby.

Section 4.5. Default by County. In the event County does not accept, review, approve, or issue necessary development permits or entitlements for use in a timely fashion as defined by Section 3.3 of this Agreement, or as otherwise agreed to by the parties, or the County otherwise defaults under the terms of this Agreement, nor shall resulting delays in Developer performance constitute grounds for termination or cancellation of this Agreement.

Section 4.6. Cumulative Remedies of Parties. In addition to any other rights or remedies, County, Developer, and any Landowner may institute

legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, to enjoin any threatened or attempted violation of the provisions of this Agreement.

Section 4.7. Forced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party or Landowner hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the County, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation enacted by the state or federal government or litigation. Notwithstanding the foregoing sentence, delays incurred in conjunction with the delivery of water or sewer service shall not result in any extensions. An extension of time for such cause shall be granted in writing by County for the period of the forced delay or longer, as may be mutually agreed upon, but in no case shall the cumulative extensions add more than five (5) years to the effective period of this Agreement.

ARTICLE 5

TERMINATION

Section 5.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the term or when the Subject Property has been fully developed and all of the Developer's obligations in connection therewith are satisfied as determined by the County. Upon termination of this Agreement, the County shall record a notice of such termination in a form satisfactory to the County Counsel that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force or effect as to any single-family residence, any other residential dwelling unit(s) or parcel upon which such residence is located, when it has been approved by the County for occupancy.

Section 5.2. Effect Upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the County General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlements approved with respect to the Subject Property, any other covenants or any other development requirements specified in this Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees, or taxes.

Section 5.3. Effect Upon Termination on County. Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees, and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided vesting

of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning law) and the County shall no longer be limited, by this Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to such property.

ARTICLE 6

STANDARD PROVISIONS

Section 6.1. Notices. Notices, demands, correspondence, and other communication to County and Developer shall be deemed given if dispatched by prepaid first-class mail to the principal offices of the parties as designated in Section 1.6. Notice to the County shall be to the attention of both the County Counsel and the Planning Director. Notices to subsequent Landowners shall be required to be given by the County only for those Landowners who have given the County written notice of their address for such notices. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands, or correspondence.

Section 6.2. Recordation of Agreement. Within ten (10) days of the County Board of Supervisors entering into this Agreement, the Clerk of the County Board of Supervisors shall record this document.

Section 6.3. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 6.4. Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date, the remaining provisions shall continue in full force and effect.

Section 6.5. Third Party Legal Challenge.

(a) In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner, challenging this Agreement or any provision herein, Developer agrees to defend, indemnify, and hold harmless the County and its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, and employees arising from such approval. The obligation of Developer to defend, indemnify, and hold harmless arises only if the County notifies Developer of any claim, action, or proceeding within a reasonable time after the County knows of the claim, action, or proceeding.

(b) Developer shall, upon written request of the County, prepare a defense for the County at Developer's sole expense. Alternatively, the County, at the County's sole discretion, may prepare its own defense, with Developer paying the reasonable costs of the County's defense. Such costs shall include attorney fees and other related costs of defense, including without limitation, travel, postage, photocopies, and County staff costs.

(c) Developer shall not be required to pay or perform any settlement unless the settlement is approved in advance by the Developer. The County must approve any settlement affecting the rights and obligations of the County.

(d) In all cases, regardless of whether the County or the Developer defends the County, the Developer shall indemnify the County for any judgment, order, or settlement rendered as a result of any claim, action, or proceeding arising from the approval.

(e) At no time shall Developer file any complaint, cross-complaint, or any offensive pleadings in an action arising out of the County's approval without first obtaining the County's written approval.

(f) Developer shall pay to the County, within thirty (30) calendar days upon written demand, any amount owed to the County as a result of the County incurring costs or expenses due to its defense under the terms of this subsection.

Section 6.6. Covenant of Good Faith and Fair Dealing. Time is of the essence in achieving agreement on the form and substance of all documents, their execution, implementation actions including the grant of approvals and permits, formation of special districts, design, construction and operation of infrastructure, provision of services, and accomplishment of all further undertakings by all parties as contemplated by this Agreement. Implicit in this Agreement are all the covenants of good faith and fair dealing recognized under California law. All parties pledge and agree to use their best efforts to reach accord with respect to all details required to effect the intentions evidenced by this Agreement.

Section 6.7. Cooperation in Project Implementation. The County further agrees to cooperate in the implementation of the Project. Cooperation is defined as the timely review, permitting, and inspection of all on-site and off-site buildings, improvements, and finalized construction and maintenance of public facilities as provided in Section 3.3 of this Agreement.

Section 6.8. Standard Terms and Conditions.

(a) **Venue.** Venue for all legal proceedings shall be in the Superior Court for the County of Madera.

