

**DEVELOPMENT AGREEMENT  
 BY AND BETWEEN THE CITY OF COLUSA  
 AND BLUE HERON RIDGE, INC. AND  
 WESCOTT RANCH LLC/BRENAN & SONS RELATIVE TO THE  
 WESCOTT TENTATIVE SUBDIVISION PROJECT  
 (APN 017-130-170 AND 017-030-050 - Portion of)**

This Development Agreement is entered into this \_\_\_\_\_ day of May 2024, by and between the CITY OF COLUSA, a municipal corporation (“City”), and BLUE HERON RIDGE INC, and WESCOTT RANCH LLC/BRENNAN & SONS (“Developer”), pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of California.

**RECITALS**

A. Authorization. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, et seq., of the Government Code (the "Development Agreement Statute"), which authorizes the City of Colusa and an applicant for a development project to enter into a development agreement, establishing certain development rights in the Property which is the subject of the development project application.

B. Property. The subject of this Agreement is the development of those certain parcels of land, consisting of approximately 90.95± acres as described in Exhibit “A” and shown on Exhibit “B” (hereinafter the “Property”). and Landowner agrees to be bound by this Agreement.

C. The Property is currently undeveloped and is located within the City Limits.

D. The Modified Mitigated Negative Declaration adopted \_\_\_\_\_, 2024 reviewed the following land uses within the Property, to be incorporated into subsequent land use entitlements, as set forth below, for the following gross acres:

R-1/PD Low Density Residential- Planned Development	46.54 acres±
R-2/PD Medium Density Residential - Planned Development	16.27 acres ±
R-3/PD High Density Residential - Planned Development	7.45 acres ±

CM/PD Commercial - Planned Development	1.17 acres ±
P- Parks	3.51 acres ±
OS Open Space	14.03 acres ±

E. Current Project: The current project subject to this Agreement modifies the land uses within the boundaries of the Property to introduce a variety of land uses to be divided into the following:

R-1/PD Low Density Residential- Planned Development	170 lots
R-2/PD Medium Density Residential - Planned Development	53 lots
R-3/PD High Density Residential - Planned Development	1 lot
CM/PD Commercial - Planned Development	1 lot
P- Parks	1 lot
OS Open Space	2 lots

## AGREEMENT

### ARTICLE 1. GENERAL PROVISIONS

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

1.2 Property Description and Binding Covenants. The Property is that property described in Exhibits "A" and "B." Upon satisfaction of the conditions to recordation of the Agreement set forth in Section 1.5 below, the provisions of this Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors in interest to and assigns of the parties hereto. Accordingly, all references herein to "Landowner" shall mean and refer to BLUE HERON RIDGE INC and WESCOTT RANCH LLC/BRENNAN & SONS each and every subsequent purchaser or transferee of the Property or any portion thereof from BLUE HERON RIDGE INC and WESCOTT RANCH LLC/BRENNAN & SONS

1.3 Effective Date and Term.

1.3.1 Effective Date. The term of this Agreement shall commence upon the approval of the tentative map by the City Council. The Agreement shall be recorded against the Property within ten (10) days after City enters into the Agreement, as required by California Government Code Section 65868.5, provided, however, the terms and conditions of this Agreement shall not be binding upon the Property, nor shall Landowner have any development rights or improvement or payment obligations, with the exception of costs incurred by City in the processing of the Initial Entitlements, until tentative map approval.

1.3.2 Term. Upon approval by the City Council, the term of this agreement shall run concurrently with the tentative map and expire ten (10) years after approval of the Initial Entitlements and shall also be extended with the extension of any tentative maps.

