

DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF
HUMBOLDT AND SAMOA PACIFIC GROUP, LLC/DANCO DEVELOPMENT RELATING
TO THE SAMOA TOWN MASTER PLAN PROJECT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this 15 day of December, 2020, by and between the County of Humboldt, organized under the laws of the State of California (“**County**”), Samoa Pacific Group, LLC a California limited liability company (“**Landowner**” or “**Owner**”) together with Danco Communities, a California corporation, (collectively referred to as “**Developer**”), pursuant to the authority of Sections 65864 through 65869.4 of the Government Code of the State of California and Title II, Division 17, Chapter 1 of the Humboldt County Code. Developer and County are, from time to time, hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs 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 County to enter into a development agreement with any person/entity having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

B. Pursuant to Government Code Section 65865(c), the County has adopted rules and regulations establishing procedures and requirements for consideration of development agreements. This Development Agreement has been processed, considered, and executed in accordance with those County rules and regulations. (See Humboldt County Code, Title II, Div. 17 (Development Agreements).) The use of a Development Agreement is appropriate under the stated intent of the relevant provisions of the County Code and the circumstances of the Samoa Town Master Plan project (“**STMP**” or “**Project**”) that is the subject of this Agreement.

C. On October 27, 2009, in Resolution No. 09-85, the County Board of Supervisors (“**Board**”) certified as adequate a Final Environmental Impact Report prepared for the Project pursuant to the California Environmental Quality Act (“**CEQA**”), and conditionally approved the proposed STMP, including the related General Plan Amendment, Zone Reclassification and Urban Limit Line Extension, subject to California Coastal Commission (“**Coastal Commission**”) review and approval. The Board also approved a resolution of submittal to the Coastal Commission.

D. This Agreement relates to the development of the Project pursuant to the approved STMP, including the densities, intensities and uses of the Project Site as depicted on the County Approvals (“**County Approvals**”) and consistent with the Local Coastal Program (“**LCP**”) for the Humboldt Bay Area Plan (“**HBAP**”) (of the Humboldt County LCP) approved by the County Board of Supervisors and last amended in December 2014, and certified by the California Coastal Commission.

E. Developer has a legal interest in those certain parcels of land making up the Project site and encompassing approximately 171 acres (and not including 2.4 acres of railway right-of-way that lie within the site, but are not owned by the Developer), as diagramed in Exhibit A (STMP Site Plan) attached hereto, and more particularly described in Exhibit B (legal description) attached hereto and incorporated herein (the “**Project Site**” or “**Property**”). Developer represents that it has an equitable and legal interest in the Project Site and that all other persons holding legal or equitable interests in the Project Site are to be bound by this Agreement. The subject of this Agreement is the development of those certain parcels of land within the Project Site.

F. Planning for the Project began in 2001, when the Samoa Pacific Group, LLC purchased the historic town of Samoa. In 2002, a draft STMP was prepared. A revised STMP was prepared in 2005. The STMP was again revised in 2006 in response to concerns raised by the California Coastal Commission (“**Coastal Commission**”) regarding tsunami issues. Thereafter, the County Planning Division released a Draft Master EIR prepared pursuant to CEQA for public review and comment (State Clearinghouse No. 2003052054).

A draft Final EIR was prepared in April 2006, but the STMP was once again revised to address additional comments and concerns received. The revisions necessitated further environmental review. A Recirculated Draft 1 Master EIR was released for public review and comment in June 2006. In March 2007, a Recirculation Draft 2 Master EIR was also released for public review and comment, including information regarding the Tsunami Vulnerability Evaluation. In September 2007, a Recirculation Draft 3 Master EIR was circulated.

G. The County Planning Commission held numerous public hearings on the Project, including on March 16, 2006, April 6, 2006, April 13, 2006, and January 9, 2008. At its January 9, 2008 meeting, the Planning Commission adopted Resolution No. 08-01 recommending the Board approve the proposed Project and related entitlements.

H. On October 27, 2009, the Board certified the Final EIR for the Project and conditionally approved the proposed General Plan Amendment, Zone Reclassification and Urban Limit Line Extension subject to Coastal Commission review and approval. The Board also approved a resolution of submittal to the Coastal Commission.

I. At the Coastal Commission hearing of March 10, 2011, the Commission denied certification of the then proposed Humboldt County LCP Amendment No. HUM-MAJ-01-08, and recommended modifications to the County Approvals. The Coastal Commission held a public hearing and vote on the recommended modifications at its June 17, 2011 meeting and determined that its revised findings support its action on the LCP Amendment at the prior hearing on March 10, 2011.

J. On December 6, 2011, and upon review and acceptance of the Coastal Commission’s recommended modifications, the Board of Supervisors approved and adopted the required findings for the following land use approvals for the Project:

J.1. Resolution Number 11-95, approving the General Plan amendment of the Humboldt County General Plan (HBAP), as modified by the Coastal Commission for LCP Amendment No. HUM-MAJ-01-08, including the amendment of the land use map by reconfiguring the boundary lines shown on the Revised STMP Land Use Map; and approving text amendments to the HBAP to: (1) add the Natural Resource (NR) and Business Park (MB) land use designations to Section 4.10A, Urban Land Designations of the HBAP; (2) add text amendments to incorporate the policies, definitions, and revisions requested by the Coastal Commission, including the addition of a Samoa Town Plan Land Use Overlay Designation and Development Policies to the Land Use Designations in Chapter 4 and modifying Section 3.17.B.3 of the HBAP to require tsunami risk assessments; and (3) approve interpretation of environmentally sensitive habitat areas (ESHAs) identified by the Coastal Commission for parcels making up the Project Site.

J.2. Ordinance Number 2466 amending Sections 313-15 and 313-34 to add a Samoa Town Special Area Combining Zone and Samoa Town Plan Standards, and amending Section 313-19, Design Review, of the Coastal Zoning Regulations to establish a Samoa Design Review Committee and add standards for protection of historic structures.

K. At its December 6, 2011 meeting, the Board of Supervisors also adopted Resolution Number 11-94, a Resolution of Transmittal to the Coastal Commission for the proposed LCP Amendment and transmittal of the Local Coastal Program Amendments to the HBAP land use plan and implanting zoning maps and text changes to the Coastal Commission for certification in accordance with the California Coastal Act.

