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AND WHEN RECORDED, MAIL TO:**

County Clerk
County of Yuba
915 8th St. Suite 107
Marysville, CA 95901

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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE COUNTY OF YUBA AND _____
RELATIVE TO THE DEVELOPMENT KNOWN AS**

This document, including exhibits, totals _____ pages.

REFERENCE SHEET

Project Name:

Project:

Developer:

Developer's Address for Purpose of Written Notice:

Landowner:

Term:

The Term of the Development Agreement, as provided for in section 1.8 is _____ (_____) years, which begins (30) days after the Board of Supervisors enacts the Adopting Ordinance (noted below).

Entitlements: As referred to in Recital 5 shall mean _____

CEQA document: As referred to in Recital 6 shall mean _____

Adopting Ordinance: As referred to in Section 1.3 (a), shall mean Ordinance No. _____ enacted by the Board of Supervisors or enacted by the voters via a Board-sponsored measure on _____, 20____.

Exhibits which are attached to this Development Agreement are as follows:

- A. Legal Description
- B. Assumption Agreement
- C. Special Conditions and Requirements
- D. Sample Notice of Termination

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THIS DEVELOPMENT AGREEMENT (“Agreement”) is made by and between the COUNTY OF YUBA, a political subdivision of the State of California (“County”), and 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.

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 (Gov. Code, § 65864 et seq.)
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 and by common law, assure property developers that they may proceed with their projects with the assurance that approvals granted by public agencies will not change during the period of development. Cities and counties are equally assured that costly infrastructure such as roads, sewers, fire protection facilities, etc., will be available in a timely manner.
3. The parties have, in good faith, negotiated the terms hereinafter set forth which carry out the legislative purpose set forth above and will assure the parties to this Agreement of mutually desirable development in a manner consistent with the CEQA document, the Entitlements, and this Agreement.
4. Developer owns in fee (or holds an option to purchase for a term that is or may be extended for at least the term of this Agreement) the Subject Property more particularly described on **Exhibit A** hereto, located in the County.
5. County, in response to Developer's application(s), after public hearings and extensive environmental analysis, has granted approval of the Entitlements, as set forth on the Reference Sheet.
6. In support of the various Entitlements described in paragraph 5 above, and in accord with the California Environmental Quality Act (“CEQA”) and State and County guidelines, County has accepted and ratified a CEQA document, as set forth in the Reference Sheet.
7. Development of the Subject Property pursuant to the terms and conditions of the Entitlements, the General Plan and appropriate environmental determinations will provide for orderly growth and development consistent with the County's General Plan and other development policies and programs.
8. The Planning Commission considered this Agreement, and recommended its adoption to the Board of Supervisors.

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.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. The Project. The Project is defined as set forth on the Reference Sheet.

Section 1.2. Subject Property. The Subject Property is more specifically described in **Exhibit A**, which is incorporated herein and made part of this Agreement.

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.

(a) **Adopting Ordinance** means the ordinance which approves this Agreement.

(b) **Assumption Agreement** means an agreement substantially conforming to the model assumption agreement described in **Exhibit B**, 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) **County** means the County Board of Supervisors for the County of Yuba, or its designee.

(e) **County Laws** means ordinances, resolutions, rules, regulations, policies, motions, directives, mitigation measures, conditions, standards, specifications, dedications, fees, taxes (including without limitation general, special and excise taxes), assessments, liens, other exactions and impositions, and any other actions having the force of law, that are enacted or adopted by County, or by its electorate through the initiative or referendum process.

(f) **Current Fees** means those County development fees, processing fees, and utility rates and fees in effect as of the Effective Date as specified in Section 2.5.

(g) **Developer** shall mean that person or entity that has applied for this Development Agreement as defined on the Reference Sheet.

(h) **Director** means the Community Development Director for the County, or his/her designee.

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

(j) **Entitlements** shall mean those approvals listed on the Reference Sheet of this Agreement, approved copies of which are on file with the Board of Supervisors.

(k) **General Plan** means the General Plan of the County, including the text and maps, as may have been 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) **New Fees** means those fees adopted by the County after the Effective Date of this Development Agreement

(n) **Planning Commission** shall mean the County's Planning Commission, or its designee.

(o) **Reserved Powers** shall mean those powers explicitly reserved to the County by this Agreement.

(p) **Subject Property** means the property described in Section 1.2, or the remaining portions thereof after releases from the provisions of this Agreement have been executed as authorized by this Agreement.

