

“M”

Development Agreement

ORDINANCE NO. _____

**AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS,
STATE OF CALIFORNIA, APPROVING THE DEVELOPMENT
AGREEMENT BETWEEN NAPA COUNTY AND CAYMUS VINEYARDS**

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864-65869.5 (the “Development Agreement Statute”), authorizing municipalities to enter into development agreements in connection with the development of real property within their jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property which is the subject of such development agreement; and

WHEREAS, the purpose of the Development Agreement Statute is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations; and

WHEREAS, Caymus Vineyards (“Landowner”) is a California Corporation and is in good standing thereunder and is qualified to do business in California; and

WHEREAS, Landowner owns holds legal or equitable interests in a 69.5 acre parcel of real property in Napa County located at 8700 Conn Creek Road, Rutherford, California, designated by Assessor’s Parcel Number (APN) 030-200-066 (the “Property”), and is more particularly described in the legal description shown on Exhibit A and depicted on the site map shown on Exhibit B to the form of Development Agreement attached to this Ordinance as Attachment 1; and

WHEREAS, Landowner has proposed a request to modify the winery's existing use permit (U-437888) in two-phases encompassing the following (the “Project”):

- **Phase One.** A decrease of current wine production to a maximum annual production of 110,000 gallons per year (except as provided in the Project Approval relating to the 2016 and 2017 vintages), realignment of the winery

driveway and access off Conn Creek Road, demolition of Buildings B2, B6, B7 and B8; remodeling of Building B5; recognition of pre-1990 marketing events and public visitation; installation of fire suppression systems within existing buildings and associated outdoor water storage tanks; remodeling of Building B3; removal of concrete pad on the east side of B3 after the 2016 harvest; removal of the retaining wall and slab immediately to the south of the bridge on the west bank of the creek; restoration of the creek bank; recognition of Winery Development Area of approximately 82,000 square feet within the footprint of the pre-WDO 98,000 square foot Winery Development Area; on-premises consumption and sale of wine consistent with Business and Professions Code Sections 23358, 23390 and 23396.5 and the PBES Director's July 17, 2008 memo, "Assembly Bill 2004 (Evans) and the Sale of Wine for Consumption On-Premises;" food and wine pairing for visitors; repairing and upgrading the domestic leach field area on the south side of Building B5; and maintaining Building B9 for residential use during Phase One.

- **Phase Two.** Demolition of Building B9 and construction of an 8,205 square foot agricultural greenhouse; increasing annual wine production by 550,000 gallons, for a total maximum annual production of 660,000 gallons per year in accordance with the approved use permit modification; and upgrading the existing process wastewater system.

WHEREAS, on February 9, 2016, the Board of Supervisors approved a Term Sheet between the County and Landowner, setting forth material terms upon which the County and Landowner would negotiate and enter into the Development Agreement; and

WHEREAS, County has determined that the Project is a development for which a development agreement is appropriate. The Development Agreement will eliminate uncertainty in the County's land use planning process and secure orderly development of the Project, assure progressive and timely installation of necessary improvements and mitigation appropriate to each stage of development of the Project, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. The County desires to provide certainty through this Agreement with respect to specific development criteria that will be applicable to the Property in accordance with sound planning principles. The Development Agreement, if approved, would guide development within the existing winery development area, define the Landowner's status and rights as a pre-WDO winery, and define the rights and obligations of County and the Landowner; and

WHEREAS, after conducting a duly noticed public hearing in accordance with the Development Agreement Statute, the Planning Commission by a vote of _____, on March 23, 2016, recommended that the Board _____;

WHEREAS, thereafter on _____, 2016, the Board held a duly noticed public hearing on the Development Agreement pursuant to the Development Agreement Statute.

NOW, THEREFORE, the Napa County Board of Supervisors, State of California, ordains as follows:

SECTION 1. The above recitals are true and correct.

SECTION 2. The Board finds that pursuant to California Government Code Section 65867.5, the Development Agreement is consistent with the County's Zoning Ordinance and the following goals, policies, action items and objectives and programs of the County's General Plan:

Goals: AG/LU-1, AG/LU-3, CIR-1, CON-8, CON-9 , CON-10, CON-11, and CON-13.

Policies: AG/LU-1, AG/LU-2, AG/LU-5, AG/LU-9, AG/LU-13, AG/LU-15, AG/LU-21, AG/LU-118, CIR-5, CON-6, CON-27, CON-48, CON-51, CON-52, CON-53, CON-55, CON-60.5, CON-72, CON-77, CON-81, CIR-6, CIR-7, CIR-8, CIR-13.5, CIR-14, CIR-15, CIR-19, CIR-23, and SAF-20.

SECTION 3. The Board finds that the Project on the Property in the Agricultural Preserve Zoning District approved by the Development Agreement provides substantial public benefits to persons residing or owning property outside the boundary of the Property beyond the exactions for public benefits required in the normal development review process under federal, state or local law, as described in the foregoing recitals and in the Development Agreement. The Board further finds that the Development Agreement is in compliance with Government Code Section 65867 .5 and therefore may be approved.

SECTION 4. The Development Agreement substantially in the form attached hereto as Attachment 1 and incorporated herein by reference between the County and Caymus Vineyards, a California Corporation, is hereby approved. The Board authorizes and directs the County Executive Officer to execute the Development Agreement, subject to any further modifications

that the Executive Officer determines, in consultation with the County Counsel, are in the best interest of the County, do not materially decrease the benefits to or materially increase the obligations or liabilities of the County, and are in compliance with all applicable laws.

SECTION 5. The Project Approval or Subsequent Approval set forth in the Development Agreement shall prevail in the event of any conflict or inconsistency with the County Subdivision Code.

SECTION 6. All actions taken by County officials in preparing and submitted the Development Agreement to the Board for review and consideration are hereby ratified and confirmed, and the Board further authorizes the Executive Officer and any other appropriate officers, agents or employees of the County to take any and all steps as they or any of them deems necessary or appropriate, in consultation with the County Counsel, in order to consummate the matters set forth in the Development Agreement.

SECTION 7. Pursuant to Government Code § 65868.5, the Clerk of the Board of Supervisors shall record with the County Recorder of the County of Napa a copy of the Development Agreement within ten (10) days after the Development Agreement is fully executed.

SECTION 8. This ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 9. A summary of this ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in Napa County, together with the names of members voting for and against the same.

The foregoing Ordinance was recommended for adoption and public hearing held thereon before the Napa County Planning Commission at a special meeting of the Commission on the 23rd day of March, 2016. The Planning Commission's recommendation was considered by the

Board of Supervisors and this Ordinance was introduced and read at a regular meeting of the Napa County Board of Supervisors (“the Board”), State of California, held on the ____ day of _____, 2016, and passed at a regular meeting of the Board held on the ____ day of _____, 2016, by the following vote:

AYES: SUPERVISORS _____

 NOES: SUPERVISORS _____
 ABSTAIN: SUPERVISORS _____
 ABSENT: SUPERVISORS _____

 ALFREDO PEDROZA, Chairman of the Board of Supervisors

Attachment No. 1 – Development Agreement

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Laura J. Anderson</u> Deputy County Counsel</p> <p>By: <u>Sue Ingalls</u> County Code Services</p> <p>Date: <u>March 16, 2016</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors</p> <p>By: _____</p>
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I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON _____.

