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AND WHEN RECORDED MAIL TO:

Yolo County Planning, Resources & Public Works Dept.
Attn: JD Trebec, Senior Planner
292 West Beamer Street
Woodland, CA 95695

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**FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE STORY
PROJECT BETWEEN THE COUNTY OF YOLO AND ESPARTO STORY, LLC**

THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this [] day of [], 2022, by and between the County of Yolo, a political subdivision of the State of California (“County”), and ESPARTO STORY, LLC, a California limited liability company (“Developer” or “Story Developer”) (collectively, “Parties”), pursuant to California Government Code § 65864 et seq. (the “Development Agreement Statute”).

RECITALS

WHEREAS, County entered into a development agreement with Developer’s predecessor in interest on or around October 23, 2007, regarding the approval of Tentative Subdivision Map No. 4691 and related approvals to develop the Story residential subdivision project (Agreement No. 07-216, “Development Agreement”), which was amended three times to extend the expiration date of the Development Agreement to December 31, 2023; and

WHEREAS, the County and Developer wish to amend the Development Agreement to reflect the revised Tentative Subdivision Map No. 4691; and

WHEREAS, the County and Developer also wish to amend the Development Agreement to remove Development Obligation B. Construction by Near Term Developers of Circulation Improvements for Crossing of Lamb Valley Slough at Alpha Street and Signalized Intersection at State Route 16/County Road 86A-under Section 4.01.02 due to the improvements no longer being needed or desired by the County or Developer.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the parties agree as follows:

AGREEMENT

- A. The Development Agreement is hereby amended as reflected and shown in full in Exhibit A, attached hereto.

B. Pursuant to Government Code § 65868.5, no later than ten (10) days after the County enters into this Agreement, the County Clerk shall record an executed copy of this Agreement in the Official Records of the County of Yolo.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment to the Agreement as of the year and date first set forth above.

Esparto Story. LLC

COUNTY OF YOLO

By: _____
Raul Melendez
Its: Manager

By _____
Angel Barajas, Chair
Board of Supervisors

Attest:
Julie Dachtler, Clerk
Board of Supervisors

By _____
Deputy (Seal)

Approved as to Form:
Phillip J. Pogledich, County Counsel

By  _____
Eric May, Senior Deputy

EXHIBIT A

**AMENDED DEVELOPMENT AGREEMENT FOR THE STORY PROJECT
BY AND BETWEEN
THE COUNTY OF YOLO AND ~~EMERALD HOMES LT, LLC~~ ESPARTO STORY, LLC**

THIS DEVELOPMENT AGREEMENT, as amended, (“Agreement”) is made and entered into this [] day of [], ~~2007~~2022, by and between the County of Yolo, a political subdivision of the State of California (“County”), and ~~EMERALD HOMES LT~~ ESPARTO STORY, LLC, a California limited liability company (“Developer” or “Story Developer”), pursuant to California Government Code § 65864 *et seq.* (the “Development Agreement Statute”).

RECITALS

A. 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 enacted the Development Agreement Statute, which authorizes the County to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property and establishing certain development rights therein.

B. Pursuant to the Development Agreement Statute, the County has adopted certain procedures and requirements for the consideration of development agreements. These procedures and requirements are set forth in Title 8, Chapter 10 of the Yolo County Code. This Agreement has been processed, considered and executed in accordance with those County procedures and requirements.

C. Developer has expressed interest in developing certain real property in Esparto referred to as the Story Property. A legal description of the Story Property is attached hereto as Exhibit A and incorporated by this reference. The Story Property is also referred to herein as the “Project Site.” This Agreement shall apply to the single-family residential project on the Story Property (“Story Project,” “Project” or “Story Subdivision”) as defined below.

D. The County has determined that the Project is a development for which this Agreement is appropriate, and it desires to enter into this Agreement. This Agreement will, among other things, eliminate uncertainty in long-term planning in connection with the Project, provide for the orderly development of the Project on a basis consistent with the County’s General Plan, provide certain benefits to the County, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

E. In exchange for the benefits to the County that will result from this Agreement, the Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with “Applicable Laws,” as defined below, and it therefore desires to enter into this Agreement.