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

Exhibit A	Subject Property
Exhibit B	Assumption Agreement
Exhibit C	Special Conditions and Requirements
Exhibit D	Sample Notice of Termination

Section 1.5. Incorporation of Recitals. Recitals 1 through 9 are incorporated herein, including all exhibits referred to in the Recitals. In the event of inconsistency between the Recitals and the provisions of Articles 1 through 5, the provisions of Articles 1 through 5 shall prevail.

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

Development Agreement Between the County of Yuba
and _____

_____ Date

(a) **The County of Yuba.** A political subdivision of the State of California exercising general governmental functions and powers. The principal office of the County is located at 915 8th Street, Marysville, California 95901.

(b) **Developer.** Developer owns in fee or has an equitable interest in the Subject Property.

(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 the County has no interest therein except as authorized in the exercise of its governmental functions.

Section 1.8. Term of Agreement. This Agreement shall commence upon the Effective Date of the Adopting Ordinance approving this Agreement and shall continue in force for the period shown on the Reference Sheet under "Term."

Section 1.9. 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 shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. Developer shall provide County with a copy of the Assumption Agreement. 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. Any such assumption of Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the County Counsel if executed in the form of the Assumption Agreement attached hereto as **Exhibit B** and incorporated herein by this reference, or such other form as shall be approved by the County Counsel.

Section 1.10. 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

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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 unit or non-residential building which has been approved by the County for occupancy, this Agreement shall automatically terminate.

Section 1.11. 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.

Any amendment entered into between the County and the Developer shall require the signature of each owner of any portion of the Subject Property to the extent the amendment modifies this Agreement as to that other owner's property.

Section 1.12. Amendment to Agreement (Landowner and County). This Agreement may also be amended, subject to the provisions of Government Code section 65868, between a Landowner who has acquired a portion of the Subject Property from Developer and County as to the portions of the Subject Property then owned by Landowner.

Any amendment entered into between the County and a Landowner shall require the signature of each Landowner of any portion of the Subject Property or the Developer to the extent the amendment modifies the Agreement as to that Landowner's or the Developer's property.

Section 1.13. Releases. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the County Clerk receives a copy of the Assumption Agreement provided for in Section 1.9.

Section 1.14. 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(a). Notice to the County shall be to the attention of both the County Administrator and the 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 1.15. Reimbursement for Agreement Expense of County. Developer agrees to reimburse County for reasonable and actual expenses over and above fees paid by Developer as an applicant, for costs specifically incurred by County for the preparation of this Agreement, including

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recording fees, publishing fees, and reasonable staff and consultant costs not otherwise included within application fees then due and payable to the County. Such reimbursement shall be paid to the County prior to execution of this Agreement by the County. Developer shall also pay any and all installments of property tax then due for the Subject Property.

Section 1.16. Recordation of Agreement. The County Clerk shall cause a copy of this Agreement to be recorded with the County Recorder not later than ten (10) days after the effective date following execution of this Agreement by the County. Developer hereby covenants that during the period following execution and the recording of this Agreement by the County, Developer shall not, without prior written approval by the County Counsel, cause or allow to be recorded against the Subject Property any instrument affecting the priority, validity or enforceability of this Agreement.

Section 1.17. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 1.18. 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 became effective after the Effective Date, the remaining provisions shall continue in full force and effect.

Section 1.19. Third Party Legal Challenge. 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, the Entitlements or any approval subsequently granted by the County for the development of the Subject Property, the parties and any Landowner agree to cooperate with each other in good faith. County may elect to tender the defense of any lawsuit filed by a third person or entity to Developer and/or Landowner(s) (to the extent the litigation, in part or in whole, seeks to overturn or invalidate this Agreement, the Entitlements or any subsequent approval granted for the Subject Property held by or granted to Developer and/or Landowner), and, in such event, Developer and/or such Landowner(s) shall indemnify, hold the County harmless from and defend the County from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in such litigation. For purposes of this section only, "County" shall include all employees, consultants and agents acting on behalf of the County. Neither party shall settle any such lawsuit without the consent of the other party. The County may elect to participate in the litigation, in which case the Developer and/or Landowner agree to reimburse the County for its litigation costs and fees, including the retention of outside legal counsel and all staff costs. It is the intent of the Parties that the County's participation not result in unnecessary duplication of legal services, but rather that the County's active involvement in the litigation be limited to

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supervising the preparation of the administrative record or discovery as applicable, monitoring of litigation, and responsive pleadings regarding issues which, in the sole opinion of the County, involve broader County concerns than those immediately affecting the Landowner and/or Developer. Upon written demand of the County, Developer and/or Landowner shall deposit with the County such sums as may be specified by the County as its estimated litigation costs and fees for the following thirty day period. Both parties shall act in good faith, and shall not unreasonably withhold consent to settle. In the event that the County elects to settle a claim, and Developer refuses to also settle, County at its sole option may require Developer to post security in a form and amount reasonably acceptable to the County, for the performance of Developer's duties under this section. If the Developer, within 30 days of receiving written notice from County, fails to post this security, the Developer shall settle the claim on terms as previously approved by the County. This provision shall survive the termination of this Agreement.