_____, DEPUTY
 GLADYS I. COIL, CLERK OF THE BOARD

ATTACHMENT 1

ATTACHMENT 1

OFFICIAL BUSINESS

Document entitled to free recording
Government Code Section 27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Napa County
1195 Third Street, Suite 310
Napa, California 94559

Attention: Clerk of the Board of Supervisors

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**DEVELOPMENT AGREEMENT
BY AND BETWEEN**

NAPA COUNTY

AND

CAYMUS VINEYARDS

TABLE OF CONTENTS

	<u>Page</u>
1. Incorporation of Exhibits and Recitals	5
2. Definitions	5
2.1 Adoption Date	5
2.2 Agreement	5
2.3 Amendment to Judgment	5
2.4 Annual Review Date	5
2.5 Applicable Rules	5
2.6 Application	5
2.7 Board	5
2.8 CEQA	5
2.9 Claims	5
2.10 Commission	5
2.11 Complaining Party	5
2.12 County	5
2.13 Default	6
2.14 Development Agreement Statute	6
2.15 Director	6
2.16 Effective Date	6
2.17 Enhancements	6
2.18 Judgment	6
2.19 Landowner	6
2.20 Landowner Affiliates	6
2.21 Minor Amendment	6
2.22 Party	6
2.23 Party in Default	6
2.24 Permit Deadline	6
2.25 Permitted Delay	6
2.26 Prevailing Party	6
2.27 Project	6
2.28 Project Approval	6
2.29 Property	6
2.30 Public Benefits	6
2.31 Road Realignment	6
2.32 Submittal Deadline	6
2.33 Subsequent Rule	6
2.34 Substantive Amendment	6
2.35 Term	7
2.36 Timely	7
2.37 Transferee	7
2.38 Use Permit	7
2.39 WDO	7
3. Parties to the Development Agreement	7

4.	Description of Property	7
5.	Interest of Landowner	7
6.	Relationship of County and Landowner.....	7
7.	Execution and Recording; Effective Date; Term.....	7
	7.1 Execution and Recording	7
	7.2 Effective Date	8
	7.3 Term.....	8
	7.4 Extension of Term Due to Litigation.....	8
	7.5 Rights and Obligation Upon Expiration of the Term or Earlier Termination.....	8
8.	Vested Rights.....	8
	8.1 Vested Rights and Permitted Uses.....	8
9.	Applicable Rules.....	9
10.	Subsequent Rules and Approvals.....	10
	10.1 Conflicting Actions.....	10
	10.2 Change in State or Federal Law	11
11.	Subsequent Approvals.....	11
12.	Project Summary and Public Benefits	11
	12.1 Project Summary	11
	12.2 Public Benefits.....	12
	12.3 Production of Wine Over 110,000 Gallons	12
	12.4 Wine Production Levels	13
	12.5 Review of Revenue and Taxation Forms	13
	12.6 Public Right of Way to Landowner.....	13
	12.7 Benefits to Landowner.....	13
13.	Transfers and Assignments.....	13
	13.1 Transfers Generally	13
	13.2 Effect of Transfer; Agreement Binding on Successors and Assigns	13
	13.3 Constructive Notice.....	14
14.	Lender Obligations and Protections.....	14
	14.1 Encumbrances on Property	14
	14.2 Mortgagee Obligations	14
	14.3 Mortgagee Protection	14
	14.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure	14

15.	Estoppel Certificate	15
16.	Annual Review	15
16.1	Review Date	15
16.2	Required Information from Landowner	15
16.3	County Report	16
16.4	Non-compliance with Agreement; Hearing	16
16.5	Appeal of Determination	16
16.6	Costs	16
16.7	No Limits on Remedies for Default	17
17.	Indemnification	17
18.	Amendment, Cancellation, or Suspension	17
18.1	Modification Because of Conflict with State or Federal Laws	17
18.2	Amendment by Mutual Consent	17
18.3	Substantive Amendments	18
18.4	Minor Amendment	18
18.5	Amendment Exemptions	18
18.6	Cancellation by Mutual Consent	18
18.7	Suspension by County	18
19.	Default	18
19.1	Default by Landowner	18
19.2	Default by County	19
20.	Remedies for Default	19
21.	Procedure Regarding Defaults	19
21.1	Notice; Meet and Confer	20
21.2	Cure	20
21.3	Failure to Assert	20
22.	Attorneys' Fees and Costs in Legal Actions by Parties to the Agreement	20
23.	Attorneys' Fees and Costs in Legal Actions by Third Parties	21
24.	Third Party Court Action/Limitation on Action	21
25.	Agreement Runs with the Land	21
26.	Excuse for Nonperformance	21
27.	Third Party Beneficiary	22
28.	Notice	22

29.	Severability	23
30.	Waiver; Remedies Cumulative	23
31.	Applicable Law and Venue	23
32.	Further Assurances.....	23
33.	Not a Public Dedication	23
34.	Entire Agreement.....	23
35.	Form of Agreement; Entirety; Recordation; Exhibits	24
36.	Construction of Agreement.....	24
37.	Signature Pages	25
38.	Time Is of the Essence.....	25
39.	Enforcement	25
40.	Non-Liability of County Officers and Employees.....	25
41.	Authority to Execute.....	25
42.	Bankruptcy	25

**DEVELOPMENT AGREEMENT
CAYMUS VINEYARDS**

This Development Agreement (the “**Agreement**”) is entered into on this day of , 2016, by and between **Napa County**, a political subdivision of the State of California (the “**County**”) and **Caymus Vineyards**, a California corporation (the “**Landowner**”). County and Landowner and their respective successors and Transferees are collectively referred to in this Agreement as the “**Parties**” and singularly as a “**Party**.”

RECITALS

A. **Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the legislature of California adopted Government Code Sections 65864, et seq. (the “**Development Agreement Statute**”), which authorizes the County and any person having a legal or equitable interest in real property to enter into a development agreement, establishing certain development rights in the property that is the subject of the development project application. The purpose of the Development Agreement Statute is to authorize local agencies, in their discretion, to establish certain development rights regardless of intervening changes in land use regulations.

B. **Property; Landowner; Affiliates.** Landowner holds legal or equitable interests in a parcel of real property in Napa County located at 8700 Conn Creek Road, Rutherford, California, designated by Assessor’s Parcel Number (APN) 030-200-066, and is more particularly described in the legal description attached hereto as Exhibit A (the “**Property**”) and depicted on the site map attached hereto as Exhibit B.

Landowner and its affiliates (the “**Landowner Affiliates**”) produce a variety of wines. Landowner Affiliates include any wine-making entity that is owned or controlled, in whole or in part, by Landowner or by Landowner’s principal or his children, or other lineal descendants, or other successors and assigns.

C. **Historical Background.**

Landowner began operating a winery on the Property in 1972, prior to enactment of the zoning ordinance in 1974 which required a use permit for wineries in Napa County. In 1988, Landowner applied for a use permit, triggered by their request to expand the winery by constructing a new building on the Property. Landowner did not request recognition by the County at that time of its existing marketing activities. The County issued Landowner use permit #U-438788 (the “**Use Permit**”) for Landowner’s winery operations on the Property.

C.1. The Use Permit was filed prior to the Napa County Board of Supervisors (the “**Board**”) adopting an interim ordinance on August 16, 1988 stopping the processing of most applications for new wineries, and expansion of existing wineries or small wineries after August 8, 1988. Because Landowner filed on or before August 8, 1988, it was afforded a grace period until September 15, 1988 to submit information to the County to complete the Use Permit application. The Use Permit application was deemed complete, underwent CEQA review, and was acted upon by the Napa County Planning Commission (the “**Planning Commission**”) on September 7, 1988.

C.2. The Use Permit application described the proposed use as a “Main Building: Case Good and Barrel Storage Tasting Facility: New Facility for Existing Public Wine Tasting and Retail Sales Operations.” Among other things, the application reported “initial/current production” of wine as 110,000 gallons per year. In response to the line item for “production capacity requested,” the application reported “N/A.”

C.3. In 2009, Landowner was randomly selected to participate in the County’s wine audit. As a result of the wine audit, a dispute arose between Landowner and the County as to whether Landowner was abiding by the terms of the Use Permit. In 2011, as a part of the ongoing compliance effort, the County requested copies of the Landowner's Federal ATTB (Alcohol and Tobacco Tax and Trade Bureau) forms. The forms indicated that production levels had increased further to 1.2 million gallons annually. By 2012, annual production had increased by 1.3 million gallons. During this time, two additional issues arose. The first was a difference between the County and Landowner with regards to the level of public tours and tasting room visitation that had been legally allowed under the Use Permit. The second was a dispute as to whether the winery had exceeded its pre-WDO (Winery Definition Ordinance) "development area" and therefore whether wine production in excess of 110,000 gallons per year was subject to the 75 percent local grape source requirement.