L. On July 17, 2012, and upon review and acceptance of the Coastal Commission's recommendations, the Board approved and adopted required findings for the following additional land use approvals for the Project:

L.1. Resolution Number 12-63, approving LCP amendments to include revised land use and zone maps for the Project Site that incorporated the special modifications recommended by the Coastal Commission.

L.2. Ordinance Number 2482 amending Section 311-7 of the Humboldt County Code for the approximate 171 acres making up the STMP by designating the boundary lines of the following zones and combining zones: Residential Single Family (RS), Residential Multi-Family (RM), Commercial General (CG), Commercial Recreation (CR), Natural Resources (NR), Public Recreation (PR), Public facilities (PF), and Coastal Dependent Industrial (MC) zones; and Planned Unit Development (P), Wetland (W), Archaeological Resource (A) and Design Review (D) combining zones, as generally depicted in the Samoa Town Master Plan Zoning Map, attached as Exhibit C.

The County Approvals are attached hereto as Exhibit D1-D14, and D-15 [HBAP STMP Policies], and are the subject of this Agreement.

M. At its July 17, 2012 meeting, the Board of Supervisors also adopted Resolution Number 12-62, directing Planning staff to submit the STMP amendments to the Coastal Commission for review and certification in accordance with the California Coastal Act.

N. Based on the County Approvals, the maximum potentially allowable levels of development for the Project Site include up to 200 new single-family residences and 80 units of affordable housing, retention of the 99 existing historic residences, a new business park of approximately 19 acres in size (or smaller in building footprint and up to 4 stories high), and a variety of general commercial, commercial recreation, public recreation, public facilities, and natural resource areas.

O. At the August 10, 2012 Coastal Commission meeting, the Coastal Commission concurred with the Executive Director that the County fulfilled the requirements of Section 13544.5(a) of the California Code of Regulations, and in accordance with Sections 13544(b) and 13544.5(b) of the same, the Director determined that the County's actions were legally adequate. This completed the Coastal Commission's initial approval of the LCP Amendments needed for the Project.

O.1 In 2013-2014 the Developer proposed, through the County and Coastal Commission, amendments to the HBAP LCP and related zone reclassifications to allow revisions to the phasing provisions of the STMP previously adopted into the HBAP. The amendment was found to be in the public interest because they will facilitate obtaining an infrastructure grant to upgrade the wastewater treatment facility (WWTF) to serve low-income multi-family housing, funding which otherwise would be unavailable and would delay the improvement. The State of California's promotion of a grant therefore changed the timing of the Project's development.

O.2 The LCP Amendment (LCP-1-HUM-15-0004-1) included several changes to previous development phasing requirements of the Project, including requirements that any affordable housing that occurs in new Master Parcel 2 would be allowed to occur prior to: (a) the comprehensive subdivision of STMP lands; (b) the development of various public access and recreational improvements; (c) the development of low-cost visitor serving improvements; and (d) the renovation of the existing residences in the historic town.

O.3 As part of its adoption of Resolution No. 16-48, the Board of Supervisors agreed to issue coastal development permits ("CDPs") subject to the approved LCP, including certification of the LCP Amendment No. LCP-1-HUM-15-0004-1.

O.4 On or about May 12, 2016, the Executive Director of the Coastal Commission found that County Board of Supervisors Resolutions No. 16-48 and 16-49 and Ordinance Number 2549 were legally adequate, thus completing the Commission's approval of the LCP amendment process for LCP Amendment Number LCP-1-HUM-15-0004-1.

P. On July 16, 2019, the County Planning Division released a draft Supplemental Environmental Impact Report (SEIR) prepared pursuant to CEQA for public review and comment (State Clearinghouse No. 2003052054). The SEIR was prepared to address utilization of the Humboldt Bay Harbor, Recreation and Conservation District's Marine Terminal II Ocean Outfall line for disposal of treated sewage effluent for the STMP lands among other changes to the project description. The public comment period closed on August 30, 2019 and responses to comments were prepared. On October 3, 2019, the Planning Commission following a duly noticed public hearing certified the SEIR and adopting a Statement of Overriding Considerations.

Q. On February 20, 2020, the County Planning Commission held a duly noticed public hearing to approve the Tentative Map for the phased subdivision of Master Parcels 2 and 3 encompassing approximately 185 acres into 332 parcels and adopted Resolution Number 20-15. Subsequently, on July 9, 2020, the County Planning Commission held a duly noticed public hearing (continued from June 18, 2020) to approve a Coastal Development Permit for the phased subdivision approved at the February 20, 2020 meeting and to consider this Agreement and issue a recommendation to the Board pursuant to Government Code Section 65867 and County Code section 2171-13. The Planning Commission adopted Resolution Number 20-39 approving the Coastal Development Permit and Resolution Number 20-40 recommending that the Board of Supervisors approve the Development Agreement. On December 15, 2020, the Board also held a duly noticed public hearing as required by County Code section 2171-14, made the findings for approval required therein, and voted to adopt this Agreement by Ordinance No. 2663.

R. Development Agreement Ordinance. County and Developer have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Ordinance of the County (County Code, Title II, Division 17, Section 2171-1 et seq.).

S. The Parties have, in good faith, negotiated the terms hereinafter set forth which carry out the Legislature's purpose, as set forth in Government Code section 65864 et seq., above and assure the Parties to this Agreement realize a mutually desirable development of the Project Site.

T. Development of the Project will result in significant public benefits as described in the STMP Project approvals attached as Exhibit D1-D14, and as additionally described hereinafter, including, without limitation:

T.1. The sale of approximately 35 acres of coastal dune property ("Coastal Dune Property") as depicted in Exhibit E to this Agreement (figure and legal description), to a 501(c)(3) non-profit (i.e. land trust), or private entity contingent upon the recordation of a subdivision map, as well as dedication of a conservation easement and a deed restriction/covenant to the County of Humboldt requiring the Coastal Dune Property to be preserved as open space in perpetuity. Developer shall use good faith efforts to prepare and record an approved subdivision map of the Coastal Dune Property prior to the Effective Date of this Agreement, and shall execute a purchase and sale agreement within 5 years of the filing of a final parcel map for the Coastal Dune Property. Should Developer be unable to execute a purchase and sale agreement within that time, Developer shall, within 180 days from the

expiration of the 5-year term, record a deed restriction/covenant to the County of Humboldt which requires the Coastal Dune Property to be preserved as open space in perpetuity and which runs with the land. Both the conservation easement and the deed restriction/covenant shall be in a manner approved by the County;