1.3.3 Tolling and Extension During Legal Challenge or Moratoria. In the event that this Agreement or any of the Initial Entitlements (i.e. Annexation, LAFCO approval, General Plan Amendment, Tentative Parcel Map) or the environmental document or any subsequent approvals or permits required to implement the Initial Entitlements (such as any required wetlands fill permit or environmental document required under the National Environmental Protection Act ("NEPA") related thereto) are subjected to legal challenge by a third party, and Landowner is unable to proceed with the Project due to such litigation (or Landowner gives written notice to City that it is electing not to proceed with the Project until such litigation is resolved to Landowner's satisfaction), the term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of Landowner, be extended and tolled during such litigation until - the entry of final order of judgment upholding this Agreement and/or Initial Entitlements, or the litigation is dismissed by stipulation of the parties; provided, however, that, notwithstanding the foregoing, Landowner shall have the right to elect, in Landowner's sole discretion, to proceed with the Project at any point by providing the City with written notice that it is electing to proceed with Project, in which event the tolling of the term of this Agreement shall cease as of the date of such notice.

Similarly, if Landowner is unable to develop the Property due to the imposition by the City or other public agency of a development moratoria for a health or safety reason unrelated to the performance of Landowner's obligations hereunder (including without limitation, moratoria imposed due to the unavailability of water or sewer to serve the Property), then the term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of Landowner, be extended and tolled for the period of time that such moratoria prevents such development of the Property. Notwithstanding any extension or tolling of the term of this Agreement as provided above in this Section 1.3.5, the City shall at Landowner's cost, process any preliminary plans submitted by Landowner, including, without limitation, any applications for tentative parcel map or tentative subdivision approval,

during such tolling period, provided, however, that Landowner waives the time limits set forth in the Subdivision Map Act or Permit Streamlining Act for any action by City during the tolling period to approve such tentative parcel map or tentative subdivision map or other development permit approval. In the event of a moratorium affecting tentative map or development permit approval, City shall not be obligated to approve such tentative map or development permit during the moratorium. In the event of a moratorium affecting the issuance of building permits, City shall process, but shall not be obligated to approve, any building permits during such moratorium.

1.4 Amendment of Agreement. This Agreement may be amended from time to time by mutual written consent of City and Landowner (and/or any successor owner of any portion of the physical area to which the benefit or burden of the amendment would apply), in accordance with the provisions of the Development Agreement Statute. If the proposed amendment affects less than the entirety of the Property, then such amendment need only be approved by the City and the owner(s) in fee of the portion(s) of the Property that is subject to or affected by such amendment.

1.4.1 Insubstantial Amendments. Notwithstanding the provisions of Section 1.4, for any amendments to this Agreement which do not relate to (a) the term of the agreement as provided in Section 1.3.2; (b) the permitted uses of the Property as provided in Section 2.1; (c) provisions for “significant” reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Property; or (f) monetary contributions by Landowner as provided in this Agreement; the Project shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Commission or the City Council before the parties may execute an amendment hereto.

1.4.2 Minor Modifications of Initial Entitlements. For purposes of this Section, minor modifications of Initial Entitlements shall mean any modification to the Project that does not relate to (i) the permitted uses of the Project, (ii) density or intensity of use, except as allowed pursuant to Section 2.3 of this Agreement, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for Subsequent Entitlements, (v) the maximum height or size of proposed buildings; (vi) monetary contributions by Landowner; or (vii) public improvements to be constructed by Landowner (“Minor Modifications”). Minor Modifications of Initial Entitlements shall not require amendment of this Agreement, unless the Minor Modifications of the Initial Entitlements relates specifically to some provision of this Agreement. Further, Minor Modifications of Initial Entitlements may be processed under CEQA as exempt from CEQA, or with the preparation of a Negative Declaration or Mitigated Negative Declaration.

1.5 Recordation Upon Amendment or Termination. Except when this Agreement is automatically terminated due to the expiration of the Term or the

provisions of Section 1.3.2 above, the City shall cause any amendment hereto and any other termination hereof to be recorded, at Landowner's expense, with the County Recorder within ten (10) days after City executes such amendment or termination. Any amendment or termination of the Agreement to be recorded that affects less than all the Property shall describe the portion thereof that is the subject of such amendment or termination.

## ARTICLE 2. DEVELOPMENT OF THE PROPERTY

2.1 Permitted Uses. The permitted uses of the Property, shall be those set forth in the General Plan, as may be further refined in the Subsequent Entitlements. (i.e. Subdivision Map, General Development Plans, Conditional Major Use Permit). The density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes or payment of fees in lieu thereof, location of public utilities and improvements, the development standards and design guidelines, and other terms and conditions of development applicable to the Property shall be those set forth in the Subsequent Entitlements.