C.4. A Use Permit Modification was filed by Landowner in July of 2012, to allow the existing winery to make improvements in two phases. After review of the application, the County alleged that there were violations concerning the construction of buildings without permit and the re-use of existing structures without permit, as well as other unauthorized improvements.

C.5. As part of the resolution of that dispute, Landowner filed an application on July 5, 2012 for Use Permit Modification (No. P12-00221) to increase its wine production, among other things (as amended from time to time, the “**Application**”). The first amendment to the Application was filed on May 29, 2013.

C.6. On August 5, 2013, the Parties resolved their dispute via the entry of a Final Judgment Pursuant to Stipulation (the “**Judgment**”) by the Napa County Superior Court, which is attached hereto as Exhibit C. In the Judgment, the Parties, without admitting any liability whatsoever and desiring to avoid further litigation, agreed that Landowner would undertake certain improvements and modifications to the Property and would modify its Use Permit Application.

C.7. Landowner thereafter filed an amended Application on October 31, 2013, as well as further amendments and/or responses to comments by the County on August 28, 2014, October 14, 2014, January 20, 2015, April 28, 2015, and October 19, 2015. The April 28, 2015 application submittal is attached hereto as Exhibit D.

C.8. On June 9, 2015, pursuant to an Amendment to Judgment Pursuant to Stipulation entered by the Napa County Superior Court (the “**Amendment to Judgment**”), attached hereto as Exhibit E, the Parties stipulated that Landowner’s Application was complete pursuant to the Permit Streamlining Act (California Government Code Sections 65920 et seq.); that the County would review the submittal and determine whether the project described by the Application (the

“**Project**”) was subject to review under the California Environmental Quality Act (“**CEQA**”); and that Landowner would make certain further improvements and modifications to its Property. The Parties further stipulated that various areas of the winery could continue to be occupied under a Temporary Certificate of Occupancy until December 5, 2016 in order to continue producing 1.8 million gallons of wine, or such later date as established by the Court.

D. **Reduced Project Description.** On August 3, 2015, Landowner proposed a Reduced Project Description, attached hereto as Exhibit F, in which the total requested production capacity would be reduced from 1.8 million gallons to a maximum of 660,000 gallons, the request for certain additional marketing activities would be abandoned, and the Project construction would be staggered to occur in two phases. In Phase One, Landowner proposed to, among other things, decrease production to 110,000 gallons; demolish Buildings B2, B6, B7, and B8; remodel Buildings B3 and B5; remove one driveway to the Property; and move the driveway and winery entrance. In Phase Two, Landowner proposed to, among other things, increase production by 550,000 gallons for a total of 660,000 gallons of wine per year, demolish Building B9 and construct an 8,205 square foot agricultural greenhouse.

D.1. Shortly thereafter, Landowner also provided documentation showing that the marketing and visitation levels at the winery prior to the adoption of the County’s WDO were generally consistent with those levels reported in the Reduced Project Description.

E. **Environmental Review.** On September 1, 2015, in a letter attached hereto as Exhibit G, the County preliminarily determined the Project was exempt from environmental review under various categorical exemptions to CEQA.

F. **Board Direction on Terms.** In an effort to resolve all pending disputes between the Parties and to define the rights and obligations of the Parties, on February 9, 2016, the Board held a public meeting and took public testimony regarding the terms and conditions of a proposed development agreement with Landowner. After considering public, staff and Landowner comments, the Board provided direction to County staff consistent with the terms herein.

G. **Planning Commission Public Hearing.** On March 16, 2016, at a duly noticed public hearing, the Commission, serving as the County’s planning agency for purposes of development agreement review pursuant to Government Code Section 65867, considered this Agreement. The Commission also considered the use permit Application. The Commission recommended that the Board [REDACTED].

H. **Project Approvals.** The County has adopted the following land use approval (the “**Project Approval**”) for Landowner’s Application and Project located on the Property, which Project Approval includes and is the subject of this Agreement:

Use Permit Modification No. P12-00221-UP, recommended for approval of the Project by the Planning Commission and approved by the Napa County Board of Supervisors on [REDACTED], 2016, attached hereto as Exhibit H.

I. **Appropriateness of Development Agreement.** The County has determined a development agreement is appropriate for this Project. A development agreement will eliminate

uncertainty in the County's land use planning process and secure orderly development of the Project consistent with the Project Approvals, assure progressive and timely installation of necessary improvements appropriate to each stage of Project development, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. The County desires to provide certainty through this Agreement with respect to specific development criteria that will be applicable to the Property in accordance with sound planning principles. The Development Agreement guides development within the existing winery development area, defines the Landowner's status and rights as a pre-WDO winery, and defines the rights and obligations of the Parties.

J. Public Benefits Provided Pursuant to the Development Agreement. The Board has determined that the development of the Project will afford the County and its citizens and the surrounding region with the following primary benefits (all as set further forth in Section 12.2 of this Agreement), which include both public benefits provided by the Project in accordance with the Project Approvals and public benefits in excess of those which could be expected from the Project in absence of this Agreement (collectively, the "**Public Benefits**"):

J.1. Landowner agrees to make certain enhancements to the roadway along the front of the Property namely: (a) realignment of the State Highway 128 and Conn Creek Road intersection as generally depicted in Exhibit J attached hereto ("**Road Realignment**"); and (b) installation of a left-hand turn lane for southbound traffic on Highway 128 entering into the Property as generally depicted on Exhibit J attached hereto (collectively, the "**Enhancements**").

J.2. Payment to the County of \$4.50 per square foot of buildings Landowner intends to bring into compliance with the Applicable Rules, approximately \$56,000, to be determined upon final review and approval of plans submitted, that County may use for affordable housing. The calculation of fees is pursuant to Sections 18.107.050 and 18.107.060 of the County Code for the buildings Landowner intends to bring into compliance with the Applicable Rules. The Parties contemplate that the certificates of occupancy will be issued, and the payment made, at the conclusion of Phase One of the Project.

J.3. Payment to the County of \$50,000 by Landowner, within ten (10) days of the Effective Date of this Agreement, earmarked for the Rutherford Fire Station for the use in improving driveway access to the Rutherford Fire Station, provided however, that the County retains sole discretion in determining how the funds are ultimately spent.

K. Reasons for this Agreement.

K.1. **Landowner Benefits.** In exchange for the Public Benefits of the Project that exceed those required by law, Landowner desires to receive assurances that the County will grant permits and approvals required for the development of the Project, over the Project's estimated development horizon, in accordance with procedures provided by law and in this Agreement, and that Landowner may proceed with the Project in accordance with the County Code as of the Effective Date (the "**Applicable Rules**"), attached hereto as Exhibit I, subject to the further terms and conditions of this Agreement. To effect these purposes, the Parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, conditions, and covenants hereinafter set forth, the Parties agree as follows:

AGREEMENT

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

2. Definitions. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

2.1 Adoption Date. [REDACTED], 2016, the date the Board approved the Project and adopted this Agreement.

2.2 Agreement. The Development Agreement entered into on [REDACTED], 2016 by and between Napa County, a political subdivision of the State of California, and Caymus Vineyards, a California corporation.

2.3 Amendment to Judgment. The Amendment to Judgment Pursuant to Stipulation entered by the Napa County Superior Court on June 9, 2015.

2.4 Annual Review Date. The anniversary date of the Effective Date of this Agreement.

2.5 Applicable Rules. The County Code as of the Effective Date.

2.6 Application. The application for Use Permit Modification, No. P12-00221, filed by Landowner on July 5, 2012 as subsequently amended.

2.7 Board. The Napa County Board of Supervisors.

2.8 CEQA. The California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) the Guidelines thereunder (Title 14, Cal. Code Regs., Sections 15000 et seq.) and the County's Local Guidelines for Implementing CEQA.

2.9 Claims. Defined in Section 17.

2.10 Commission. The Napa County Planning Commission, serving as the County's planning agency for purposes of development agreement review pursuant to Government Code Section 65867.