(b) Waiver. A waiver by any party of any breach of any term, covenant, or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

(c) Completeness of Instrument. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

(d) Supersedes Prior Agreements. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

(e) Captions. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

(f) Number and Gender. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms, or associations, wherever the context so requires.

(g) Mandatory and Permissive. "Shall" and "will" and "agrees" are mandatory as used in this Agreement. "May" is permissive as used in this Agreement.

(h) Term Includes Extensions. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

(i) Successors and Assigns. All representations, covenants, and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors, and assigns.

(j) Modifications. No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification is in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

(k) Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(l) Other Documents. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

(m) Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

(n) Controlling Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

(o) Time is of the Essence. Time is of the essence of this Agreement and each covenant and term a condition herein.

(p) Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, estates, or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

(q) Document Preparation. This Agreement will not be construed against the party preparing it, but will be construed as if prepared by all parties.

(r) Advice of Legal Counsel. Each party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement.

(s) Attorneys Fees and Costs. If any action at law or in equity, including an action for declaratory relief or any arbitration, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

(t) **Time Periods.** All time periods are measured as calendar days, unless a different intent is clearly stated.

[SIGNATURES FOLLOW ON THE NEXT PAGES.]

IN WITNESS WHEREOF, this Agreement was executed by the parties thereto on the dates set forth below.

“COUNTY”

County of Madera

By: _____

Name: _____

Title: _____

ATTEST:

MADERA BOARD OF SUPERVISORS CLERK

By: _____

Name: _____

Title: Board of Supervisors Clerk

APPROVED AS TO FORM:

COUNTY COUNSEL

Dale E.

By: Bacigalupi

Digitally signed by: Dale E. Bacigalupi
DN: CN = Dale E. Bacigalupi email =
dbacigalupi@lozanosmith.com C =
US O = Lozano Smith
Date: 2022.10.25 17:33:07 -07'00'

Name: Dale E. Bacigalupi

Title: County Counsel

**NOTARY ACKNOWLEDGEMENTS TO
DEVELOPMENT AGREEMENT**

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 Madera)

On _____, 2022, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary Public

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 Madera)

On _____, 2022, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary Public

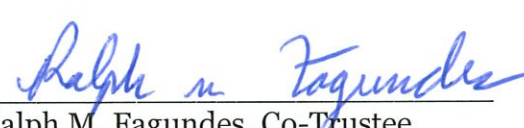
DEVELOPER:


Fagundes Dairy,
a California general partnership

By: 
Fred Fagundes
Its: General Partner

By: 
Lloyd Fagundes
Its: General Partner

By: Fagundes Family Trust dated May 9, 2000
Its: General Partner

By: 
Ralph M. Fagundes, Co-Trustee

By: 
Vicki L. Fagundes, Co-Trustee

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 Madera)

On _____, 2022, before me, _____, Notary Public, personally appeared **Fred Fagundes**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

see Attached

WITNESS my hand and official seal.

Signature of Notary Public

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 Madera)

On _____, 2022, before me, _____, Notary Public, personally appeared **Lloyd Fagundes**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

see Attached

WITNESS my hand and official seal.

Signature of Notary Public

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 Madera)

On _____, 2022, before me, _____, Notary Public, personally appeared **Ralph M. Fagundes**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

see Attached

Signature of Notary Public

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 Madera)

On _____, 2022, before me, _____, Notary Public, personally appeared **Vicki L. Fagundes**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person 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.

see Attached

Signature of Notary Public

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California }
County of Merced }

On November 7, 2022 before me, Tatum Heffner, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Lloyd Fagundes
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature Tatum Heffner
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Development Agreement

Document Date: 10/2022 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Lloyd Fagundes

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California }
County of Merced }
On November 9, 2022 before me, Tatum Heffner, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Fred Fagundes
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature Tatum Heffner
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Development Agreement

Document Date: 10/2022 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Fred Fagundes

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California }
County of Merced }

On November 9, 2022 before me, Tatum Heffner, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Ralph M. Fagundes and
Name(s) of Signer(s)

Nicki L. Fagundes

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 Tatum Heffner
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Development Agreement

Document Date: 10/2022 Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Ralph M. Fagundes Signer's Name: Nicki L. Fagundes

Corporate Officer - Title(s): Partner - Limited General

Individual Attorney in Fact Partner - Limited General

Trustee Guardian or Conservator Individual Attorney in Fact

Other: Signer is Representing:

LIST OF EXHIBITS

Exhibit A	Legal Description of Subject Property
Exhibit B	Tentative Subdivision Map
Exhibit C	Conditions of Approval
Exhibit D	Assumption Agreement

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

For APN/Parcel ID(s): 059-200-020

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA OF THE COUNTY OF MADERA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

The Southwest quarter of the Northeast quarter of the Southwest quarter of Section 9, Township 7 South, Range 22 East, Mount Diablo Base and Meridian, in the unincorporated area, County of Madera, State of California, according to the official plat thereof.