2.2 Vested Rights. Subject to the prohibition on physical development until Subsequent Entitlements are obtained with an approved tentative map, above, and the requirements of Section 2.4 below, Landowner shall have the fully vested right ("Vested Rights") to develop the Property in accordance with the Initial Entitlements, including in particular the provision of this Development Agreement and the other Initial Entitlements, pursuant to the rules, regulations and official policies as set forth below. In the event of any conflict or inconsistency between this Development Agreement and the Existing Rules or between this Development Agreement and the other Initial Entitlements, this Development Agreement shall prevail and control.

2.3 Existing Rules. Unless otherwise expressly provided in Section 2.1 and Section 2.2, for the term of this Agreement, the City's ordinances, rules, regulations and official policies governing the permitted and conditionally permitted uses of the Property, shall be those in force and effect on the Effective Date of this Agreement (the "Existing Rules"). The Existing Rules include the General Plan as adopted on \_\_\_\_\_, the Initial Study/Mitigated Negative Declaration with their mitigation measures which are subject to review monitoring by the City of Colusa, this Development Agreement, and the provisions of the City Zoning Ordinance applicable to the Property which governing documents are intended to be consistent with one another and interpreted together to form a unified whole. The Initial Entitlements as initially adopted shall be construed so as to be consistent with one another to the extent that the reconciliation of provisions is reasonably possible. In the event of any inconsistency between the foregoing, one shall govern over the other in descending order of priority such that the General Plan shall be given the greatest precedence and the applicable provisions of the Zoning Ordinance shall have the least precedence.

2.4 General Development Plan. Notwithstanding any other provision of this Agreement to the contrary, Landowner shall be required to enter into a General Development Plan(s) in conjunction with Subsequent Entitlements and shall not be able to develop the Property, or any portions thereof, until Landowner has entered into a General Development Plan(s).

2.5 Application of Subsequently Enacted Rules, Regulations and Official Policies. While City may enact new or modified tentative map conditions of approval, rules, regulations and official policies after the Effective Date ("New Rules"), such New Rules shall be applicable to the Property only to the extent that they do not conflict with the Existing Rules. Furthermore, City shall not be prevented from denying or conditionally approving any Subsequent Entitlements on the basis of such Existing Rules or New Rules that do not conflict with the Existing Rules.

2.6 Obligation to Meet and Confer. If City attempts to apply to the Project a Subsequent Entitlement or New Rule which Landowner believes to conflict with this Agreement or the other Initial Entitlement, Landowner shall provide to City in writing a notice describing the legal and factual basis for Landowner's position. The parties shall meet and confer within thirty (30) days after the date of such written notice with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution can be reached, either party may take such action as may be permitted under Article 5 below.

2.7 Uniform Codes and Standard Specifications. Nothing herein shall preclude City from applying to the Property standards contained in uniform building, construction, plumbing, fire or other uniform codes and Title 24 of the California Code of Regulations, relating to Building Standards in effect at the time of approval of the appropriate permits which may include building, grading or other construction permits for the Property, as the same may be adopted or amended from time to time by City, provided that the provisions of any such uniform code shall:

- (1) Apply to the Property only to the extent that such code is in effect on a City-wide basis; and
- (2) With respect to those portions of any such uniform code that have been adopted by City without amendment, be interpreted and applied in a manner consistent with the generally prevailing interpretation and application of such code in California.

2.8 Changes in State or Federal Laws or Regulations. Nothing herein shall preclude City from applying to the Property changes in the Existing Rules, the terms of which are specifically mandated and required by changes in state or federal laws or regulations. To the extent that such changes in the Existing Rules, prevent, delay or preclude compliance with one or more provisions of this Agreement or the other Initial

Entitlements, City may modify or suspend such provisions of the Agreement as may be necessary to comply with such state or federal laws or regulations and City and Landowner shall take such action as may be required pursuant to this Agreement to comply therewith.