2.11 Complaining Party. The Party claiming another Party is in default.

2.12 County. Napa County, a political subdivision of the State of California.

- 2.13 Default.** Defined in Section 19.
- 2.14 Development Agreement Statute.** California Government Code Sections 65864 et seq.
- 2.15 Director.** Defined in Section 12.2.1.
- 2.16 Effective Date.** Defined in Section 7.2.
- 2.17 Enhancements.** Defined in Recital J.1.
- 2.18 Judgment.** The Final Judgment Pursuant to Stipulation, entered by the Napa County Superior Court on August 5, 2013.
- 2.19 Landowner.** Caymus Vineyards, a California corporation.
- 2.20 Landowner Affiliates.** Any wine-making entity that is owned or controlled, in whole or in part, by Landowner or by Landowner’s principal or his children, or other lineal descendants, or other successors and assigns.
- 2.21 Minor Amendment.** Defined in Section 18.4.
- 2.22 Party.** County, Landowner, and their respective successors and Transferees. Collectively, they shall be called the “**Parties**.”
- 2.23 Party in Default.** The Party alleged to be in Default.
- 2.24 Permit Deadline.** Defined in Section 12.2.1.
- 2.25 Permitted Delay.** Defined in Section 26.
- 2.26 Prevailing Party.** Defined in Section 22.
- 2.27 Project.** Described in Recital D.
- 2.28 Project Approval.** Defined in Recital H.
- 2.29 Property.** Defined in Recital B.
- 2.30 Public Benefits.** Defined in Recital J.
- 2.31 Road Realignment.** Defined in Recital J.1.
- 2.32 Submittal Deadline.** Defined in Section 12.2.1.
- 2.33 Subsequent Rule.** County ordinances, resolutions, rules, regulations, or official policies enacted after the Adoption Date, as further defined in Section 10.
- 2.34 Substantive Amendment.** Defined in Section 18.3.

2.35 Term. Defined in Section 7.3.

2.36 Timely. Defined in Section 23.

2.37 Transferee. Defined in Section 13.1.

2.38 Use Permit. Permit #U-438777, issued by the Planning Commission.

2.39 WDO. Winery Definition Ordinance, No. 947 (Jan. 1990).

3. Parties to the Development Agreement. The Parties to this Development Agreement are:

- a. Napa County, a political subdivision of the State of California exercising general governmental functions and power. The principal place of business of the County is located at 1195 Third Street, Suite 310, Napa, CA 94559.
- b. Caymus Vineyards, a California Corporation. The principal place of business of Landowner is located at 8700 Conn Creek Road, Rutherford, California.

4. Description of Property. The Property that is the subject of this Agreement is described generally in Recital B and with greater particularity in Exhibit A attached hereto.

5. Interest of Landowner. The Landowner hereby represents and warrants that it presently has a legal or equitable interest in the entire Property sufficient to satisfy the requirement of California Government Code Section 65865.

6. Relationship of County and Landowner. The Parties specifically acknowledge that the Project is a private development, that no Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Landowner, the affairs of the County, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. County and Landowner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making County and Landowner joint venturers or partners.

7. Execution and Recording; Effective Date; Term.

7.1 Execution and Recording. Not later than ten (10) days after the date the Board approves the Project and adopts the this Agreement (the “**Adoption Date**”), County and Landowner shall execute and acknowledge this Agreement. Not later than forty (40) days after the Effective Date, the County Clerk shall cause this Agreement to be recorded in the Official Records of Napa County, State of California.

7.2 Effective Date. This Agreement shall not become effective and neither Party shall have any rights or obligations hereunder until the “**Effective Date,**” which for purposes of this Agreement shall mean the effective date of County Ordinance No. [REDACTED], which is the Adoption Date.

7.3 Term. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall continue thereafter until the earlier of the following: (i) the date that is twenty (20) years after the Effective Date; or (ii) the date this Agreement is terminated pursuant to Section 18.6 of this Agreement.

7.4 Extension of Term Due to Litigation. In the event that Litigation is filed by a third party (i.e., an entity other than a Party to this Agreement), or by any party hereto, that seeks to invalidate this Agreement or any of the Project Approvals, the Term of this Agreement shall be extended for a period of time equal to the length of time from the date a summons and complaint and/or petition are first served on the defendant(s)/respondent(s) until the date that the resolution of the litigation is final and not subject to appeal; provided, however, that the total amount of time for which the Term may be extended as a result of any and all litigation shall not exceed five (5) years.

7.5 Rights and Obligation Upon Expiration of the Term or Earlier Termination. Upon termination of this Agreement, all of the rights, duties, and obligations of the Parties hereunder shall terminate and be of no further force and effect, except as otherwise expressly set forth herein; and except as to Landowner’s obligation to provide Public Benefits. Termination shall not affect any pre-existing rights of Landowner, including without limitation those arising from any previously granted Project Approval and Subsequent Approval for development of all or any portion of the Property, including, without limitation, Landowner’s right to complete and/or occupy any building or other improvement authorized by such Project Approval or Subsequent Approval, provided that any such building or improvement is completed in accordance with all previously granted Project Approvals and Subsequent Approvals in effect at the time of such termination. Landowner hereby waives all rights to object to or challenge such conditions of approval under the Mitigation Fee Act (Government Code Sections 66000-66011) or any other law or authority.

Landowner’s rights under the Judgment and Amendment to Judgment, and vis-à-vis the Application remain, notwithstanding the expiration or termination of the Agreement.

8. Vested Rights.

8.1 Vested Rights and Permitted Uses. During the Term of this Agreement, except to the extent County reserves its discretion as expressly set forth in this Agreement or in the Applicable Rules, Landowner shall have the vested right to exercise its discretion within the limits and constraints of the Applicable Rules in designing any buildings, structures, streets, sidewalks, buildings, and development within the Property. County shall not exercise or require any design review approval for Landowner’s use of the Property unless expressly set forth in the Applicable Rules. In connection therewith, Landowner acknowledges that nothing in this Agreement is intended to override any review and approval requirements contained in the Applicable Rules or to preclude County from the exercise of any discretionary authority it has

under the Applicable Rules, provided that pursuant to Government Code Section 65865.2, “such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development” set forth in this Agreement.

In addition to the foregoing, Landowner acknowledges and agrees that nothing herein is intended to vest Landowner with any environmental approvals that may be required in connection with the future development of the Property, and that Landowner must submit, process, and obtain the approval of all documentation and information required to comply with CEQA (California Public Resources Code Sections 21000 et seq.) with regard to any development of the Property.

9. Applicable Rules. Other than as expressly set forth in this Agreement, during the Term of this Agreement, the terms and conditions of development applicable to the Property, including but not limited to the permitted uses, the density and intensity of use, and the maximum height, size, and location of proposed buildings, shall be those set forth in the Applicable Rules and this Agreement. The permitted uses, density and intensity of development, and the maximum height, location, and size of proposed buildings permitted under the Project conform with the development studied and contemplated by the Project Approval.

During the Term of this Agreement, County shall not prevent development of the Property consistent with the Project Approval that is in compliance with the Applicable Rules, or require Landowner to modify or redesign any building which complies with the Applicable Rules.

Landowner may apply to County for permits or approvals necessary to modify or amend the development specified in the Applicable Rules, provided that the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic. This Agreement does not constitute a promise or commitment by County to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and County’s discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

The winery on the Property existed prior to the date of the adoption of the WDO, and the Parties agreed in the Judgment that the Property’s winery development area at the time of the WDO was 98,000 square feet (“Original Development Area”). The Project Approval remains within both the size limitation and footprint of the Original Development Area. The Project Approval also recognizes Landowner’s pre-WDO marketing and visitation levels, including: (a) up to two (2) winery dinners per month with up to fifty (50) people, catered food service; (b) one wine auction event per year with up to one hundred (100) people, catered food service; (c) one harvest event per year with up to two hundred and fifty (250) people, catered food service; (d) up to three (3) winery lunches per month with up to fifty (50) people, catered food service; (e) up to two (2) Friends of the Winery events with up to five hundred (500) people, catered food service; and (f) public visitation at the winery.