F. The Story Property was designated for ~~single-family residential~~ Residential Low use in the ~~1996-Esparto~~ 2030 Countywide General Plan and the zoning map approved concurrently therewith. ~~It is similarly designated in the updated 2007-Esparto General Plan~~

~~recently approved by the Board of Supervisors.~~ Developer has secured or applied for the other various environmental and land use approvals, entitlements, and permits relating to the development of the Project (“Project Approvals”). These include, without limitation, the following:

- (1) Tentative Subdivision Map. Before or concurrent with its approval of this Agreement, the Board of Supervisors (also the “Board”) has approved Tentative Subdivision Map No. 4691 (also, the “Tentative Subdivision Map” or “TSM”) to guide the development of the Project Site. The TSM is attached hereto as **Exhibit B** and incorporated by this reference. The Tentative Subdivision Map has been approved subject to conditions (“TSM Conditions of Approval”) and includes ~~seventy-eight (78)~~76 ~~single-family~~ residential lots with 16 units of affordable housing, as well as recommended by a majority of the members of the Planning Commission on [REDACTED], ~~2007~~2022, following a public hearing.
- (2) Mitigated Negative Declaration. The environmental impacts of the Project, including the Project Approvals and Subsequent Approvals (defined below) have properly been reviewed and assessed by the County pursuant to the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*), the CEQA Guidelines (Code of Regulations, Title 14, Section 15000 *et seq.*), and the County’s local ordinances. Before or concurrent with its approval of this Agreement, the Yolo County Board of Supervisors (“Board”) adopted the mitigated negative declaration (the “MND”) prepared for the Project (including this Agreement), adopted a Mitigation Monitoring Plan, and adopted Findings (“Findings”), all recommended by a majority of the members of the Yolo County Planning Commission (“Planning Commission”) on [REDACTED], 2007, following a public hearing.

~~Planned Development Zoning. Before or concurrent with its approval of this Agreement by ordinance, the Board adopted a separate ordinance rezoning the Project Site to a new planned development ordinance (Ordinance No. [REDACTED]) applicable only to the Project Site and consistent with the uses set forth in the Esparto General Plan, as well as recommended by a majority of the members of the Planning Commission on [REDACTED], 2007, following a public hearing.~~

~~G. WHEREAS, County entered into a development agreement with Developer’s predecessor in interest on or around October 23, 2007, regarding the approval of Tentative Subdivision Map No. 4691 and related approvals to develop the Story residential subdivision project (Agreement No. 07-216, “Development Agreement”), which was amended three times to extend the expiration date of the Development Agreement to December 31, 2023; and~~

~~H. WHEREAS, the County and Developer entered into a Fourth Amendment to reflect the revised Tentative Subdivision Map No. 4691 and to remove Development Obligation B. Construction by Near Term Developers of Circulation Improvements for Crossing of Lamb Valley Slough at Alpha Street and Signalized Intersection at State Route 16/County Road 86A under Section 4.01.02 due to the improvements no longer being needed or desired by the County or Developer; and~~

I. WHEREAS, the full Development Agreement between the Parties, including the cumulative amendments thereto, are reflected herein.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the parties agree as follows:

AGREEMENT

ARTICLE 1. EFFECTIVE DATE AND TERM

Section 1.01. Effective Date. This Agreement shall become effective upon the thirtieth (30th) day following the adoption by the Board of the ordinance approving this Agreement, or on the date upon which the Agreement is fully executed by the parties hereto, whichever is later (the “Effective Date”).

Section 1.02. Term. The term of this Agreement (the “Term”) shall commence upon the Effective Date and shall continue until December 31, 2021~~2029~~. In the event the Developer does not complete construction of the Project in accordance with all Project Approvals, and all Subsequent Approvals, this Agreement shall automatically terminate, with the exception of those provisions that impose post-termination obligations upon Developer.