2.9 Authority of City. This Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit discretion of City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by City or any of its officers or officials, provided that subsequent discretionary actions shall not prevent or delay development of the Property for the uses and to the density and intensity of development as provided by the Initial Entitlements and this Agreement, in effect as of the Effective Date of this Agreement.

## ARTICLE 3. LANDOWNER OBLIGATIONS

3.1 City Fees and Charges. Landowner shall pay those processing, inspection and plan check fees and charges required by City under the current regulations then in effect for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Landowner hereunder, including paying costs incurred by City to conduct environmental review of the Initial Entitlements.

3.2 Applicable Fees; Time of Payment. The Property shall be subject to those development impact fees required by City's adopted Resolution No. 15-16, adopted April 21, 2015, and policies which are in effect at the time of individual building permit application. Further, the Property shall be subject to those dedications required by City's adopted ordinances, resolutions and policies which are in effect at the time of tentative map approval. Except as otherwise provided in Section 2.6 of this Agreement, any and all required payments of development, connection or mitigation fees by Landowner shall be made at the time and in the amount specified by then applicable City ordinances.

3.3.1 Formation, Consent, Waiver and Special Benefit. Landowner agrees to cooperate in the formation or annexation to, and agrees to take all acts necessary to the formation or annexation to one or more financing mechanism or assessment district for maintenance purposes, as chosen by the City (herein the "Services District"), and consents herewith to the levy of such special taxes as are necessary to fund the maintenance obligations described below. No residential building permit, excluding permits for model homes, shall be issued until the formation of, and inclusion of the Property in, the Services District. For purposes of Article XIIIID of the California Constitution, Landowner acknowledges hereby that all the services described herein to be provided by the Services District will provide a "special benefit" to the Property, as defined by said Article, and that the foregoing support and consent shall apply as to any claim that any portion of the services supported by the special tax does not provide special benefit to the property. The Services District shall:

a. Provide the City assured funding for the ongoing maintenance and operation of public facilities and all Improvements required herein or in the Project Approvals, whether such facilities and Improvements are located within or outside of the boundaries of the Project, including: public roads, public alleys and associated frontage improvements such as curb, gutter and sidewalks, intersection signals, and street signs; road special features (e.g. speed bumps, textured or painted surfaces, modified crosswalks, etc.); project monument signs; all public landscaping, including street frontage landscaping and road medians; streetlights within the property and upon the Property frontages and statuary, fountains or ornamental structures.



b. Cause to be established appropriate funding mechanisms, to the satisfaction of the City, to fund the ongoing maintenance of park facilities and improvements with the Project, and any other park improvements pursuant to the Project Approvals.

c. Cause to be established appropriate mechanisms, as determined appropriate by the City to fund the ongoing maintenance of drainage facilities within the project consistent with the Project Approvals.

d. Cause to be established appropriate funding mechanisms, as determined appropriate by the City, to maintain all public open space areas within the Property, other than improved park sites, including without limitation, maintaining bike trails and conducting weed abatement and providing fire prevention to the satisfaction of the City within such open space areas. Such fire prevention efforts may include flail mowing from adjacent private property lines into such open space areas and other such vegetation management efforts as deemed necessary by the City.

e. Conduct, manage and finance any environmental litigation monitoring as required by the Project Approvals.

Landowner acknowledges that the total annual cost of the maintenance obligations in this Article 3.3.1 is not known as of the Effective Date and will be determined in the future. The assessments listed herein shall be adjusted annually on each January 1, beginning one year after the recordation of a map, based on the Consumer Price Index. As used herein, the term, "Consumer Price Index" shall mean the United States Department of Labor Bureau of Labor Statistics Consumer Price Index, All Urban Consumer, All Items, San Francisco-Oakland-San Jose, California, or the successor of such index.

3.3.2 Public Parcel Exclusion. Landowner expressly agrees that parcels conveyed or to be conveyed to the City shall be excluded from any assessment to be imposed by the Services District.