As partial consideration for this Agreement, Landowner has voluntarily agreed that any production of wine between 110,000 gallons and 660,000 gallons will be subject to the 75% rule established by Napa County Code Section 18.104.250(c). In consideration thereof, and notwithstanding the provisions of the County Code, the County recognizes Landowner's pre-WDO right to continue to sell wines from its tasting room without regard to the source of grapes or location of production, so long as such wines are produced by Landowner or Landowner's Affiliates. The provisions of this Section 9 shall survive expiration of the Agreement and shall run with the land.

10. Subsequent Rules and Approvals. During the Term of this Agreement, no County ordinances, resolutions, rules, regulations, or official policies enacted after the Adoption Date (the "**Subsequent Rule**") that conflict with the Vested Rights of Landowner set forth in this Agreement shall be applicable hereunder without Landowner's written consent; provided, however, that nothing shall prevent County from taking such action as may be necessary and appropriate to protect County residents against specific physical public health and/or safety impacts.

10.1 Conflicting Actions. For purposes of Section 10 above, any action or proceeding of the County (whether enacted by administrative action, or by a commission, board, the legislative body or the electorate) undertaken without the consent of Landowner that has any of the following effects on the Project shall be considered in conflict with the Vested Rights, this Agreement, and the Applicable Rules:

10.1.1 limiting, reducing or modifying the uses, height, bulk, density or intensity of permitted uses of all or any part of the Project, or otherwise requiring any reduction in the square footage or total number or location of or other improvements;

10.1.2 limiting the location or sites, grading, roadways or other improvements or facilities on the Property in a manner that conflicts with, or is more restrictive than the limitations included in this Agreement or the Project Approval;

10.1.3 limiting or controlling the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of a Project except as otherwise provided herein, including the demolition or removal of existing buildings, facilities or materials;

10.1.4 requiring the issuance of Subsequent Approvals other than those required or contemplated under the existing County land use regulations;

10.1.5 limiting the processing or procuring of applications and approvals of Subsequent Approvals that are required to implement the Project Approval;

10.1.6 imposing or increasing any Development Fees in a manner that conflicts with this Agreement;

10.1.7 changing or limiting the Project Approval; and/or

10.1.8 limiting, reducing or substantially modifying vehicular access from that described in the Project Approval or as otherwise contemplated under the Project Approval.

10.2 Change in State or Federal Law. This Agreement shall not preclude the application to development of the Property of Subsequent Rules mandated and required by changes in state or federal law.

11. Subsequent Approvals. Applications for Subsequent Approvals associated with the Project shall be processed by County, and consistent with the Applicable Rules. Development of the Project is subject to discretionary and ministerial Subsequent Approvals in accordance with the Project Approval. In considering, reviewing and acting on applications for Subsequent Approvals, the County shall apply the Applicable Rules. County shall exercise its authority consistent with the Applicable Rules, and provided that the scope of County's review of Subsequent Approvals shall be limited to a determination of compliance and consistency with the Project Approval and any prior Subsequent Approvals. In the course of such review, County shall not apply criteria or standards that would conflict with the Project Approval or prior Subsequent Approvals. Consequently, County shall not use its authority to change the policy decisions reflected by the Project Approval and this Agreement or otherwise to prevent, delay or modify development of the Project as contemplated by the Project Approval.

12. Project Summary and Public Benefits.

12.1 Project Summary. The Project shall be consistent with the Application as amended to reflect the Reduced Project Description attached hereto as Exhibit E, and includes the following:

12.1.1 Phase One. A decrease of current wine production to a maximum annual production of 110,000 gallons per year (except as provided in the Project Approval relating to the 2016 and 2017 vintages), realignment of the winery driveway and access off Conn Valley Road, demolition of Buildings B2, B6, B7 and B8; remodeling of Building B5; recognition of pre-1990 marketing events and public visitation at the levels set forth in the Project Approval; installation of fire suppression systems within existing buildings and associated outdoor water storage tanks; remodeling of Building B3; removal of a concrete pad on the east side of B3 after the 2016 harvest; removal of the retaining wall and slab immediately to the south of the bridge on the west bank of the creek; restoration of the creek bank; recognition of Winery Development Area of approximately 86,987 square feet within the footprint of the pre-WDO 98,000 square foot Winery Development Area; on-premises consumption and sale of wine consistent with Business and Professions Code Sections 23358, 23390 and 23396.5 and the PBES Director's July 17, 2008 memo, "Assembly Bill 2004 (Evans) and the Sale of Wine for Consumption On-Premises;" food and wine pairing for visitors; repairing and upgrading the domestic leach field area on the south side of Building B5; and maintaining Building B9 for residential use during Phase One.

12.1.2 Phase Two. Demolition of Building B9 and construction of an 8,205 square foot agricultural greenhouse; increasing annual wine production by 550,000 gallons, for a total maximum annual production of 660,000 gallons per year and upgrading the existing process wastewater system as set forth in the Project Approval.

12.2 Public Benefits.

12.2.1 Landowner agrees to make the Enhancements to the roadway along the front of the Property namely: (a) the Road Realignment of the State Highway 128 and Conn Creek Road intersection as generally depicted in Exhibit J attached hereto; and (b) installation of a left-hand turn lane for southbound traffic on Highway 128 entering into the Property as generally depicted on Exhibit J attached hereto. With regard to the Enhancements, Landowner shall submit an application to the County and Caltrans for an encroachment permit within six (6) months after the Notice of Exemption is filed in connection with the Project Approval, or the final resolution of any litigation challenging the Project Approval, whichever shall occur later (the “**Submittal Deadline**”). Landowner shall make all good faith efforts to obtain approval of both the Caltrans and County Encroachment permits within eighteen (18) months of the Submittal Deadline (“**Permit Deadline**”). The Napa County Director of the Department of Planning, Building and Environmental Services (“**Director**”) as determined in his/her full discretion shall extend the Permit Deadline for good cause, taking into consideration conditions beyond Landowner’s control, delays attributable to the County or Caltrans, and/or other factors that the Director determines are reasonable. The County shall avoid all undue delays in issuing an encroachment permit for the Road Realignment or in coordinating with Caltrans on the issuance of the encroachment permit for work within the State of California right-of-way. The Landowner shall post a performance bond with the County for the full amount of the Enhancements, prior to the issuance of the County encroachment permit. All construction for the Enhancements shall be completed within one (1) year of the issuance of the encroachment permits by both the County and Caltrans.

12.2.2 Payment to the County of \$4.50 per square foot of buildings Landowner intends to bring into compliance with the Applicable Rules, totaling approximately \$56,000, that County may use for affordable housing. The calculation of fees is pursuant to Sections 18.107.050 and 18.107.060 of the County’s Code for the buildings Landowner intends to bring into compliance with the Applicable Rules. The final calculation of fees shall be made upon submittal of building permits and the actual square footage of buildings Landowner intends to bring into compliance. The Parties contemplate that the certificates of occupancy will be issued, and the payment made, at the conclusion of Phase One of the Project.

12.2.3 Payment to the County of \$50,000 by Landowner, within ten (10) days of the Effective Date of this Agreement, earmarked for the Rutherford Fire Station for the use in improving driveway access to the Rutherford Fire Station, provided however, that the County retains sole discretion in determining how the funds are ultimately spent.

12.3 Production of Wine Over 110,000 Gallons. County acknowledges Landowner’s pre-WDO Status under Ordinance No. 945 up to the levels allowed in Landowner’s Use Permit. As partial consideration for this Agreement, Landowner has agreed that all production of wine between 110,000 gallons and 660,000 gallons will be subject to the 75% Rule established by Napa County Code Section 18.104.250(c). The County recognizes Landowner’s pre-WDO right to continue to sell wines from its tasting room without regard to the source of grapes or location of production, so long as such wines are produced by Landowner or Landowner’s Affiliates.

12.4 Wine Production Levels. Through December 31, 2016, Landowner agrees not to exceed production of wine at 1,800,000 gallons per year, as set forth in the Amendment to Judgment. Through December 31, 2017, Landowner agrees not to exceed the maximum capacity for 2017 production of wine at the levels set forth in the Project Approval.