T.2. The construction and provision of additional parking and trail improvements as depicted in Exhibit F to this Agreement, to facilitate and encourage low cost visitor services, public coastal access and visitors to frequent local businesses;

T.3. The formation of a Peninsula Community Services District (CSD) which will, subject to LAFCO approval, expand and improve the efficiency of existing services. The CSD will, for example, result in the reorganization of the Samoa Peninsula Fire Protection District (“PFD”) into the CSD to provide more cost effective and efficient fire protection facilities and services to the STMP and broader Peninsula community. The CSD would also provide domestic and industrial water distribution and water storage; wastewater collection, treatment, and disposal; emergency medical services; road maintenance; storm drainage; parks, recreation, trails, and open space;

T.4. The construction of a minimum of eighty (80) additional affordable housing units for persons and families of low and moderate income as defined in Health and Safety Code Section 50093 within the coastal zone and the Project area; and

T.5. The expansion of Tsunami evacuation education, signage and protocols to include areas outside the STMP in an attempt to reach a greater number of visitors to the area.

U. Development of the Project will necessitate the financing and/or construction of significant improvements that will not only benefit the Project, but will benefit the County generally. The County recognizes that the success of the Project depends greatly upon the certainty and timing of further approvals and/or actions by the County necessary to implement the Project, including approval of CDPs, tentative and final subdivision maps, conditional use permits, and design review. Such further approvals and/or actions by the County are referred to herein collectively as (“**Subsequent County Approvals**”). Nothing in this Agreement is intending to bind Non-County Responsible Agencies, including the Coastal Commission, to issue subsequent permits or approvals which may be needed in the future (“**Non-County Subsequent Approvals**”), including CDPs if otherwise required by the Coastal Act, and for any Development that is inconsistent with the certified LCP.

V. For the reasons recited herein, Developer and County have determined that the Project is the type of development for which this Agreement is appropriate. The Agreement will eliminate uncertainty in planning and provide for the orderly development of the Project and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

In exchange for these benefits to the County, together with the public benefits that will result from the development of the Project, Developer desires to receive the assurance that it may proceed with the Project in accordance with the County Approvals, Subsequent County

Approvals and this Agreement and the ordinances, resolutions, policies, and regulations of the County in effect on the Effective Date of this Agreement, as hereinafter defined, pursuant to the terms and conditions contained in this Agreement. The Parties shall cooperatively collect all documents mentioned in this recital and place them in a three ring binder to be maintained at all times by the County Clerk. Two true and correct conforming copies of the binder shall be prepared and given to the Developer and Planning Director of the County respectively. The Parties shall rely on the documents in the binder to determine the approvals granted by the County and the ordinances, policies and regulations in effect at the Effective Date of the Agreement.

Now, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the Parties agree as follows:

AGREEMENT

Section 1. General Provisions.

1.A. Incorporation of Recitals, Exhibits. The Recitals set forth above, the introductory paragraph preceding the Recitals, all defined terms set forth in both, and all Exhibits referred to in this Agreement are hereby incorporated into this Agreement as if set forth herein in full.

1.B. Covenants. Each and every purchaser, assignee, or transferee of an interest in the Project Site, 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 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 Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Project site 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 or commercial unit or non-residential building or a portion thereof, which has been approved by County for occupancy, the automatic termination provisions of Section 6 herein shall apply thereto, and the rights and obligations of Developer hereunder shall not run with respect to such portion of the Project Site sold, assigned or transferred and shall not be binding upon such purchaser, assignee or transferee. Any such sale, assignment or transfer shall constitute a release from this Agreement of Developer as to that Property approved for occupancy except with regard to conditions, covenants, and restrictions imposed on individual properties which are required to effectuate the regulatory actions of County with respect to the Project.

1.C. Effective Date. This Agreement shall become effective upon the recordation of the Agreement, which shall be no later than two months after County's approval of this Agreement. This Agreement shall be recorded against the Property at Developer's expense not more than ten (10) days after County enters into this Agreement, as required by California Government Code section 65868.5 and County Code.

1.D. Term. The term of this Agreement shall commence upon the Effective Date and shall extend 30-years until December 31, 2050 or ninety (90) days following the "**Project Build-**

out” as hereinafter defined, whichever is earlier. This Agreement may be extended by the mutual consent of the Parties hereto. For purposes of this Agreement, “Project Build-out” shall mean the date on which the permit final inspection (or comparable instrument) is completed for the last Project improvement or residential home or other structure to be constructed pursuant to the STMP. Following the expiration of said term, except as otherwise provided for in this Agreement, this Agreement shall be deemed terminated and of no further force and effect. However, Developer’s right to receive reimbursement as provided for infrastructure improvements and County’s promise to form or impose reimbursement mechanisms, if any, shall survive the term of this Agreement until full reimbursement is received by Developer or for ten (10) additional years, whichever occurs first.

1.E. Priority Enactment. In the event of conflict between the Development Agreement and the County Approvals, the Parties agree that the County Approvals are superior to the Agreement.

1.F. Amendment to Agreement. This Agreement may be amended from time to time by mutual written consent of County and Developer (and/or any successor owner of any portion of the Property 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 the approved Master Plan land use designation or zoning of less than the entirety of the Property, then such amendment need only be approved by the owner(s) in fee of the portion(s) of the Property that is subject to or affected by such amendment. If the proposed amendment or minor modification would significantly reduce the amount of revenue anticipated to be received by the County to the extent that County is unable to fund or maintain facilities and/or service commitments to the Property, Developer agrees County may adjust or modify any fee or assessment to mitigate the impact.

1.G. Operating Memorandum. County and Developer may implement or clarify provisions of this Agreement through the execution of an “Operating Memorandum” approved by County and Developer, from time to time during the Term. Any such Operating Memorandum shall be automatically deemed a part of this Agreement, but approval, implementation and/or amendment thereof shall not constitute or require an amendment to the Agreement or require public notice or hearing. In the event a provision of any Operating Memorandum conflicts with this Agreement, the Agreement shall control. Such memorandums shall be used for agreed upon extensions of time to perform under this agreement.

1.H. Agreement is Between Developer and County. This Agreement is between Developer and County. Unless otherwise provided by law or provisions of this Agreement, this Agreement does not apply to other governmental agencies not party to this Agreement and whose permit or approval authority is not exercised through, by, or on behalf of County. This Agreement has no effect on the rules, regulations, and fees of other governmental agencies that may have independent permit or approval authority over the Project, including but not limited to, the Coastal Commission and other Non-County Responsible Agencies, and whose permit or approval authority is not exercised through, by, or on behalf of County.