3.3.3 Provisions Survive Termination. The provisions of this Article 3.3 shall survive the termination of the Agreement.

#### ARTICLE 4. CITY OBLIGATIONS

4.2.1 Subdivision Maps. City acknowledges that under Government Code Section 66452.6, the term of a tentative subdivision map will be automatically extended for a period of time where a subdivision is obligated to install certain improvements located outside the boundaries of the subdivision. In determining the term of any tentative

subdivision map that may be approved in the future by the City for the Property, or any portion thereof, and without limiting the effect of any other provisions of the Government Code dealing with map extensions, the City agrees that any public improvements, exceeding the value set forth in Section 66452.6 at the time of tentative map approval, shall be treated as such off-site improvements for purposes of applying Section 66452.6 of the Government Code.

A subdivision, as defined in Government Code Section 66473.7, shall not be approved unless any tentative map prepared for the subdivision complies with the provisions of said Section 66473.7. This provision is included in this Agreement to comply with Government Code Section 65867.5.

4.3 Moratorium, Quotas, Restrictions or Other Growth Limitations. Subject to applicable law relating to the vesting provisions of development agreements, Landowner and City intend that except as otherwise provided herein, this Agreement shall vest the Initial Entitlements against subsequent City resolutions, ordinances, growth control measures and initiatives or referenda, other than a referendum that specifically overturns City's approval of the Initial Entitlements, that would directly or indirectly limit the rate, timing or sequencing of development, or would prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Initial Entitlements and that any such resolution, ordinance, initiative or referendum shall not apply to the Initial Entitlements and the Project. Landowner shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted and applied on a uniform, City-wide basis and directly concerns an imminent public health or safety issue. In such case, City shall apply such ordinance, resolution, rule, regulation or policy uniformly, equitably and proportionately to Landowner and the Property and to all other public or private owners and properties directly affected thereby. By way of example only, an ordinance which would preclude the issuance of a building permit due to a City-wide lack of adequate sewage treatment capacity to meet additional demand would directly concern an imminent public health issue under the terms of this paragraph and would support a denial of a building permit within the Property if approval would require additional sewage treatment capacity. However, an effort to limit the issuance of building permits because of a general increase in traffic congestion levels on City roads would not be deemed to directly concern a public health or safety issue under the terms of this paragraph.

4.4 Essence of Agreement. Articles 1, 2, 3 and 4 are the essence of this Agreement.

## **ARTICLE 5. DEFAULT, REMEDIES, TERMINATION**

5.1 General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provisions of this Agreement shall constitute a default. In the event of alleged default or breach of any

term or condition of this Agreement, the party alleging such default or breach shall give the other party 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 satisfactorily cured. During any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

If the default is not cured by the defaulting party after notice and expiration of the thirty (30) day period, the other party to this Agreement at its option may institute any legal or equitable action to enforce its rights under this Agreement; provided, however, that if the default cannot be cured within such thirty (30) day period, the non-defaulting party shall refrain from any legal or equitable action so long as the defaulting party begins to cure such default within such thirty (30) day period and diligently pursues such cure to completion. Failure to give notice shall not constitute any waiver of any default. Notwithstanding the foregoing and in the event that the parties are unable to resolve this matter, the non-defaulting party may give notice of intent to terminate the Agreement pursuant to California Government Code Section 65868. Following notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code Sections 65865, 65867 and 65868 and City regulations implementing such Sections.

Following consideration of the evidence presented in said review before the City Council, either party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

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 determines that the other party is in default following the completion of the normally scheduled periodic review, said party may give written notice of default of this Agreement as set forth in this section, specifying in said notice the alleged nature of the default, and potential actions to cure said default and shall specify a reasonable period of time in which such default is to be cured. If the alleged default is not cured within thirty (30) days or within such longer period specified in the notice, or if the defaulting party waives its right to cure such alleged default, the other party may terminate this Agreement.

No building permit shall be issued or building permit application accepted for any structure on the Property if the permit applicant owns and controls any property subject to this Agreement, and if such applicant or entity or person controlling such applicant is in material default of the terms of this Agreement.