ARTICLE 2. DEFINITIONS

Section 2.01. Definitions. The following terms when used in this Agreement shall have the following meanings:

- A. “Applicable Laws” means all ordinances, resolutions, rules, minute orders, regulations, design guidelines, and the official policies of the County adopted therein applicable to the development, use, and occupancy of the Story Property in effect on February 14, 2007, the date the Planning, Resources and Public Works Department determined the application for Tentative Subdivision Map No. 4691 was complete, including those governing the issuance of permits and approvals for the Project and the planning and zoning policies applicable to the Project, as well as the 2007 Esparto General Plan adopted by the Board of Supervisors on _____, 2007, but excluding uniform codes such as the Uniform Building Code.
- B. “Board” shall have that meaning set forth in Recital F(2), above.
- ~~C. “Capay Cottages Project” shall mean a single-family residential project proposed by the John Deterding Company on property located east of Alpha Street.~~
- C. “CEQA” shall mean the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.*

- D. “Changes in the Law” shall have the meaning set forth in Section 3.08 of this Agreement.
- E. “County” shall have the meaning set forth in the Preamble to this Agreement.
- F. “Developer” shall have the meaning set forth in the Preamble to this Agreement.
- G. “Director” shall mean the Director of the ~~Planning, Resources and Public Works~~ Department of Community Services of the County or his or her designee.
- H. “Effective Date” shall have that meaning set forth in Section 1.01, above.
- I. “Findings” shall have the meaning set forth in Recital F, above.
- J. “General Plan” shall mean the County’s General Plan ~~(which includes the updated 2007 Esparto General Plan)~~ in force as of the Effective Date of this Agreement.
- K. *[INTENTIONALLY LEFT BLANK]*
- L. “Mitigation Measures” shall have that meaning set forth in section 4.01.03, below.
- M. “Mitigation Monitoring Plan” shall have that meaning set forth in section 4.01.03, below.
- N. “Planning Commission” shall have the meaning set forth in Recital F, above.
- O. “Mitigated Negative Declaration or MND” shall have the meaning set forth in Recital F, above.
- P. “Near Term Development Properties” shall mean the properties on which other near term Esparto projects defined in this section are located.
- ~~Q. “Orciuoli Project” shall mean a single family residential project proposed by Castle Companies on property located in the northwest section of Esparto along State Route 16.~~
- Q. “Project” shall mean the development in accordance with the Project Approvals and Subsequent Approvals.
- R. “Project Approvals” shall mean the MND and adopted Mitigation Measures, Tentative Subdivision Map, Conditions of Approval and Planned Development Ordinance, each as described in Recital F above.
- ~~S. “E. Parker Project” means the single family residential project on property located along County Road 20X proposed by Emerald Homes LT, LLC (Tentative Subdivision Map No. 4755). The “E. Parker Developer” shall mean the developer of the E. Parker Project.~~

- S. “Subsequent Approvals” shall have that meaning set forth in Section 3.03, below.
- T. “Term” shall have that meaning set forth in Section 1.02, above.
- ~~U. “Town Center Project” shall mean the proposed mixed-use project by the John Deterding Company on the Town Center properties located in the northwest section of Esparto off State Route 16 or some other future potential development project(s) on those properties.~~

ARTICLE 3. DEVELOPMENT OF THE PROJECTS

Section 3.01. Vested Right to Develop. Unless otherwise provided herein, Developer shall have a vested right to develop the Project within the Project Site in accordance with the terms and conditions of this Agreement, all Applicable Laws, the Project Approvals, and any Subsequent Approvals, including the right to develop within the Project Site the improvements described in the Tentative Subdivision Map, subject to the TSM Conditions of Approval and the MND certified by the Board for the Project.

Section 3.02. Density or Intensity of Use. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, and the other terms and conditions of development applicable to the Project Site shall be those set forth in this Agreement, the Project Approvals, any Subsequent Approvals, and the Applicable Laws. Notwithstanding the foregoing, and notwithstanding Section 3.03, below, should Developer request a substantive amendment to the General Plan, zoning, TSM, and other Project Approvals or Subsequent Approvals, the County may apply current regulations in effect as of the time the application for amendment is deemed complete to the extent the current regulations relate to the proposed amendment.

Section 3.03. Subsequent Approvals. To the extent necessary or desirable for the development of the Project after this Agreement is recorded, Developer may apply for environmental and land use approvals, entitlements, and permits in addition to the Project Approvals (“Subsequent Approvals”) in the same manner as any other similarly-situated person. All application processing fees then applicable for the type of Subsequent Approvals shall apply. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals; tentative subdivision map; variances and minor or major conditional use permits; site plan approvals; revised architectural design, elevations and/or floor plans; grading permit, final subdivision map and building permits.