1.I. Project is a Private Undertaking. It is agreed among the Parties that the Project is a private development and the County has no interest therein except as authorized in the exercise of its governmental functions.

1.J. Assignment and Assumption. From and after recordation of this Agreement against the Property, Developer and Developer's successors in interest shall 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 Developer, or its successors in interest, as applicable, and assumption by the assignee of such assignment in the form attached hereto as Exhibit G, and the conveyance of Developer's interest in the Property related thereto, Developer shall, subject to the County's approval not to be unreasonably withheld, conditioned, or delayed, 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 Developer, with all rights and obligations related thereto, with respect to such conveyed property. Developer shall remain subject to that portion of the Agreement that is not so assigned. In determining whether to grant or deny such approval, County shall review the experience and financial resources of the proposed assignee for the purpose of determining the assignee's ability to implement the Project in conformance with the County Approvals and this Agreement.

Section 2. Definitions.

In this Agreement, unless the context otherwise requires:

2.A. "Coastal Development Permit" or "CDP" shall mean a coastal development permit issued by the County pursuant to the certified LCP (HBAP), as amended, or Coastal Commission.

2.B. "Comprehensive Division" shall mean the comprehensive division of Master Parcel 2 (the parcel of land created through the final subdivision maps) in accordance with the requirements set forth in Policy 1B of Chapter 4 (Land Use Designation) of the HBAP related to the Samoa Town Plan Land Use Overlay Designation and Development Policies for this Overlay Designation as adopted by the County Board of Supervisors on December 6, 2011.

2.C. "County" shall mean the County of Humboldt, agencies under its jurisdiction, and agents, officers, employees, representatives and/or any others acting for, by or under the direction of the County. County does not refer to Non-County Responsible Agencies, as defined in this Agreement.

2.D. "Develop" or "Development" shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms "Develop" and "Development," as used herein, do not include the

maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

2.E. "Development Plan" shall mean all of the land use entitlements, approvals, and permits approved by the County and/or Coastal Commission for the Project Site on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement.

2.F. "Development Standards" shall mean the Development Agreement and County Approvals, including but not limited to the General Plan Amendment (as modified by the Coastal Commission for LCP Amendment No. HUM-MAJ-01-08 and LCP-1-HUM-14-0004-1), including the amendment of the land use map, Zone Reclassification, and Urban Limit Line Extension associated with the STMP and approved by the County on December 6, 2011, as well as the amendments reflected by Resolutions No. 16-48 and 16-49, and Ordinance 2549 (LCP Amendment No. LCP-1-HUM-15-0004-1). If (a) a CDP consistent with the certified Local Coastal Program is issued for the Project; and (b) public notice consistent with the CDP is recorded, then the land use designations and zoning approved by the Coastal Commission with suggested modifications in its action on Humboldt County LCP Amendment No. HUM-MAJ-01-08 and LCP-1-HUM-15-0004-1, and adopted by the County as part of the County Approvals, shall become the Development Standards applicable to the Project Site.

2.G. "General Plan" shall mean the Humboldt County General Plan, including the text, maps, and Humboldt Bay Area Plan, as amended in connection with the Project and the text, maps, and amendments to the Humboldt Bay Area Plan that will become effective upon satisfaction of the conditions of approval for the Project.

2.H. "Non-County Responsible Agencies" or "Non-City Responsible Agency" or "Trustee Responsible Agencies," means any governmental agency or agencies with remaining approval or appeal authority over some aspect of the Project, including but not limited to the Humboldt Local Agency Formation ("LAFCO"), the California Regional Water Quality Control Board and the Coastal Commission. Non-County Responsible Agencies are not bound by this Agreement for purposes of issuing any remaining permit or approval which may be otherwise required by law.

2.I. "Non-County Subsequent Approvals" shall mean those permits and approvals necessary to implement the Project Approvals that have not been conferred or delegated to the County as of the Effective Date of this Agreement, with the understanding that except as expressly set forth herein, Non-County Responsible Agencies reserve the right to issue permits and approvals which remain within their discretion.

2.J. "Project" shall include all on-site and off-site improvements approved for implementation of the STMP that Developer is authorized and/or required to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, pursuant to the STMP and related plans, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

2.K “Subsequent County Approvals” shall mean those County approvals necessary to implement the Project Approvals that have not been conferred as of the Effective Date of this Agreement.

Section 3. Development of the Project Site.

3.A. Vested Right to Develop. It is agreed that the development rights, obligations, terms and conditions specified in this Agreement are fully vested in the Developer and may not be changed, modified, invalidated or otherwise limited by County, whether by administrative action, legislative action, or, to the extent allowed by law, vote of the electorate through initiative, referenda and/or other voting process, except as may be expressly permitted by and in accordance with the terms and conditions of the Development Standards or as expressly consented to by Developer.

Should such vested rights not be exercised during the term of this Agreement by Developer by undertaking and completing the contemplated Project, then such vested rights shall not survive beyond the term of this Agreement and any applicable extensions. Should, in the future within the term of this Agreement, any or all of the Project be destroyed by fire, earthquake, or other similar causes, then the Developer, or its successors, shall have a continuing vested right to rebuild or repair such damaged or destroyed structures, infrastructure, public and private facilities and Property as allowed by law within the term of this Agreement and to continue the vested uses granted hereunder.

3.B. Permitted Uses and Development Standards. The Project shall be developed in accordance with the Development Standards. The maximum permitted uses, density and intensity of use, the maximum height and size of proposed buildings, the construction, installation and extension of public and private improvements, subdivision standards, development guidelines and standards, implementation program for processing of Subsequent County Approvals, and other conditions of development for the Project Site shall be those set forth in the Development Standards.

3.C. Life of Parcel Maps, Subdivision Maps, County Approvals, Subsequent County Approvals and Permits. Except as otherwise required by law, any discretionary land use approval for the Project, including tentative maps, shall be automatically extended for the Term of this Agreement, by the County, if not otherwise vested by substantial construction. The Term of this Agreement and of any parcel map, subdivision map, tentative map, vesting tentative map, final map, or any other map or any other Subsequent County Approvals shall not include any periods of time during which the Project is delayed by unforeseen circumstances beyond the control of the Developer, including, but not limited to, development or building moratoria, or other governmental restrictions of development or building, or lawsuits adverse to the Developer and/or the Project, including any lawsuits which may be filed under the California Environmental Quality Act, the Subdivision Map Act, the Coastal Act or the Planning and Zoning Law. In the event of termination, any tentative subdivision map or tentative parcel map shall remain in effect for twenty-four (24) months. Such tentative subdivision and parcel maps shall also otherwise be eligible for extensions as may be provided for by statute.