12.5 Review of Revenue and Taxation Forms. Pursuant to Section 14.D.i. of the Amendment to Judgment, Landowner agrees to participate in a review of its reports to the Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau through January 2, 2019. The review will apply only to Landowner and to the wines produced on the Property.

12.6 Public Right of Way to Landowner. Upon approval of the Road Realignment and as compensation for Landowner's agreement to complete the same and realign the driveways to the Property, County agrees to transfer fee title to Landowner of any excess public right-of-way resulting from the Road Realignment, subject to any ongoing reservation of future right-of-way required by the County.

12.7 Benefits to Landowner. Landowner has expended and will continue to expend substantial amounts of time and money on the planning of the Project and construction of infrastructure for and in conjunction with the Project. Landowner represents and County acknowledges that Landowner would not make these expenditures without this Agreement, and that Landowner makes these expenditures in reliance upon this Agreement. A benefit to Landowner under this Agreement is the assurance that Landowner will preserve the right to develop the Property in accordance with the terms of this Agreement. County acknowledges that Landowner will be investing money and planning efforts in the Project in reliance on County's covenants and representations in this Agreement. County agrees that Landowner may reasonably and justifiably rely on County's covenants and representations in this Agreement and on the enforceability of this Agreement.

13. Transfers and Assignments.

13.1 Transfers Generally. Subject to the terms of this Section 13.1, Landowner shall have the right to sell, lease, transfer, or assign the Property in whole or in part to any person, partnership, joint venture, firm, or corporation (the "**Transferee**") at any time during the Term of this Agreement without the consent of County. Any sale or transfer of the Property shall include the assignment and assumption of all rights, duties, and obligations arising from this Agreement to the transferee. Landowner shall no longer be obligated under this Agreement for the Property if Landowner is not in default under this Agreement at the time of the sale or transfer. Landowner shall provide written notice to the County within thirty (30) days after the effective date of any sale, transfer, or assignment of its interest in all or any portion of the Property or any of its interests, rights, and obligations under this Agreement. Upon the closing of such conveyance, transfer, sale, or lease, the Transferee shall be deemed a Party to this Agreement.

13.2 Effect of Transfer; Agreement Binding on Successors and Assigns. The burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors in interest of the Parties to this Agreement, and constitute covenants that run with the Property. To provide continued notice, the Parties will record this Agreement and any subsequent amendments to it.

13.3 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property and undertakes any development activities on the Property is, and shall be, constructively deemed to have consented and agreed to, and is obligated by, all of the terms and conditions of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

14. Lender Obligations and Protections.

14.1 Encumbrances on Property. The Parties agree that this Agreement shall not prevent or limit Landowner in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

14.2 Mortgage Obligations. A Mortgagee not in legal possession of the Property or any portion thereof shall not be subject to the obligations or liabilities of the Landowner under this Agreement, including the obligation to construct or complete construction of improvements or pay fees. A Mortgagee in legal possession shall not have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to pay, perform, or provide any fee, dedication, improvements, or other imposition. A Mortgagee in legal possession of the Property or portion thereof shall only be entitled to use of Property or to construct any improvements on the Property in accordance with the Project Approvals and this Agreement if Mortgagee fully complies with the terms of this Agreement.

14.3 Mortgage Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, after the date of recording this Agreement, including the lien for any deed of trust or Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any Person or entity, including any deed of trust beneficiary or Mortgagee that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise, and any such Mortgagee or successor to a Mortgagee that takes title to the Property or any portion thereof shall be entitled to the benefits arising under this Agreement.

14.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If County receives notice from a Mortgagee requesting a copy of any notice of Default given Landowner under this Agreement and specifying the address for service thereof, then County shall deliver to such Mortgagee, concurrently with service thereon to Landowner, any notice given to Landowner with respect to any claim by County that Landowner is in Default and/or Certificate of Non-Compliance. Each Mortgagee shall have the right during the same period available to Landowner to cure or remedy, or to commence to cure or remedy, the Default or non-compliance as provided in this Agreement; provided, however, that if the Default, noncompliance or

Certificate of Non-Compliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Default, noncompliance or Certificate of Non-Compliance within ninety (90) days after obtaining possession. If any such Default, noncompliance or Certificate of Non-Compliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Default, noncompliance or Certificate of Non-Compliance (including but not limited to proceeding to gain possession of the Property) if such Mortgagee commences cure during such ninety (90) day period, and thereafter diligently pursues completion of such cure to the extent possible.

15. Estoppel Certificate. Any Party may, at any time, and from time to time, deliver written notice to any other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, (c) the requesting Party is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Default, and (d) such other information as may reasonably be requested. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The County Executive Officer, or his or her designee, shall have the right to execute any certificate requested by Landowner hereunder. County acknowledges that a certificate hereunder may be relied upon by Transferees, lenders, and Mortgagees.

Once Landowner has paid all required amounts in Sections 12.2.1, 12.2.2 and 12.2.3 of this Agreement, County will issue and send Landowner a written confirmation that Landowner has fulfilled its obligations under this Agreement.

16. Annual Review.

16.1 Review Date. The annual review date for this Agreement shall occur each year on the anniversary date of the Effective Date of this Agreement (the “**Annual Review Date**”). The annual review letter required hereunder shall be submitted by the Landowner (or a Transferee) pursuant to Section 16.

16.2 Required Information from Landowner. Not more than sixty (60) days and at least forty-five (45) days prior to the Annual Review Date, Landowner shall provide a letter to County’s Director of Planning, Building and Environmental Services demonstrating its compliance with this Agreement, including, but not limited to, compliance with the requirements regarding the public benefits to be provided under this Agreement.

16.3 County Report. Within forty (40) days after Landowner submits its letter, County shall review the information submitted and all other available evidence on Landowner's compliance with this Agreement. All such available evidence including public comments and final staff reports shall, upon receipt by County, be made available as soon as practicable to Landowner. County shall notify Landowner in writing whether it has complied with the terms of this Agreement. If County finds Landowner in compliance, County shall issue a Certificate of Compliance. If County finds Landowner is not in compliance, County shall issue a Certificate of Non-Compliance after complying with the procedures set forth in Section 16.4. County's failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date.

16.4 Non-compliance with Agreement; Hearing. If County, on the basis of substantial evidence, finds that Landowner has not complied with the terms of this Agreement, it shall specify in writing to Landowner, with reasonable specificity, the respects in which Landowner has failed to comply. County shall specify a reasonable time for Landowner to respond, provide additional evidence of compliance or to meet the terms of compliance, which time shall be not less than thirty (30) days, and shall be reasonably related to the time necessary for Landowner to adequately bring its performance into compliance; provided, however, that if the non-compliance solely involves a monetary Default, then County may require payment in thirty (30) days. If after the reasonable time for Landowner to meet the terms of compliance has passed and County, on the basis of substantial evidence, continues to find that Landowner has not complied, then County shall issue a Certificate of Non-Compliance.

Any Certificate of Non-Compliance shall be made in writing with reasonable specificity as to the reasons for the determination, and a copy shall be provided to Landowner in the manner prescribed in Section 16.3.

If County issues a Certificate of Non-Compliance, then the Board shall conduct a hearing within thirty (30) days of the County's issuance of the Certificate of Non-Compliance, or at the next available, regularly scheduled hearing thereafter. The Landowner shall be given not less than ten (10) days written notice of the hearing and copies of the evidence upon which County made its determination. Landowner will be given the opportunity to present evidence at the hearing. If the Board of Supervisors determines that Landowner is not in compliance with this Agreement, it may proceed to County's rights and remedies, including, modifying or terminating this Agreement at a subsequent public hearing.

16.5 Appeal of Determination. The decision of the Board as to Landowner's compliance shall be final, and any Court action or proceeding to attack, review, set aside, void or annul any decision of the determination by the Board shall be commenced within thirty (30) days of the final decision by the Board.

16.6 Costs. Costs reasonably incurred by County in connection with the annual review and related hearings shall be paid by Landowner in accordance with the County's schedule of fees and billing rates for staff time in effect at the time of review.