Section 3.04. Construction Codes. Pursuant to Yolo County Code § 8-10.205, and recognizing the importance of complying with current safety standards for long-term projects, the parties agree that the County may apply the then-current versions of the Uniform Building, Plumbing, Mechanical, Electrical, Fire, and Grading Codes to the Project throughout the term of this Agreement, provided that the provisions of such uniform codes shall: (i) apply to the Project only to the extent that the applicable code (and the applicable version of the code, as may be amended or revised from time to time) has been adopted by the County and is in force and effect on a County-wide basis; (ii) be interpreted and applied to construction of the Project in a reasonable manner consistent with the express provisions and limits in the particular uniform

code provisions adopted by the County; and (iii) be interpreted and applied to the Project in a manner consistent with the generally prevailing interpretation of such provisions under the State Building Standards Code.

Section 3.05. Consistency With General Plan. The County finds that the provisions of this Agreement and the development of the Story Property as approved are consistent with and conform to the General Plan of the County of Yolo, ~~including the 2007 Esparto General Plan (as well as the 1996 Esparto General Plan)~~. The basis for these findings are set forth in greater detail in the Findings adopted in connection with the MND for the Project.

Section 3.06. No Conflicting Enactments. Subject to certain exceptions expressly set forth in this Agreement, the County shall not impose upon or apply to the Project (whether by action of the Board or by initiative, referendum, issuance of a Subsequent Approval or other means) any ordinance, resolution, rule, regulation, official policy, standard, specification, directive, condition or other measure (each individually, a “Development Standard”) that is in conflict with the Applicable Laws or that reduces the development rights provided by this Agreement. Notwithstanding the foregoing, the following regulations and provisions shall apply to the development of the property:

- A. Application fees and charges of every kind and nature imposed by the County to cover the actual costs to the County of processing developing applications or for monitoring compliance with any Project Approvals or Subsequent Approvals.
- B. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied on a County-wide basis to all substantially similar types of development projects and properties.
- C. Regulations governing construction standards and similar matters, as set forth in Section 3.04, above.

Section 3.07. Initiatives, Referenda and Moratoria.

Section 3.07.01. If any Development Standard is enacted or imposed by initiative or referendum, or by the Board directly or indirectly in connection with any proposed initiative or referendum, which Development Standard would conflict with the Applicable Laws or reduce the development rights provided by this Agreement, such Development Standard shall not apply to the Project.

Section 3.07.02. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting building permits or any other entitlements to use that are or are to be approved, issued or granted within the County or portions of the County, shall apply to the Project.

Section 3.08. State and Federal Law. As provided in California Government Code § 65869.5, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations and are otherwise applicable to the Project irrespective of the existence of this Agreement (“Changes in the Law”). In the event that Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with the Changes in the Law, and the parties shall take such action as may be required pursuant to Section 8.06 (Excusable Delay; Extension of Time for Performance) of this Agreement.

Section 3.09. Compliance With Government Code § 66006. As required by Government Code § 65865(e) for Agreements approved after January 1, 2004, the County will comply with the requirements of Government Code § 66006 pertaining to the payment of fees for the development of the Project.

Section 3.10. Pursuant to Government Code § 66452.6(a), the term of any parcel map or tentative subdivision map on the Project Site shall automatically be extended to coincide with the term of this Agreement.

ARTICLE 4. OBLIGATIONS OF DEVELOPER AND THE COUNTY

Section 4.01. Obligations of Developer.

Section 4.01.01. Generally. The parties acknowledge and agree that the execution of this Agreement by the County is material consideration for both Developer’s acceptance of, and agreement to comply with, the terms and conditions of the Project Approvals and (as and when they are issued) Subsequent Approvals.

Section 4.01.02. Development Obligations, Payments, and Miscellaneous Contributions. The following specific development obligations for the Project are in addition to any Conditions of Approval or Mitigation Measures and constitute community benefits of the Project:

A. Contribution to New Seasons Community Development Corporation for Yolo Avenue Streetscape Improvements in Downtown Esparto.