3.D. Timing of Development and Phasing; Effect of *Pardee* Decision. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that failure of the parties to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the intent of the Developer and County to cure that deficiency by acknowledging and providing that Developer shall have the right (without the obligation) to develop the Property in such order and at such rate and at such time as it deems appropriate within the exercise of its subjective business judgment, subject to the terms of this Agreement. Phasing shall be in accordance with the Policies of the HBAP for the STMP Land Use Designation Overlay and County approvals as may be amended. Developer may apply for final subdivision maps as the Developer determines in its sole discretion, provided the timing of the application for final subdivision maps complies or is not inconsistent with the Policies of the HBAP for the STMP Land Use Designation Overlay as adopted by the Board of Supervisors and which may be amended by the Board. The County may not impose additional restrictions on the phasing of final maps except as permitted by the Subdivision Map Act.

3.E. Compliance with CEQA. The Parties acknowledge that the Supplemental EIR (SEIR) and Final EIR prepared for the Project complies with CEQA. The Parties further acknowledge that (i) the SEIR and Final MEIR contains a thorough analysis of the Project and possible alternatives to the Project, (ii) The Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (iii) the Board of Supervisors adopted a statement of overriding considerations in connection with the Project, pursuant to CEQA Guidelines Section 15093, for those significant impacts that could not be mitigated to a less than significant level. The SEIR and Final EIR for the Project is intended to be used in connection with each of the Subsequent County Approvals needed for the Project consistent with the Public Resources Code and the CEQA Guidelines, which streamlines the review of the Project and reduces the need to prepare repetitive environmental studies. Consistent with the CEQA policies and requirements applicable to the SEIR and MEIR, the EIRs will be used to the fullest extent allowed by law in connection with the processing of any Subsequent County Approval. Additional environmental review may only be required by County, in strict conformity with the terms and intent of the Public Resources Code and the CEQA Guidelines. (Pub. Resources Code, § 21166; CEQA Guidelines, § 15163.)

3.F. Changes to Development Standards. Only the following changes to the Development Standards shall apply to the development of the Project Site.

3.F.1. Development of the Project Site shall be subject to the rules, regulations, ordinances, and official policies applicable to such development on the Effective Date of Agreement or as will become effective pursuant to the Development Standards and Subsequent County Approvals. To the extent any future changes in the plans, zoning, ordinances, or any future rules, ordinances, regulations, or policies adopted by County purport to be applicable to the Project, the terms of the Agreement shall prevail, unless the Parties thereto mutually agree to amend or modify the Agreement.

3.F.2. The Agreement shall not prevent the County, in subsequent actions applicable to the Property, from applying new rules, regulations, and policies which do not

conflict with the terms and conditions of the Agreement, nor shall the Agreement prevent the County from denying or conditionally approving any subsequent development application on the basis of such existing or new rules, regulations, and policies.

3.F.3. In the event State or federal laws or regulations enacted after the effective date of the Agreement prevent or preclude compliance with one or more provisions of the Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such State or federal laws or regulations. Said modification or suspension shall be noticed and heard in accordance with the procedures set forth in Section 2171-12 of the County Code. The Agreement shall not preclude County from applying to those changes in County plans, regulations and policies which are specifically mandated by changes in State or federal laws or regulations. Provided, however, that said changes shall not be applied to the Project Approvals where County has discretion how to comply with said directives so as to not affect the Project and this Agreement.

3.F.4. Authority of County. This Agreement shall not be construed to limit the authority or obligation of County to hold necessary public hearings, or to limit discretion of County 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 County or any of its officers or officials, provided that subsequent discretionary actions shall comply with the Applicable Rules and shall not unreasonably prevent or delay development of the Property. Nothing in this Agreement shall preclude the County from taking those actions it deems necessary and essential to protect public health and safety; to the extent such actions are inconsistent with the County Approvals, however, the County's actions shall be narrowly tailored to address the identified public health and safety concern, and the County shall minimize any inconsistency with the County Approvals. No official or employee of County shall be personally liable for any default or liability under this Agreement.

Section 4. Obligations of Developer.

In consideration of County entering into this Agreement, Developer agrees that it will comply with this Agreement and County Approvals. The Parties acknowledge that the execution of this Agreement by County is a material consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of this Agreement and County Approvals.

4.A. Development and Connection Fees. Except as otherwise specifically provided in this Agreement, any and all required payments of development and connections by developer shall be made at the time and in the amount specified by County ordinances in effect as of the Effective Date.

4.B. Costs. Developer shall bear all costs associated with applying for and obtaining any necessary Non-County Responsible Agency approvals, including appeals to the Coastal Commission. Developer, at no cost to the County that is not a cost approved by the County, shall be solely responsible for complying with any Non-County Responsible Agency approval(s) and any and all conditions or restrictions imposed as part of a Non-County Responsible Agency approval, whether the conditions are on the Project Site or outside the Project Site. Developer

shall have the right to appeal or contest any condition in any manner permitted by law imposed under any Non-County Responsible Agency approval, but only with the prior consent of County if the County is a co-applicant or co-permittee or the appeal impacts the rights, obligations, or potential liabilities of the County. If Developer demonstrates to the County's satisfaction that an appeal would not affect the County's rights, obligations, or potential liabilities, County shall not unreasonably withhold or delay its consent. In all other cases, County shall have the right to give or withhold its consent in its sole discretion. Developer must pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Non-County Responsible Agency approval(s), and Developer shall indemnify County for all losses relating to Developer's failure to comply with any Non-County Responsible Agency approvals.

Section 5. Obligations of County.

In consideration of Developer entering into this Agreement, County agrees that it will comply with this Agreement, and County Approvals, and will proceed with processing any and all Subsequent County Approvals in accordance with and consistent with the terms of this Agreement and with the County Approvals. The Parties acknowledge that the execution of this Agreement by County is a material consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of this Agreement and County Approvals.

5.A. Vested Rights. Developer is assured, and County agrees, that development rights, terms and conditions as specified in the Development Standards are fully vested in Developer and may not be changed or modified by County except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, or as expressly consented thereto by Developer to the extent such proposed change or modification is applicable thereto.