## 5.2 Annual Review.

5.2.1 Review Date. The annual review date for this Agreement shall be \_\_\_\_\_, 2025, and each year thereafter.

5.2.2 Initiation of Review. City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Landowner with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to Section 65865.1 of the Government Code and the monitoring of mitigation in accordance with Section 21081.6 of the Public Resources Code of the State of California. Notice of such annual review shall include the statement that any review of obligations of Landowner as set forth in this Agreement may result in termination of this Agreement. A finding by City of good faith compliance by Landowner with the terms of the Agreement shall be conclusive with respect to the performance of Landowner during the period preceding the review. To the extent this cost is not included in other fees or costs paid by Landowner, Landowner shall be responsible for the cost reasonably and directly incurred by the City to conduct such annual review, the payment of which shall be due within thirty (30) days after conclusion of the review and receipt from the City of the bill for such costs.

Upon, not less than thirty (30) days written notice by the City, Landowner shall provide such information as may be reasonably requested and deemed to be required by the City in order to ascertain compliance with this Agreement.

In the same manner prescribed in Section 10, the City shall deposit in the mail to Landowner a copy of all staff reports and related exhibits concerning contract performance and, to the extent practical, at least ten (10) calendar days prior to any such periodic review. Landowner shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the City Council or, if the matter is referred to the Planning Commission, before the Planning Commission.

If City takes no action within thirty (30) days following a required public hearing to discuss the annual review findings, Landowner shall be deemed to have complied in good faith with the provisions of the Agreement.

5.3 Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, acts of terrorism, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, litigation, or similar bases for excused performance. If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

5.4 Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or

agreement herein, or to enjoin any threatened or attempted violation. Provided, however, that the Landowner, its successors and assigns hereby waive any and all claims for monetary damages against City arising out of this Agreement at any time. All legal actions shall be initiated in the Superior Court of the County of Colusa, State of California.

5.5 Effect of Termination. If this Agreement is terminated following any event of default of Landowner or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent Landowner from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

5.6 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. This Agreement has been reviewed by legal counsel both for City and Landowner, and therefore no presumption or rule that ambiguity shall be construed against the party drafting the agreement shall apply.

## **ARTICLE 6. HOLD HARMLESS AGREEMENT**

Landowner and its successors-in-interest and assigns, hereby agrees to, and shall defend, indemnify, and hold City, its elective and appointive boards, commissions, officers, agents, employees and representatives harmless from any and all claims, costs (including legal fees and costs), liability for damage or claims for damage for personal injury, or bodily injury including death, as well as from claims for property damage which may arise from Landowner's performance of this Agreement, or of Landowner's contractors, subcontractors, agents, or employees under this Agreement, including attorneys' fees, whether such performance be by Landowner, or by any of Landowner's contractors or subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Landowner or Landowner's contractors or subcontractors, unless such damage or claim arises from the sole negligence or willful misconduct of City. In addition to the foregoing indemnity obligation, Landowner agrees to and shall defend, indemnify and hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this Agreement, exclusive of any such actions brought by Landowner, its successors-in-interests or assigns. City acknowledges hereby that the foregoing liability of Landowner shall be limited to its interest in the Property and that neither Landowner nor any of its partners, officers, shareholders, employees or agents shall have any personal liability therefore. This indemnification provision

survives termination of this Agreement.

## **ARTICLE 7. PROJECT AS A PRIVATE UNDERTAKING**

It is specifically understood and agreed by and between the parties hereto that the subject project is a private development. No partnership, joint venture or other association of any kind is formed by this Agreement.

## **ARTICLE 8. COOPERATION IN THE EVENT OF LEGAL CHALLENGE**

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action. Landowner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding and for any attorney's fees and costs awarded to a party to be paid by City.

## **ARTICLE 9. GENERAL**

9.1 Enforceability. The City agrees that unless this Agreement is amended or canceled pursuant to the provisions of this Agreement and the Adopting Ordinance, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building regulation adopted by City, or by initiative, which changes, alters or amends the rules, regulations and policies applicable to the development of the Property at the time of approval of this Agreement, as provided by Government Code Section 65866.

9.2 City Finding. The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

9.3 Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of Landowner and City and their successors and assigns: No other person shall have any right of action based upon any provision in this Agreement.