1. The goal of the New Seasons Community Development Corporation (“New Seasons CDC”) is to promote the revitalization of downtown Esparto in order to attract and keep new businesses to serve the local community. Toward that end, New Seasons CDC is working with the County and Caltrans to make changes to Yolo Avenue that will calm and slow down traffic. New Seasons CDC is also working with both agencies to make landscape, lighting and pedestrian (“streetscape”) improvements in the public right of way to enhance the appearance of the downtown. As a community benefit, Developer has agreed, upon approval of its final subdivision map for the Project, to place One Hundred

Twenty-Five Thousand Dollars (\$125,000) in an escrow account, to be used by New Seasons CDC to make streetscape improvements in the public right-of-way on Yolo Avenue in downtown Esparto. The terms of that commitment shall be further described in a letter agreement between New Seasons CDC and Developer. The specific improvements to be constructed must be reviewed and approved by the County and Caltrans.

~~B. Construction by Near Term Developers of Circulation Improvements for Crossing of Lamb Valley Slough at Alpha Street and Signalized Intersection at State Route 16/County Road 86A.~~

~~1. The 2007 Esparto General Plan includes the East Esparto Circulation Plan, which is based on the East Esparto Circulation Study by Fehr & Peers and input from the Planning, Resources and Public Works Department and Esparto Citizens Advisory Committee. That plan calls for the extension of Alpha Street from Plainfield Street across Lamb Valley Slough to State Route 16 and a signalized intersection at State Route 16 and County Road 86A. These improvements will allow East Esparto traffic to avoid Yolo Avenue when traveling to or from the east on State Route 16. These improvements will reduce unnecessary traffic on Yolo Avenue and help allow for successful implementation of traffic calming measures and enhancement of that streetscape, which in turn will help to achieve the goal of the County and local community to revitalize downtown Esparto and its commercial base. Under the California Environmental Quality Act (CEQA), the County may require new development to pay its fair share cost for the County to construct the Alpha Street extension and County Road 86A signal improvements, determined by a development's percentage of the overall traffic in Esparto based on 2030 buildout under the 2007 Esparto General Plan. However, those fair share contributions do not achieve the County's goal that the following improvements be constructed by developers in the near term:~~

~~(a) Construct the extension of Alpha Street from Plainfield Street to State Route 16 and right turn in and out improvements on State Route 16, in order to provide an acceptable level of service at the Yolo Avenue/Plainfield Street intersection or around the final near term development is completed. Construct related improvements to facilitate use of this extension: (i) sidewalk improvements on the north side of Plainfield Street from the existing sidewalk to Alpha Street and (ii) improvements to Alpha Street from Grafton Street to Plainfield Street.~~

~~(b) Construct a signalized intersection on State Route 16 at County Road 86A, in order to provide an acceptable level of service at that intersection at or around the time the near term development is completed.~~

~~2. The Developer has agreed to construct a significant portion of the above-described circulation improvements as community benefits, subject to partial reimbursements from other developers the amounts of which are premised on the~~

~~respective traffic percentages of the near term developers as determined by Fehr & Peers in its Technical Memorandum dated March 2, 2007, as follows:~~

~~(a) If the Story Subdivision is constructed after the E. Parker Project, the Story Developer shall construct, prior to issuance of the fiftieth (50th) building permit, the circulation improvements described below and subject to partial reimbursement from other developers as follows:~~

~~(1) The Story Developer shall construct the extension of Alpha Street from Plainfield Street to State Route 16 and right turns in and out improvements on State Route 16.~~

~~(2) If a subdivision is approved and developed on the adjoining property east of the E. Parker Project, Yolo County shall secure reimbursement from that developer in an amount equal to the number of approved units in that subdivision, divided by the number of approved units in the E. Parker Project (62) plus the number of approved units in that subdivision, times the bonded cost to extend Alpha Street on the south side of Lamb Valley Slough to State Route 16 and the improvements on State Route 16 for right turns in and out.~~

~~(3) Yolo County shall secure a payment to the Developer from the developer of the Orciuoli Project in the amount of _____ in partial reimbursement for the Orciuoli Project's share of the cost to construct the extension of Alpha Street from the south side of Plainfield Street to the south side of Lamb Valley Slough, which includes the slough crossing. Said amount is roughly proportional to the Orciuoli Project's share of near term development traffic.~~

~~(4) The County shall require the Capay Cottages Project developer to construct other improvements related to the Alpha Street extension, namely the sidewalks on the north side of Plainfield Street and the Alpha Street improvement from Plainfield Street to Grafton Street, prior to completion of that project. Said obligation is roughly proportional to the Capay Cottages Project's share of near term development traffic.~~