16.7 No Limits on Remedies for Default. The rights and powers of the County under this Section are in addition to, and shall not be limited to the rights of the County to terminate or take other action under this Agreement on account of the commission by Landowner of an event of Default.

17. Indemnification. Landowner agrees to indemnify, defend, and hold harmless County, County's designee, and their respective elected and appointed councils, boards, commissions, officers, agents, employees, volunteers and representatives from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death or physical property damage) and from any and all claims, demands, and actions in law or equity (including attorneys' fees and litigation expenses) (collectively, "**Claims**") by any third party, that may arise, directly or indirectly, from the acts, omissions, or operations of Landowner or Landowner's agents, contractors, subcontractors, agents, or employees pursuant to this Agreement.

Notwithstanding the foregoing, Landowner shall have no indemnification obligation with respect to the gross negligence or willful misconduct of County or their respective contractors, subcontractors, agents or employees, or by any one or more persons directly or indirectly employed by or acting as an agent for Landowner or any of Landowner's contractors or subcontractors.

The indemnity under this Section 17 shall survive termination of this Agreement. Except as otherwise provided herein, Landowner shall timely pay all costs incurred by County in defending Claims or challenges, and Landowner shall be solely responsible to pay, in a timely manner and on County's behalf, any and all awards of money damages, attorney fees and court costs against County resulting from such Claims.

18. Amendment, Cancellation, or Suspension/Modification Because of Conflict with State or Federal Laws. In the event that Laws or regulations enacted after the Adoption Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require substantial and material changes in Project Approvals, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such change in Laws. Any such amendment of the Agreement shall be approved by the Board, in accordance with existing local laws and this Agreement.

18.2 Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto and in accordance with the procedures of State law, the County Code, and this Agreement.

18.3 Substantive Amendments. Any substantive amendment to the Agreement shall require approval of an amendment to this Agreement in accordance with state law and County Code. The term “**Substantive Amendment**” is defined to include the following: (a) any change to the Term of this Agreement; (b) any changes to the permitted uses of the Project or the density and/or intensity of use of the Project; (c) any changes to provisions in this Agreement or the Project Approvals related to monetary contributions or payments by Landowner; or (d) any other proposed amendment reasonably determined by the County Executive Officer to be a Substantive Amendment.

18.4 Minor Amendment. A “**Minor Amendment**” is any amendment of this Agreement other than a Substantive Amendment. Subject to compliance with the requirements of Section 18.2, a Minor Amendment may be approved by means of a written agreement, without a public hearing, by the County Executive Officer.

18.5 Amendment Exemptions. No Subsequent Approval and no amendment of a Project Approval or a Subsequent Approval, shall require an amendment to this Agreement. Upon approval of an amendment to a Project Approval, the meaning of the term “**Project Approval**” as used in this Agreement shall be amended to reflect the approved amendment to the Project Approval, and, along with any Subsequent Approval or amendment to a Subsequent Approval, shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the Subsequent Approval or amendment). Notwithstanding the foregoing, in the event of any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to a Project Approval or Subsequent Approval, the terms of this Agreement shall prevail.

18.6 Cancellation by Mutual Consent. This Agreement may be terminated in whole or in part by the mutual consent of all the Parties or their successors in interest, in accordance with the provisions of the State law and the County Code. Any fees or payments of any kind paid pursuant to this Agreement prior to the date of mutual termination shall be retained by County.

18.7 Suspension by County. County may suspend a portion of this Agreement, if it finds, in its reasonable and sole discretion, that suspension is necessary to protect persons or property from a condition which would create an immediate and serious risk to the physical health and safety of the general public or residents or employees who are occupying or will occupy the Property, such as might be the case in the event of a major earthquake or natural disaster of similar magnitude.

19. Default. Subject to Section 18, a Party’s violation of any material term of this Agreement or failure by any Party to perform any material obligation of this Agreement required to be performed by such Party shall constitute a default (the “**Default**”).

19.1 Default by Landowner. Pursuant to California Government Code Section 65865.1, if County determines following a noticed public hearing and on the basis of substantial evidence that Landowner has not complied in good faith with Landowner’s obligations pursuant to this Agreement, County shall by written notice to Landowner specify the manner in which Landowner has failed to comply and state the steps Landowner must take to bring itself into

compliance. If Landowner does not commence all steps reasonably necessary to bring itself into compliance as required and diligently pursue steps to completion within thirty (30) days after receipt of the written notice from County specifying the manner in which Landowner has failed to comply, then Landowner shall be deemed to be in default under the terms of this Agreement. County may then: (1) seek a modification of this Agreement, (2) terminate this Agreement, or (3) seek any other available remedies as provided in this Agreement.

19.2 Default by County. If County has not complied with any of its obligations and limitations under this Agreement, Landowner shall by written notice to County specify the manner in which County has failed to comply and state the steps necessary for County to bring itself into compliance. If County does not commence all steps reasonably necessary to bring itself into compliance as required and diligently pursue steps to completion within thirty (30) days after receipt of the written notice from Landowner specifying the manner in which County has failed to comply, then County shall be deemed to be in default under the terms of this Agreement. Landowner may then exercise any or all of the following remedies: (1) seek a modification of this Agreement; (2) withhold payments that might be otherwise due to County under this Agreement; and/or (3) seek a specific performance or similar equitable remedy as provided in this Agreement. Except as provided below, if County adopts or enforces any moratorium, de facto or de jure, or other similar limitation (whether relating to the rate, timing, or sequencing of the development or construction of all or any part of the Project and whether enacted by initiative or otherwise) affecting the processing or approval of building permits, occupancy certificates, or other entitlement to use which is applied to the Project, then Landowner may exercise any or all of the following remedies: (1) immediately seek a modification of this Agreement; (2) withhold payments that might be otherwise due to County under this Agreement, until County reverses its enactment of such moratorium or limitation; and/or (3) seek any other available remedy as provided in this Agreement.

20. Remedies for Default. Subject to the notice and opportunity to cure provisions in Section 21 below, the available remedies for any Party in the event of a Default by the other Party (except with respect to a payment Default) shall be an action in mandamus, or for damages, specific performance, or other injunctive or declaratory relief. In addition, upon the occurrence of a Default and subject to the procedures described in Section 21, the non-defaulting Party shall have the right to terminate this Agreement, but any such termination shall not affect such Party's right to seek such remedies as are provided for in this Agreement on account of the Default for which this Agreement has been terminated, and shall be subject to the procedures specified in this Agreement. Any legal action by a Party alleging a Default shall be filed within one hundred eighty (180) days from the end of the default procedure described in Section 21.

21. Procedure Regarding Defaults. For purposes of this Agreement, a Party claiming another Party is in Default shall be referred to as the "**Complaining Party**," and the Party alleged to be in Default shall be referred to as the "**Party in Default**." A Complaining Party shall not exercise any of its remedies as the result of Default unless such Complaining Party first gives notice to the Party in Default as provided in this Section 21, and the Party in Default fails to cure such Default within the applicable cure period.

21.1 Notice; Meet and Confer. The Complaining Party shall give written notice of Default to the Party in Default, specifying the Default alleged by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any Default nor shall it change the time of Default.

Before sending a Notice of Default, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement or (ii) if a delay in sending a notice pursuant to this Section 21.1 would materially and adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, such Party shall be deemed to have satisfied the requirements of this Section 21.1 and may proceed in accordance with the issuance of a notice of default.

21.2 Cure. The Party in Default shall have thirty (30) days from receipt of the Notice of Default to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged Default is such that it cannot practicably be cured within such thirty (30) day period, then it shall not be considered a Default during that thirty (30) day period so long as: (a) the cure was commenced at the earliest practicable date following receipt of the notice; (b) the cure was diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (in no event later than thirty (30) days after the curing Party's receipt of the notice), the curing Party provided written notice to the Complaining Party that the cure cannot practicably be completed within such thirty (30) day period; and (d) the cure was completed at the earliest practicable date. The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided such cure, correction or remedy shall be completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be agreed to by the Complaining Party to be reasonably necessary to correct the matter).