9.4 Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is

determined to be invalid or unenforceable and the effect thereof is to deprive a party hereto of an essential benefit of its bargain hereunder, then such party so deprived shall have the option to terminate this entire Agreement from and after such determination.

9.5 Construction. This Agreement shall be subject to and construed in accordance and harmony with the City of Colusa City Code, as it may be amended, provided that such amendments do not impair the rights granted to the parties by this Agreement.

9.6 Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

9.7 Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) to the knowledge of the certifying party, the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Landowner.

9.8 Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit Landowner, in any manner, at Landowner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property, except as limited by the provisions of this section. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Landowner and representatives of such lenders to provide any such request for interpretation. City will not unreasonably withhold its consent to any such requested interpretation provided such interpretation is consistent with the intent and purposes of this Agreement. The Parties agree that the following shall apply to any Mortgagee of the Property:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or Mortgagee who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Landowner in the performance of Landowner's obligations under this Agreement.

(c) If City receives a timely request from a Mortgagee requesting a copy of any notice of default given to Landowner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Landowner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed to Landowner under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, by any means, whether pursuant to foreclosure of the mortgage deed of trust, or deed in lieu of such foreclosure or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Landowner's obligations or other affirmative covenants of Landowner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Landowner is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Article 11 of this Agreement.

9.9 Insurance. At all times that Landowner is constructing any improvements that will become public improvements, Landowner agrees that Landowner may be required to maintain in effect a policy of comprehensive general liability insurance and name City as an additional insured on all policies evidencing such insurance. Any such obligation imposed upon Landowner by City shall automatically terminate, without any further action by either party, upon City acceptance of such public improvements, unless otherwise extended by a written agreement between Landowner and City.

#### **ARTICLE 10. NOTICES**

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

Notice required to be given to the City shall be addressed as follows:

City Manager  
City of Colusa  
425 Webster Street



Colusa, CA 95932

With a copy to:

City Attorney  
City of Colusa  
425 Webster Street  
Colusa, CA 95932

Notice required to be given to the Landowners shall be addressed as follows:

BLUE HERON RIDGE, INC.  
C/O Ed Hulbert  
50 Sunrise Blvd.  
Colusa, CA 95932

WESCOTT RANCH LLC/BRENNAN & SONS  
642 5<sup>th</sup> Street #8  
Colusa, CA 95932

Any of the parties may change the address stated herein by giving notice in writing to the other parties, and, thereafter, notices shall be addressed and delivered to the new address.

#### **ARTICLE 11. ASSIGNMENT**

From and after recordation of this Agreement against the Property, Landowner shall, subject to providing advance written notice of such assignment to City, have the full right to assign this Agreement as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by Landowner and assumption by the assignee of such assignment in the form attached hereto as Exhibit "C" and the conveyance of Landowner's interest in the Property related thereto, Landowner shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Landowner", with all rights and obligations related thereto, with respect to such conveyed property.

#### **ARTICLE 12. FINAL AGREEMENT**

This Agreement constitutes the final agreement between the parties hereto relative

to those development rights of Landowner provided for in the Initial Entitlements under the Development Agreement Statute. Development rights of Landowner under Subsequent Entitlements shall be the subject of a future tentative map application. This Agreement constitutes the entire understanding and agreement of the parties.

**ARTICLE 13. FORM OF AGREEMENT, EXHIBITS**

This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement, inclusive of its Recitals and Exhibits, constitutes the entire understanding and agreement of the parties.

IN WITNESS WHEREOF, the City of Colusa has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the Authority of \_\_\_\_\_, adopted by the City Council of the City of Colusa on the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

CITY OF COLUSA

LANDOWNER:  
BLUE HERON RIDGE, INC.

By: \_\_\_\_\_  
City Manager

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

ATTEST:

LANDOWNER:  
WESCOTT RANCH LLC/BRENNAN & SONS

By: \_\_\_\_\_  
City Clerk

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

**LIST OF EXHIBITS**

- Exhibit A            Property Legal Description
- Exhibit B            Property Map
- Exhibit C            Sample Assignment and Assumption Agreement