~~3. [INTENTIONALLY LEFT BLANK]~~

~~4. The County shall require in its conditions of approval for the above described near term projects that the reimbursement amounts for the two cumulative circulation improvements described above be paid directly to Developer prior to final subdivision map approval (or issuance of a building permit if no final subdivision map is required). If the reimbursing developer's project proceeds before the improvements by the E. Parker Developer are complete, the County shall hold the reimbursement funds in trust and they shall be paid by the County~~

~~to the Developer, once the improvements are accepted by the County as complete. If for any reason, the County does not include the reimbursements described herein as conditions of the above-described or other development projects, the County shall implement a traffic impact mitigation fee program to cover the cost of County construction of the Alpha Street extension and the signalized intersection on State Route 16 at County Road 86A.~~

- ~~5. Yolo County shall be a co-applicant for the necessary state and federal permits to complete the circulation improvements described above. The County shall fully cooperate and work with the Developer to secure the necessary encroachment permits for Caltrans in the scope of improvements supported by the County and Developer.~~
- ~~6. Condition of Approval No. 26 of Tentative Map No. 4691 describes the required improvement plans that must be approved by the County prior to approval by the Board of Supervisors of the Final Subdivision Map for the Story Subdivision.~~

C.B. Construction of Standard and Optional Visitability/Universal Design Features in Single-Family Homes.

1. Developer has agreed as a further community benefit to include or offer the following “visitability” or “universal design” features as standard in the homes in the Story Subdivision:
 - (a) One no step, accessible entrance to house shall be provided. A no step accessible entrance means: (i) 34" net clear width, measured between face of door and stop when door is in 90° position, (ii) a threshold no greater than 1/2" with 45° bevel, (iii) 60" x 60" level landing area next to and outside of entry, (iv) minimum 3' wide path of travel to the accessible entry from the vehicle unloading area, with slope in any direction not to exceed 5% maximum running slope and 2% maximum cross slope, and (v) a vehicle unloading area with a level landing not less than 40" wide. At developer's election, no step accessible entrance shall be through either the front entry or garage entry to house. If the no step accessible entrance is the front entry, then 3' wide accessible path of travel from garage driveway may connect to side of porch; if it is the garage entry to the house, then garage slab may slope to create 1/2" threshold with 45° bevel at garage entry, with the garage slope not to exceed 2%. At developer's election, the vehicle unloading area may be at the top of the driveway or be the slab within the garage. An alternative design is proposed by the developer and agreed to by the Chief Building Official.
 - (b) One interior accessible route from accessible entry to accessible first floor bathroom, common use room, kitchen and bedroom, 36" wide and level. For two-story houses, no accessible bedroom on first floor is required and the first floor bathroom may be a powder room/half-bath. Each accessible

room shall have 32" net clear opening. Kitchen shall include 36" wide path of mobility provided there is no island.

- (c) Rocker light switches on first floor.
 - (d) Light switches, receptacles, and environmental and alarm controls shall be at accessible height between 42" and 48."
 - (e) Grab bar backing on accessible first floor bathroom at side and back of toilet.
 - (f) Single-action level door and hardware on accessible bathroom and accessible house entry.
 - (g) If front entry is accessible house entry, then locate door bell between 42" and 48" from finished floor/grade.
2. Developer has agreed as a further community benefit to offer the following optional visitability/universal design features at Developer's cost:
- (a) Grab bars in accessible bath at no additional cost.
 - (b) Anti-scald devices included for faucets in kitchen and accessible bathroom.
 - (c) Single-action hardware for all doors.
 - (d) One additional eyehole in front door between 42" and 48" and the other higher eyehole.
3. Developer has agreed as a further community benefit to offer the following optional visitability/universal design features at buyer's cost:
- (a) Work/floor space in front of kitchen sink of 30" x 48" and base cabinet pullout/lazy susan shelves in that work space location in front of the sink (if no kitchen island).
 - (b) Removable base of sink in accessible bathroom.
 - (c) Shower with threshold no greater than 1/2" with 45° bevel (only single-story houses).
 - (d) These optional features must be requested by buyer prior to house construction that involves the requested option. In other words, the builder must not be required to remove, replace or modify any existing construction to provide the requested optional feature.