21.3 Failure to Assert. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies.

22. Attorneys' Fees and Costs in Legal Actions by Parties to the Agreement. If either Party brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against another Party by reason of a Default, or otherwise arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees (including, without limitation, costs and expenses), which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing Party**" within the meaning of this Section 22

shall include, without limitation, a Party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

23. Attorneys' Fees and Costs in Legal Actions by Third Parties. If any person or entity not a Party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement, the Project Approvals or the Subsequent Approvals, the Parties shall cooperate in defending such action. Landowner shall bear its own costs of defense as a real party in interest in any such action, and Landowner shall timely reimburse County for all costs (including court costs) and attorneys' fees incurred by County in defense of any such action or other proceeding. For purpose of this provision, "**timely**" reimbursement means full payment but Landowner of all costs incurred by County, as applicable, not later than forty-five (45) days following Landowner's receipt of an invoice from County describing costs previously incurred by County in defense of such action. In its sole discretion, Landowner may tender its defense of such action to Landowner or defend the action itself. Upon tender of defense to Landowner by County, Landowner shall defend through counsel approved by County, which approval shall not be unreasonably withheld, and Landowner shall bear all attorneys' fees and costs from the date of tender.

24. Third Party Court Action/Limitation on Action. If any court action or proceeding is brought by any third party to challenge any Project Approval or this Agreement, then (a) Landowner shall have the right to terminate this Agreement upon thirty (30) days' notice, in writing to County, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (b) any such action or proceeding shall constitute a Permitted Delay(s).

25. Agreement Runs with the Land. Except as otherwise provided for in this Agreement, all of the provisions, agreements, rights, terms, powers, standards, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other Persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California, and the burdens and benefits shall be binding upon and inure to the benefit of each of the Parties and their respective heirs, successors (by merger, consolidation, or otherwise), assigns, devisees, administrators, representatives, and lessees.

26. Excuse for Nonperformance. Notwithstanding anything to the contrary in this Agreement, Landowner and County shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sum of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, civil unrest, quarantine restrictions, invasion, insurrection, riot, mob violence, sabotage, inability to procure or shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, freight embargoes, strikes,

lockouts, labor disputes, condemnation, requisition, changes in Laws, litigation, orders of governmental, civil, military or naval authority, the failure of any governmental agency, public utility or communication or transportation provider to issue a permit, authorization, consent, or approval required for development, construction, use, or operation of the Project or portion thereof within typical, standard or customary timeframes, or any other cause, whether similar or dissimilar to the foregoing, not within the control of the Party claiming the extension of time to perform (a “**Permitted Delay**”). The Party claiming such extension shall send written notice of the claimed extension to the other Party within thirty (30) days from the commencement of the cause entitling the Party to the extension.

27. Third Party Beneficiary. This Agreement is made and entered into solely for the protection and benefit of the Landowner and County, and their respective successors and assigns, and no other Person shall have any right of action based upon any provision in this Agreement.

28. Notice. Any notice to any Party required by this Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and given by delivering the same to such party in person or by sending the same by registered or certified mail, or express mail, return receipt requested, with postage prepaid, to the party’s mailing address. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

County: Napa County
1195 Third Street, Suite 310
Napa, California 94559
Attn: County Executive Officer

With a copy to: Napa County Counsel
1195 Third Street, Suite 301
Napa, California 94559

Landowner: Caymus Vineyards
8700 Conn Creek Road
Rutherford, California 94573
Attn: Charles J. Wagner and Michael T. Carlson

With a copy to: Farella Braun + Martel LLP
899 Adams Street, Suite G
St. Helena, CA 94574
Attn: Katherine Philippakis

Any Party may change its mailing address at any time by giving written notice of such change to the other Party in the manner provided herein at least ten (10) days prior to the date such change is affected. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

29. Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any Person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to Persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party hereto of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.

30. Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of a Default shall be effective or binding upon such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take any action with respect to such Default. No express written waiver of any Default shall affect any other Default, or cover any other period of time, other than any Default and/or period of time specified in such express waiver. Except as provided in Section 20, all of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

31. Applicable Law and Venue. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California. The Parties agree that any lawsuit or legal proceeding arising hereunder shall be heard in the Federal District Court in the Northern District (San Francisco branch) if in federal court or the Napa County Superior Court if in California Superior Court.

32. Further Assurances. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to use good faith efforts to take all actions and do all things as may reasonably be necessary or appropriate to carry out this Agreement, the Project Approvals and Subsequent Approvals, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or appropriate to achieve the purposes and objectives of this Agreement, the Project Approvals and Subsequent Approvals.

33. Not a Public Dedication. Except as provided herein and in the Project Approvals, nothing contained herein shall be deemed to be a gift or dedication of the Property to the general public, for the general public.

34. Entire Agreement. This Agreement and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement.

35. Form of Agreement; Entirety; Recordation; Exhibits. This written Agreement, which consists of twenty-six (26) pages and ten (10) exhibits (Exhibits A through J), contains all of the representations and the entire agreement between the Parties with respect to its subject matter. Except as otherwise specified herein, any prior correspondence, memoranda, agreements, warranties or representations by, among and between the Parties are superseded in total by this Agreement. The County shall cause this Agreement, any amendment hereto and any termination of any parts or provisions hereof, to be recorded, at Landowner's expense, with the County Recorder within ten (10) days of the Adoption Date, the date of the approval of an amendment hereto, or the date of termination of any parts or provisions hereof, as applicable. Any amendment or termination of this Agreement to be recorded that affects less than all of the Property shall describe the portion thereof that is the subject of such amendment or termination. This Agreement is executed in three duplicate originals, each of which is deemed to be an original.

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Property
C	Final Judgment Pursuant to Stipulation (Aug. 5, 2013)
D	Amendment to Judgment Pursuant to Stipulation (June 9, 2015)
E	Amended Use Permit Modification Application No. P12-00221 (April 28, 2015)
F	Letter to County with Description of Reduced Project
G	County's Environmental Review Determination Letter (Sep. 1, 2015)
H	Use Permit Modification No. P12-00221-UP [REDACTED] ([REDACTED], 2016)
I	Applicable Rules
J	Depiction of Road Enhancements

36. Construction of Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning in order to achieve the objectives and purposes of the Parties, and not strictly for or against any Party. The captions and headings are included only for convenience of reference and shall be disregarded in the construction and interpretation of this

Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. The exhibits to this Agreement are intended to be and shall be incorporated into this Agreement as if stated fully herein. The use in this Agreement of the words “including”, “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether or not language of non-limitation, such as “without limitation” or “but not limited to”, or words of similar import, are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. This Agreement has been reviewed and revised by legal counsel for Landowner and Local Agency, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

37. Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages in counterparts which, when attached to this Agreement, shall constitute this as one complete Agreement.

38. Time Is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

39. Enforcement. Unless amended or canceled as provided in Section 18 of this Agreement, or modified or suspended pursuant to California Government Code Section 65869.5, this Agreement is enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by County that purports to apply to any or all of the Property.

40. Non-Liability of County Officers and Employees. No official, officer, director, employee, agent, or representative of either Party shall be personally liable to the other Party or its successors and assigns for any loss arising out of or connected with this Agreement.

41. Authority to Execute. The persons executing this Agreement warrant and represent that they have the authority to execute this Agreement on behalf of the entity for which they are executing this Agreement. They further warrant and represent that they have the authority to bind their respective Party to the performance of its obligations under this Agreement.

42. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

[SIGNATURE PAGE FOLLOWS]

CAYMUS VINEYARDS

By: Charles J. Wagner
Its: President

By: Shannon L. Darrall
Its: Secretary

“LANDOWNER”

NAPA COUNTY, a political subdivision of the
State of California

ALFREDO PEDROZA, Chairman of the
Board of Supervisors

“COUNTY”

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: _____ Deputy County Counsel</p> <p>Date: _____</p>	<p>ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors</p> <p>By: _____</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>Deputy Clerk of the Board</p>
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of _____)

On _____ before me, _____, Notary Public,
personally appeared _____

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

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

WITNESS my hand and official seal.

Signature: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

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

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

WITNESS my hand and official seal.

Signature: _____