Section 1.20. Waiver of Claims. Developer waives, as to the Subject Property only, any and all existing claims that may have against the County, its agents, employees and consultants, arising out of the adoption and/or application of development requirements and standards, impact fees, the adoption of this Agreement or approval of the Entitlements and all of the proceedings, acts or determinations made prior thereto.

Section 1.21. Priority of Enactment. In the event of conflict between the Development Agreement, the Entitlements and the County Laws, the parties agree that the following sequence of approvals establishes the relative priority of approvals, each approval superior to the approvals listed thereafter: (1) **Exhibit C** to this Agreement; (2) the Development Agreement; (3) the Entitlements and (4) the County Laws. In the event of a conflict between two or more of the foregoing documents, the language of that document which is superior in priority as provided above shall govern.

ARTICLE 2

PROJECT DEVELOPMENT

Section 2.1. Limited Vested Right. During the Term of and subject to the terms of this Agreement, the Developer's rights shall be vested only as to the Entitlements. "Vested" shall mean that except as to express limitations and reservations contained in this Agreement, Developer's Entitlements shall not be subject to changes in County Laws. In the event that the County grants an approval or permit in the implementation of the Project, the approval or permit shall also be considered vested. This section shall not be construed to limit the authority or obligation of the County to hold necessary public hearings, or to limit the discretion of the County or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements, which require the exercise of discretion by the County or any of its officers or officials.

Section 2.2 No Moratorium, Quotas, Restrictions, or Other Growth Limitations. Except as otherwise provided by the terms and conditions of this Agreement of the Entitlements, no ordinance, resolution, rule, regulation or policy of County shall be applied, imposed or enacted by County, by resolution, ordinance, initiative, or otherwise, which in any way relates to the rate, timing or sequencing of the development or use of the Property, or any improvements related thereto, including without limitation, any no-growth or slow-growth moratoriums or annual development allocations, quotas or limitations, or in any way conflicts with the permitted uses, density and intensity of uses, maximum building height and size set forth in the Entitlements; provided, however, Developer shall be subject to any such growth limitation ordinance, resolution, rule, regulation or policy which is adopted on a uniformly applied, County-wide basis and directly concerns a public health or safety issue, in which case County shall treat Developer in a uniform, equitable and proportionate manner with all properties which are zoned consistent with Developer's zoning set forth in the Entitlements.

Section 2.3 Permitted Uses and Development Standards. The permitted uses and development standards shall be those as set forth in and permitted by the Entitlements, County Zoning, subdivision and land development standards as of the Effective Date.

Section 2.4. Application, Processing and Inspection Fees. Application fees, processing fees, and inspection fees that are revised during the term of this Agreement shall apply to the development pursuant to this Agreement, provided that such revised fees apply generally to similar private projects or works within County.

Section 2.5. Impact Fees. Developer shall be subject to all development impact fees including scheduled or periodic increases as provided for in the adopting ordinances or resolutions ("Current Fees"). Developer shall pay, without protest or without challenge, Current Fees in accordance with the adopted ordinance or resolution, except that the Countywide Capital Facility Fee payment shall be deferred until a request for final inspection.

In addition, Developer is subject to any new fees adopted by the County, or the recalculation of existing fees ("New Fees") and waives any and all claims of vested rights or the assertion of this Agreement as a bar to the application of the new fees. Developer retains the right to otherwise challenge New Fees as permitted by law.

Section 2.6. Reserved Powers. Notwithstanding any other provision of this Agreement, and without limitation as to any other requirements or exceptions contained in this Agreement, the County retains the authority to take the following actions and apply the same to the Subject Property:

(a) The authority of the Board of Supervisors to adopt regulations to protect the County and its citizens from an immediate adverse risk

to health and safety. This shall include, but not be limited to, lack of sufficient sewer and/or water facilities, but not school facilities.

(b) Adopt or increase utility charges in accordance with applicable laws and regulations.

(c) As set forth in Section 2.5, increase and apply Current Fees, and adopt and apply New Fees.

(d) Adopt revised subdivision regulations, building design standards (residential and non-residential) and development improvement standards.