5.B. No Conflicting Enactments. Other than a referendum overturning this Agreement initiated and passed by the voters of Humboldt County, neither County, nor any agency of County, shall recognize, enact and apply to the Project Site any ordinance, resolution or other measure of any type which would have the effect of invalidating or otherwise limiting the vested rights granted by this Agreement. Except as provided for in this Agreement and the County Approvals no such action or enactment shall dictate any particular sequence, timing or phasing of the Project. By way of example and without limiting the foregoing general statement, and for all purposes pursuant to this Agreement generally, and this Section specifically, an ordinance, resolution or other measure, including an initiative shall be deemed to conflict with this Agreement if the ordinance, resolution or other measure seeks to accomplish any one or more of the following results, either with specific reference to the Project Site or as part of a general enactment that applies to the Project Site:

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

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

(c) Limit or control in any manner the timing or phasing of the construction/development of the Project within any phase of the Development allowed by the County Approvals and this Agreement;

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

(e) Limit the processing of applications for, or procurement of Subsequent County Approvals;

(f) Establish, enact or increase in any manner applicable to the Project, or impose against the Project, any fees, taxes (including, without limitation, general, special, and excise taxes), assessments, liens or other financial obligations other than those specifically permitted by this Agreement as increased from time to time in order to offset inflationary cost adjustments as determined by County;

(g) Initiate, support or establish any assessment district or other public financing mechanism that would include or otherwise burden or affect the Project or the Project Site that has not been established under this Agreement, other than such mechanisms which would apply county-wide and not to the Project specifically.

5.C. Police Power and Taxing Power. County, through the exercise of either its police power or its taxing power, whether by direct County action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees, and other exactions, policies, standards, laws or regulations which directly relate to the Project development. Further, County shall not approve a Mello-Roos assessment, or other type of district to cause bonded indebtedness on any portion of the Project without Developer's prior written approval, which approval may be given or withheld in Developer's sole and absolute discretion. Nothing herein prohibits the Project from being subject to a (i) County-wide bond issue, (ii) County-wide special or general tax, (iii) special –assessment for the construction or maintenance of a County-wide facility as may be voted on by the electorate or otherwise enacted; provided that such tax, assessment or measure is Countywide in nature, does not discriminate against the Land, and does not distinguish between developed and undeveloped parcels, or (iv) increases in land use fees based on an inflation or cost of construction in formula that was adopted as of the effective date, provided that such revised fees apply generally to similar projects or works within the County.

This Agreement shall not be construed to limit the authority of County to charge processing fees for land use approvals, building permits as they relate to plumbing, mechanical, electric or fire code permits, or other similar permits and entitlements which are in force and effect on a County-wide basis at the time those permits are applied for except to the extent any such processing regulations would be inconsistent with this Agreement.

5.D. Credits and Reimbursements.

5.D.1. Credits and Reimbursements. Developer may, pursuant to this Agreement, finance the construction of certain improvements which would otherwise be paid by the County or other parties and which serve other properties or which would be financed by existing County fees. County and Developer agree that, except as otherwise provided in this Agreement, Developer shall be entitled to grants, credits and/or reimbursement for the construction of improvements costing in excess of its fair share for such improvements consistent with the terms of each separate reimbursement/credit or grant program.

5.D.2. Reimbursement by Third Parties. In the case of public improvements, if any, which abut property owned by third persons or for other public improvements that are oversized or extended to benefit property owned by third persons, as analyzed in the environmental impact report and as approved by the County and Coastal Commission, Developer shall be entitled to receive a reimbursement from the benefited property's owner (and not the County) for the pro rata cost of the improvements which exceed Developer's obligation. Reimbursement may be provided directly from the owner abutting such improvements or from a community facilities district or any such other infrastructure financing district if such a district is formed by or includes such properties and includes monies for the construction of said improvements.

County shall use its best efforts, to the extent County has the authority to do so, to impose the obligation to pay said reimbursement, as a condition of development of such benefited property, at the time such property owner requests a discretionary approval or other such entitlement from County for development of the benefited property whereby such condition can be imposed. Such reimbursement shall be due and payable on the earlier of issuance of a building permit on the benefited property, recordation of a final parcel or subdivision map for the benefited property or receipt of funds from an infrastructure financing district that is formed by or includes such benefited property. County's obligation to impose such condition and collect such reimbursement shall terminate upon any termination of this Agreement. County shall have no obligation to make any payments to Developer unless and until it receives any such reimbursement amount from a third-party source.

5.D.3. Reimbursable Hard Costs. The hard costs of construction to be reimbursed to Developer by the County or a third party or to be paid by Developer to any third party in accordance with the terms of this Agreement shall consist of the identifiable and commercially reasonable costs of the design, engineering and construction as actually incurred by Developer or such third party for the reimbursable work.

5.D.4. Interest on Reimbursements. In each case in which this Agreement provides that Developer is entitled to receive reimbursement for improvements from third parties or is required to pay reimbursement to third parties, Developer shall be entitled to receive, or be obligated to pay, interest on the amount to be reimbursed as determined by the Board of Supervisors on a case-by-case basis.

5.D.5. Term for Credits and Reimbursements. County's obligation to provide any credits or to pay any reimbursements to Developer that accrue hereunder shall remain and continue during the term of this Agreement.

5.D.6. Not a Limitation. Nothing in this section 5.F. is intended to or shall be construed to limit Developer from receiving, in consideration of the improvements to be constructed by Developer hereunder, any other credits or reimbursements from County otherwise provided under the existing County policy, rule, regulation or ordinance.

5.D.7. Attribution of Development Fee Credits. County and Developer agree and understand that any fee credits obtained by Developer for Development Fee programs as a result of expenditures of Developer on public infrastructure improvements may be transferred or assigned by Developer to another subsequent landowner or other third party within the Project, but only in the manner provided for in each County reimbursement program that provided for the credit. The transfer of credits shall be in compliance with the requirements and provisions of this Agreement or of the credit agreements, if any, entered into between the County and Developer that granted the fee credits in the first instance.

5.E. Applications for Permits and County Approvals.