EXCEPTING THEREFROM THE FOLLOWING:

Area A

Commencing at the Southwest corner of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 9; thence along the South line thereof N.89°37' So"E. 84.67 feet to the most Westerly comer of said Lot 58 of "The Falls Tract", Bass Lake as shown on Record of survey recorded in Book 14 of Maps at Pages 29-32, Madera County Records; thence leaving said line N.38°23'34"W, 10.04 feet; thence N.52°51'46"E. 45.86 feet; thence N.86°53'26"E. 94.89 feet; thence S.37°50'34"E. 50.27 feet to the most Easterly comer of said Lot 58; thence S.89°37'50"W. 155.92 feet to the POINT OF Beginning.

Containing 0.114 ±
acres 4,947 square
feet

Area B

Commencing at the Southwest corner of said Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 9; thence along the West line of said Southwest $\frac{1}{4}$, N.00°29'33"E. 106.24 feet to the Southeast corner of Lot 57 of "The Falls Tract" as shown on Record of Survey recorded in Book 14 of Maps, at Pages 29-32, Madera County Records; thence continuing N.00°29'33"E. 57.52 feet to the POINT OF BEGINNING; thence continuing N.00°29'33"E. 125.00 feet to the Northeast corner of said Lot 57; thence leaving said West line N.78°28'54"E. 20.41 feet; thence S.41°15'28"E. 53.42 feet to a point on the westerly edge of an existing 30.00 foot wide easement as described in easement deed recorded as document No. 2012028246, Madera County Official Records,

said point being on an 83.00 foot radius curve concave to the southeast, a radial line to said point bears N.41 °15'28"W.; thence along said 83.00 foot radius curve in a southwesterly direction through a central angle of 39°27'39" an arc

distance of 57.16 feet; thence along a 165.00 foot radius compound curve through a central angle of $20^{\circ}21'17''$ an arc distance of 58.62 feet; thence $N,58^{\circ}30'14''W$. 35.22 feet to the POINT OF BEGINNING.

Containing 4,698 Sq. Ft.

Area C

Commencing at the Southwest corner of said Southwest $1/4$ of the Northeast $1/4$ of the Southwest $1/4$ of Section 9; thence along the West line of said Southwest $1/4$, $N.00^{\circ}29'33.11'' E$. 375.49 feet to the Southeast corner of Lot 52 of "The Falls Tract" as shown on Record of Survey recorded in Book 14 of Maps, at Pages 29-32, Madera County Records; thence continuing $N.00^{\circ}29'33'' E$. 67.38 feet to the POINT OF BEGINNING; thence continuing $N.00^{\circ}29'33.11'' E$. 102.20 feet to the Northeast corner of said Lot 52; thence leaving said West line $S.57^{\circ}44'13'' E$. 31.08 feet; thence $S.11^{\circ}36'48'' E$. 63.43 feet; thence $S.59^{\circ}32'42'' W$. 46.32 feet to the POINT OF BEGINNING.

Containing 2,741 Sq. Ft

END OF LEGAL DESCRIPTION

EXHIBIT B

TENTATIVE SUBDIVISION MAP

EXHIBIT C
CONDITIONS OF APPROVAL

EXHIBIT D

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT
(hereinafter "this Agreement") is entered into this _____ day of _____, 200____,
by _____ and _____ between

(hereinafter called "Owner") and _____,
(hereinafter "Assignee").

RECITALS

A. On _____, 200____, the _____ and Owner entered into that certain agreement entitled "Pre-Annexation Development Agreement," approved by Ordinance _____ (hereinafter "Agreement"), relative to the development known as the _____ (hereinafter "Subject Property").

B. Owner entered into a purchase and sale agreement whereby a portion of the Subject Property will be sold to Assignee, which portion of the Subject Property is identified and described in **Exhibit A** attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel(s)").

C. Owner desires to assign all of its interests, rights and obligations under the Agreement with respect to the Assigned Parcel(s).

D. Assignee desires to assume all Owner's rights and obligations under the Agreement with respect to the Assigned Parcel(s).

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

1. Owner hereby assigns effective as of Owner's conveyance of the Assigned Parcel(s) to Assignee, all of the rights, interest, burdens and obligations of Owner under the Agreement with respect to the Assigned Parcel(s). Owner retains all the rights, interest, burdens and obligations under the Agreement with respect to all other property within the Subject Property owned thereby.

2. Assignee hereby assumes all of the burdens and obligations of Owner under the Agreement, and agrees to observe and fully perform all of the duties and obligations of Owner under the Agreement, and to be subject to all the terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both Owner and Assignee that, upon the execution of this Agreement and conveyance of the Assigned Parcel(s) to Assignee, Assignee shall be come substituted for Owner as the "Developer" under the Agreement with respect to the Assigned Parcel(s).

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

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ASSIGNOR / OWNER

By: _____

By: _____

ASSIGNEE

By: _____

By: _____