(e) Land use regulations, ordinances, policies, programs, resolutions or fees adopted or undertaken by County in order to comply with state or federal laws, or regulations, provided that in the event that such state or federal laws 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 state or federal laws or regulations.

(f) County land use regulations, ordinances, policies, programs or resolutions adopted after the Effective Date, which are in conflict with the County Laws, 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 by later separate document, which consent Developer and/or Landowner may withhold in their sole and exclusive discretion.

Section 2.7. Obligation and Rights of Mortgage Lenders. The holder of any mortgage, deed of trust or other security instrument 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, in the event said holder takes title to the Subject Property through foreclosure of a mortgage or a deed of trust, or deed-in-lieu of such foreclosure, said holder shall 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

DEFAULT

Section 3.1. General Provisions. 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 sixty (60) days notice in writing specifying the nature of the alleged default and the manner in which said default may be cured. During any such sixty (60) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the sixty (60) 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/her option, institute legal proceedings pursuant to this Agreement or give notice of his/her 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.

Following consideration of the evidence presented in said review before the County and an additional 30-day period to cure, 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.

Section 3.2. 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 Director, unless referred to the Planning Commission or County Board of Supervisors shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. Each said review shall be completed within sixty (60) days of the first meeting of the Planning Commission and the County Board of Supervisors, respectively, at which such review is undertaken, unless said period is extended by mutual consent of County and Developer. Failure to complete said review within the prescribed period shall be deemed a finding of good faith substantial compliance. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. County may charge, and Developer shall pay a fee for such annual review to defray the cost to the County to process and conduct such annual review.

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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. The Developer or Landowner shall be entitled to appeal a determination of the Director to the Commission and then to the Board of Supervisors. Any appeal must be filed within ten (10) days of the decision to the Director, or the Commission, as the case may be. Developer or Landowner shall be permitted an opportunity to be heard orally and/or in writing regarding its performance under this Agreement before the Commission, Board of Supervisors, and/or Director, as the case may be.

Section 3.3. Developer Default Limited to Property/Entity; Separate Obligations of Owners. Except as specified herein in Section 3.1, 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 Subject 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 3.4. 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 this Agreement, or as otherwise provided in this Agreement, or the County otherwise defaults under the terms of this Agreement, Developer and/or Landowner may give written notice thereof to the County and if not cured within sixty (60) days following receipt of such notice, Developer shall have all rights and remedies provided herein or under applicable law, including without limitation the right to pursue actions for mandamus, specific performance, or injunctive or declaratory relief to enforce this Agreement. Notwithstanding the foregoing sentence, the County, Developer and Landowner each waives any and all rights to seek monetary damages from any other party as a result of any breach or alleged breach of such other party's obligations hereunder. In the event County is in default under the terms of this Agreement, any resulting delays in Developer's performance caused thereby shall not constitute grounds for termination or cancellation of this Agreement.

Section 3.5. Cumulative Remedies of Parties/Waiver of Right to Damages. 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. Notwithstanding the foregoing sentence, the County, Developer and Landowner each waives any and all rights to seek monetary damages from the other party as

a result of any breach or alleged breach of such other party's obligations hereunder.

Section 3.6. Enforced 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, State or federal laws, regulations, decisions or orders which conflict with this Agreement, or judicial or other governmental agency decisions or orders, directing the County, or which have the effect of requiring the County, to take actions or refrain from taking actions which conflict with the obligations under this Agreement. Any and all extensions of the time of performance shall be limited to sixty (60) months.

Section 3.7. Tolling Due to Litigation. In the event of a lawsuit challenging the Entitlements or CEQA document, the Developer's obligations shall be automatically tolled for up to thirty-six (36) months. The Developer may apply for an additional tolling period of up to twenty-four (24) months, which the County may grant, in its sole discretion, based upon a finding that the Developer has actively defended the lawsuit in good faith.

Neither Section 3.6 nor 3.7 tolls the annual adjustment in the amount of fees otherwise due.

ARTICLE 4

TERMINATION

Section 4.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term as defined on the Reference Sheet or when the Subject Property has been fully developed and all of the Developer's obligations in connection therewith are satisfied. Upon termination of this Agreement, the County shall record a notice of such termination in substantially the form attached hereto as **Exhibit D**. 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 any non-residential building, and the lot or parcel upon which such residence or building is located, when it has been approved by the County for occupancy.

Section 4.2. Effect of 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 4.3. Effect of Termination on County. Upon any termination of this Agreement, as provided for under the terms and conditions 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 Subject Property affected by such termination (provided vesting of entitlements, conditions or fees applicable to the Subject Property shall be governed by 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 5

STANDARD TERMS AND CONDITIONS

Section 5.1. Venue. Venue for all legal proceedings shall be in the Superior Court for the County of Yuba.