5.E.1. Timely Processing. County agrees that it will accept, in good faith, for processing review and action, all complete applications for development permits or other entitlements for use of the Property in accordance with the County Approvals and this Agreement, and shall exercise its best efforts to act upon such applications in an expeditious manner. Accordingly, to the extent that the applications and submittals are in conformity with the County Approvals, applicable law, and this Agreement, County agrees to diligently and promptly accept, review and take timely action on all Subsequent County Approvals and any environmental review required thereon in furtherance of the Project. Similarly, County shall promptly and diligently review and approve improvement plans, conduct construction inspections and accept completed facilities.

5.E.2. Cooperation to Obtain Permits. The Parties acknowledge that implementation and development of the Project will require approval of Non-County Responsible Agencies. In addition, the Coastal Commission retains limited appeal jurisdiction over the Project. The County will cooperate with reasonable requests by Developer to obtain permits, agreements, or approvals from Non-County Responsible Agencies and to cooperate with Developer in response to any appeals of any Subsequent County Approvals made to the Coastal Commission. The County's commitment to Developer under this Agreement is subject to the following conditions:

(a) Throughout the approval or appeal process for any Non-County Responsible Agency approval or appeal, Developer shall consult and coordinate with County, and County shall cooperate reasonably with Developer.

(b) Developer shall not agree to conditions or restrictions in any Non-County Responsible Agency approvals that could create any obligations on the part of the County, unless County agrees to assume such obligations.

5.F. Overriding Federal and State Laws and Regulations.

5.F.1 Federal and state laws and regulations that override Developer's vested rights set forth in this Agreement, shall apply to the Property, together with any non-discriminatory County ordinances, resolutions, regulations, and official policies that are necessary to enable County to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Developer does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or County law or regulation; and (ii) upon the discovery of any such overriding federal, state, or County law or regulation that is not consistent with the provisions of this Agreement or otherwise prevents or precludes compliance with any provision of this Agreement, County or Developer shall provide to the other Party a written notice identifying the federal, state, or County law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter County and Developer shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or County law or regulation. In such negotiations, County and Developer agree to preserve the terms of this Agreement to the maximum feasible extent while resolving the conflict. County also agrees to process in a prompt manner Developer's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or County law or regulation; provided, however, that the approval of such changes by County shall be subject to the discretion of County, consistent with this Agreement.

Section 6. Default, Enforcement, Termination.

6.A General Provisions. Subject to extensions of time by mutual consent in writing, failure or delay by either County, Developer or member of Developer 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 term or condition of this Agreement, the Party alleging such default or breach shall give the other Party or Developer not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be cured. During any such thirty (30) day period, the Party or Developer charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Developer to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to California Government Code Section 65868 and any regulations of the County implementing said Government Code section. Following notice of intent to terminate, 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 County within thirty (30) calendar days.

Following consideration of the evidence presented in said review before County and an additional 30-day period to cure, either party alleging the default by the other party or member of Developer may institute legal proceedings or 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 a party is in default following the completion of the normally scheduled periodic review, said party may give written notice of termination of this Agreement specifying in said notice the alleged nature of the default, and potential actions to cure said default where appropriate, if the alleged default is not cured in thirty (30) days or within such longer period specified in the notice, or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by County or Developer.

6.B. Annual Review. County shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every twelve (12) months from the date this Agreement is entered into. 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, Section 2171-17 of Title II, Division 17 of the County 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 a statement that any review of obligations of Developer as set forth in this Agreement may result in termination of this Agreement. The Planning Commission, after a public hearing, shall determine on the basis of substantial evidence whether or not the Developer has, for the period under review, complied in good faith with the terms and conditions of this Agreement. A finding by the Planning Commission of good faith compliance by Developer with the terms of this Agreement shall be conclusive with respect to the performance of Developer during the period preceding the review.

Upon not less than sixty (60) days' notice by the County, Developer shall provide evidence at least thirty (30) days prior to the scheduled hearing in order to prove compliance with this Agreement.

6.C. Enforced Delay: Extension of Time 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 defaults are due to war, insurrection, strikes, walk-outs, riots, floods, force of nature, earthquakes, fires, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the County Approvals, Subsequent County Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project pursuant to this Agreement shall be deemed to create an excusable delay as to Developer. Upon the request of either party hereto, 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 by Developer and the County Manager.

6.D. Permitted Extensions by County. The County, in its reasonable discretion, may extend the time for performance by Developer of any obligation hereunder during the term of this Agreement. Any such extension shall not require an amendment to this Agreement, so long as such extension only involves the time for performance thereof and does not change the obligations to be performed by Developer as a condition of such extension.

6.E. Applicable Law/Venue/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Humboldt, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court. If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

6.F. Termination.

6.F.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term or when the Project Site has been fully developed and all of Developer's obligations in connection therewith are satisfied as determined by County. 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 County for occupancy. Further, this Agreement shall automatically terminate upon entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement or upon the adoption of a referendum measure overriding or repealing the ordinance approving this Agreement. Upon termination of this Agreement, in whole or in part, County shall record a notice of termination in a form, which may be reasonably required by a title company.

6.F.2. Effect of Termination upon Developer Obligations. If this Agreement is terminated following any event of default of Developer 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 County. Furthermore, no termination of this Agreement shall prevent Developer from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the County 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.

6.F.3. Effect of Termination upon County. Upon any termination of this Agreement as to Developer of the Project Site, 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 Project Site affected by such termination (provided vesting of such entitlements, conditions or fees may then be established for such property pursuant to then-existing planning and zoning laws) 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 the Project Site or any portion thereof.

7. Miscellaneous Provisions.

7.A. Enforceability. The County agrees that, except as otherwise provided in this Agreement (specifically Section 6, above), unless this Agreement is amended or canceled pursuant to the provisions of this Agreement and the adopting ordinance, this Agreement shall be enforceable according to its terms by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building regulation adopted by County, or by initiative, which changes, alters or amends the rules, regulations and policies applicable to the Project at the time of approval of this Agreement, as provided by Government Code Section 65866.

7.B. Notices. Any notice or communication required hereunder between County or Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested, or by overnight or other courier service. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after refusal of delivery of a registered or certified letter containing such notice, properly addressed, with postage prepaid. If personally delivered, a notice shall be deemed to have been given when delivered to the party or refused by the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to County, to:
Humboldt County Planning and Building Department
3105 H Street
Humboldt, California 95501
Attn: Planning Director

With a CC, to:
Office of the County Counsel
County of Humboldt

825 Fifth Street, Suite 110
Eureka, CA 95501

If to Developer, to:
Samoa Pacific Group, LLC
5251 Ericson Way
Arcata, California 95521
Attn: Dan Johnson

With a CC, to:
Remy Moose Manley, LLP
555 Capitol Mall, Suite 800
Sacramento, CA 95814
Attn: Andrea K. Leisy

7.C. Estoppel Certificate. Within forty-five (45) days following any written request which either party may make from time to time, the other party to this Agreement shall execute and deliver to the requesting party a statement certifying that: (i) 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 modification; (ii) There are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) Any other reasonable information requested.

The failure to deliver such a statement within such time shall constitute a conclusive presumption against the party which fails to deliver such statement that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting parties, and as to such other information reasonably requested by the requesting party. Developer shall be entitled to one estoppel certificate per year without any fee being assessed by County. For any additional estoppel certificates requested in a single year County may charge Developer a reasonable fee directly related to the actual cost to prepare the certificate. County acknowledges that a certificate hereunder may be relied on by transferees and mortgages of Developer.

7.D. Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer'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. County 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 Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. County will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(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.

(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 the County in the manner specified herein for giving notices, shall be entitled to receive written notification from County of any default by Developer in the performance of Developer's obligations under this Agreement.

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

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement.

7.E. Third Party Beneficiary. Nothing herein shall be construed to create any right of a third party to enforce this Agreement or to seek any benefit therefrom.

7.F. Third Party Challenger. Developer shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless County, its officers, agents, employees, and independent contractors from any claim, action or proceeding against County, its officers, agents, employees, or independent contractors to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. County shall promptly notify Developer of any such claim, action or proceeding, and County shall cooperate in the defense. If County fails to promptly notify Developer of any such claim, action or proceeding, or if County fails to cooperate in the defense, Developer shall not thereafter be responsible to defend, indemnify, or hold harmless County. County may in its discretion participate in the defense of any such claim, action or proceeding.

7.G. General Insurance Requirements. Without limiting the parties' indemnification obligations hereunder, each party shall maintain in full force and effect, at its own expense, any and all appropriate insurance policies including, but not limited to: comprehensive general liability insurance, comprehensive automobile insurance, workers' compensation, and professional liability policies.

7.H. Indemnity. In addition to the provisions of 7.F. above, Developer shall indemnify and hold County, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of Developer, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (Developer's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities

contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of County. Developer shall defend, at its expense, including attorneys' fees, County, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. COUNTY may in its discretion participate in the defense of any such legal action.

7.I. Environment Assurances. Developer shall indemnify and hold County, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of Developer, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and Developer shall defend, at its expense, including attorneys' fees, County, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. County may in its discretion participate in the defense of any such action.

7.J. Reservation of Rights. With respect to Sections 7.F., 7.H., and 7.I. herein, County reserves the right to either (1) approve the attorney(s) which Developer selects, hires or otherwise engages to defend County hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that Developer shall reimburse County forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

7.K. Survival. The provisions of Sections 6 and 7.E. through 7.I. inclusive, shall survive the termination of this Agreement.

7.L. Consistency with General Plan. County hereby finds and determines that execution of this Agreement furthers the public health, safety, and general welfare of the community and that the provisions of this Agreement are consistent with the General Plan, including the Humboldt Bay Area Plan, as amended by the Project.

7.M. 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 or unenforceable, or, if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of California which became effective after the Effective Date of the adopting ordinance, and either party in good faith determines such provisions are substantial material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

7.N. 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.

7.O. Conflict Between Agreement and Exhibits. If a conflict exists between the terms of the Agreement and the Exhibits, the Agreement shall control over the inconsistent portion of any exhibit. The County Approvals contained in Exhibits hereto may be amended pursuant to and consistent with this Agreement without amendment to this Agreement.

7.P. 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.

7.Q. Entire Agreement: Counterparts and Exhibits. This Agreement is executed in three (3) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 27 pages and Exhibits A through G which constitute, in full, the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

7.R. Binding Effect and Recordation of Development Agreement. The burden of this Agreement shall bind, and its benefits shall inure to the successors-in-interest of the County and Developer. No later than ten (10) days after County enters into this Agreement, the County Clerk shall at Developer's expense record an executed copy of this Agreement in the Official Records of the County of Humboldt.

7.S. Authority to Execute. Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the day and year first above written.

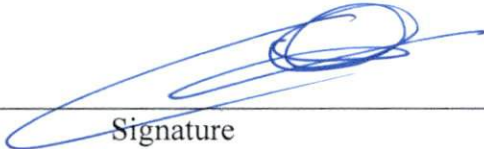
Samoa Pacific Group, LLC
a California limited liability company
First Corporate Officer

By:  _____
Signature

Name and Title: Dan Johnson, Member

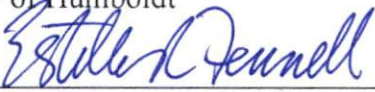
Second Corporate Officer

Samoa Pacific Group, LLC
a California corporation


By: 
Signature

Name and Title: Lane DeVries, Member

County:
County of Humboldt


By: 
Chairman, Board of Supervisors
Estelle Fennell

ATTEST: County Clerk

By: 
Its: Ryan Sharp, Deputy Clerk Board of Supervisors

APPROVED AS TO FORM

County Counsel

By: 
Natalie A. Duke

Exhibits A through G

Exhibit A – STMP Site Plan

Exhibit B – STMP Legal Description

Exhibit C – STMP Zoning Map

Exhibit D – STMP County Approvals, including:

D1 – Planning Commission Resolution Number 08-01

D2 – Board of Supervisors Resolution Number 09-85

D3 – Board of Supervisors Resolution Number 11-94

D4 – Board of Supervisors Resolution Number 11-95

D5 – Board of Supervisors Resolution Number 12-62

D6 – Board of Supervisors Resolution Number 12-63

D7 – Board of Supervisors Resolution Number 16-48

D8 – Board of Supervisors Resolution Number 16-49

D9 – Board of Supervisors Ordinance Number 2644

D10 – Board of Supervisors Ordinance Number 2482

D11 – Board of Supervisors Ordinance Number 2549

D12 – Planning Commission Resolution Number 20-15

D13 – Planning Commission Resolution Number 20-39

D14 – Planning Commission Resolution Number 20-40

D15 – STMP Humboldt Bay Area Plan Final Text

Exhibit E – Coastal Dune Property & Legal Description + Real Property to be Conveyed to Community Services District

Exhibit F – Parking and Trail Improvements

Exhibit G – Assumption of Assignment Form for Future Assignees