Section 5.2. 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.

Section 5.3. 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.

Section 5.4. 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.

Section 5.5. 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.

Section 5.6. 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.

Section 5.7. Mandatory and Permissive. “Shall” and “will” and “agrees” are mandatory. “May” is permissive.

Section 5.8. Term Includes Extensions. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

Section 5.9. 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.

Section 5.10. Modification. 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.

Section 5.11. 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.

Section 5.12. 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.

Section 5.13. 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.

Section 5.14. Controlling Law. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

Section 5.15. Time Is of the Essence. Time is of the essence of this Agreement and each covenant and term a condition herein.

Section 5.16. 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

Development Agreement Between the County of Yuba
and _____

Date

any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

Section 5.17. Document Preparation. This Agreement will not be construed against the party preparing it, but will be construed as if prepared by all parties.

Section 5.18. 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, and freely entered into this Agreement.

Section 5.19. Estoppel Certificate. Within thirty (30) days following any written request which either party may make from time to time, and upon payment of a fee to the County to reimburse the County for its reasonable expenses associated herewith, the other party to this Agreement shall execute and deliver to the requesting party a statement certifying that:

(a) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications; and

(b) there are not current uncured defaults under this Agreement or specifying the date, nature of any default and manner of cure.

This certificate may be executed by the Director.

Section 5.20. Attorneys Fees and Costs. If any action at law or in equity, including an action for declaratory relief, 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.

Section 5.21. Consent/Subordination. Unless waived in writing by the County Counsel, Developer shall furnish proof satisfactory to the County, prior to approval of the Agreement that all persons possessing a legal interest in the property have consented to the recording of this Agreement. Unless waived in writing by the County Counsel, the County shall require subordination by all lenders of record as a condition precedent to the County approval of the Agreement. The County shall have no duty to subordinate its interest in this Agreement.

Section 5.22. Calculation of Time Periods. All calculation of time periods shall be based upon calendar days unless a different intent is clearly stated.

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

COUNTY:
COUNTY OF YUBA,
a political subdivision of the State of California

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: County Clerk

APPROVED AS TO FORM:

By: _____

Name: _____

Title: County Counsel

DEVELOPER:

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: Counsel

LIST OF EXHIBITS

- Exhibit A Legal Description of Subject Property
- Exhibit B Assumption Agreement
- Exhibit C Special Conditions and Requirements
- Exhibit D Sample Notice of Termination

Development Agreement Between the County of Yuba
and _____

Date

EXHIBIT A
SUBJECT PROPERTY

EXHIBIT B

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter "this Agreement") is entered into this ____ day of _____, 20__, by and between _____ (hereinafter called "Owner") and _____, (hereinafter "Assignee").

RECITALS

A. On _____, 20__, the County of Yuba and Owner entered into that certain agreement entitled "Development Agreement," approved by Ordinance _____ (hereinafter "Agreement"), relative to the development known as _____ (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.

Development Agreement Between the County of Yuba _____ Date
and _____

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

ASSIGNOR / OWNER

By: _____

Name: _____

Title: _____

ASSIGNEE

By: _____

Name: _____

Title: _____

EXHIBIT C
SPECIAL CONDITIONS AND REQUIREMENTS

EXHIBIT D

NOTICE OF TERMINATION

THIS NOTICE OF TERMINATION (hereinafter "this Notice") is given this _____ day of _____, 20____, by the County of Yuba (hereinafter called "County") for the benefit of _____, (hereinafter "Owner").

1. On _____, 20____, the County of Yuba and _____ entered into that certain agreement entitled "Development Agreement," approved by Ordinance _____ (hereinafter "Agreement"), relative to the development known as _____ (hereinafter "Subject Property").

2. Owner has fully performed all its duties with respect to that portion of the Subject Property, which portion of the Subject Property is identified and described in **Exhibit A**, attached hereto and incorporated herein by this reference (hereinafter the "Released Property").

3. Pursuant to Section 4.1 of the Development Agreement, the Development Agreement is no longer in effect with respect to the Released Property.

COUNTY OF YUBA

By: _____

Name: _____

Title: _____

[NOTE: SIGNATURE MUST BE NOTARIZED]

NOTARY

State of California
County of _____

On _____, 20____, before me,
, Notary Public, personally appeared _____,
personally known to me (or proved 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.

Notary Signature

WITNESS MY HAND AND OFFICIAL SEAL.