4. Developer shall provide confirmation acceptable to the Planning, Resources and Public Works Director that the standard and optional features described above will be available in each home prior to the issuance of the first building permit.

Section 4.01.03. Mitigation Monitoring Plan Implementation. Concurrent with its certification of the MND prepared for the Project, the Board adopted mitigation measures to lessen or avoid the significant effects of the Project (“Mitigation Measures”). They are included as Conditions of Approval Nos. 59-64 for Tentative Subdivision Map No. 4691. Concurrent with its adoption of the Mitigation Measures, the Board also adopted a mitigation reporting or monitoring program (“Mitigation Monitoring Plan”). In consideration of the County entering into this Agreement, the Developer agrees to comply with all of the Mitigation Measures and the Mitigation Monitoring Plan. The Mitigation Measures shall be fully enforceable pursuant to this Agreement, and Developer agrees to cooperate in good faith with the County in its implementation of the Mitigation Monitoring Plan adopted by the Board. The provisions of this Section shall survive the termination or expiration of this Agreement.

Section 4.02. Obligations of the County.

Section 4.02.01. Generally. In consideration of Developer entering into this Agreement, the County agrees that it shall comply with all Project Approvals and (as and when they are issued) Subsequent Approvals, and shall consider for approval and cooperate with processing all applications for the Subsequent Approvals as provided in this Agreement. Specifically, the County shall cooperate in providing for and allowing stormwater and drainage improvements within County drainage easement locations as may be necessary to provide adequate stormwater control for the Project and in securing encroachment permits from Caltrans consistent with this Agreement and the TSM Conditions of Approval.

ARTICLE 5. AMENDMENT

Section 5.01. Amendment of the Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors-in-interest, in accordance with the provisions of California Government Code §§ 65867, 65867.5, and 65868, and Title 8, Chapter 10 of the Yolo County Code. Except as provided under Title 8, Chapter 10 of the Yolo County Code and Government Code § 65865.1, or this Agreement, no amendment shall have any force or effect unless it is set forth in writing, signed by the duly authorized representatives of each of the parties hereto, and recorded in the Official Records of the County of Yolo.

The cost to the County in processing a proposed amendment shall be paid by the Developer. The Developer shall pay any and all normal application fees. Any amendment to this Agreement which does not relate to the (i) Term; (ii) permitted uses of the Project Area; or (iii) conditions, terms, restrictions, or requirements for subsequent discretionary actions, shall not require notice or public hearing before the parties may execute an amendment hereto. Such amendment may be approved by a Board resolution.

Notwithstanding the foregoing, however, the Director may approve an amendment to this Agreement which is (i) minor when considered in light of the Project as a whole, and (ii) consistent with the general intent of the provision(s) to be amended. Any such amendment may be approved by the Director without prior notice or a public hearing by executing a memorandum of understanding with the Developer. Any memorandum of understanding must be in writing and signed by the parties, but need not be recorded in the Official Records of the County of Yolo.

Section 5.02. Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval shall require an amendment to this Agreement. Instead, any such amendment, including any conditions, mitigation measures, and other restrictions associated with the amendment, automatically shall be deemed to be incorporated into the Project and vested under this Agreement.

ARTICLE 6. THIRD PARTY LITIGATION

Section 6.01. Third Party Litigation Concerning Review or Approval of Project. The Developer and its successors, heirs, and assigns agree to indemnify and defend the County in the event any legal action or proceeding is commenced by any person or entity against the County, its elected officials, officers, employees, agents, and independent contractors, arising out of or in any way connected with this Agreement or the County's approval of the Project, issuance of the Project Approvals or Subsequent Approvals, certification of the MND or other actions taken to comply with CEQA, or any other action taken by the County in connection with the Project. In providing any defense under this Section, the Developer shall use counsel reasonably acceptable to the County Counsel. The provisions of this Section shall survive the termination or expiration of this Agreement.

Section 6.02. Third Party Litigation Concerning Construction or Operation of Project. Developer and its successors, heirs, and assigns agree to indemnify and defend the County in the event any legal action or proceeding is commenced by any person or entity against the County, its elected officials, officers, employees, agents, and independent contractors, arising out of or in any way connected with Developer's construction or operation of the Project, with the exception of claims for damages arising solely through the active negligence or willful misconduct of elected officials, officers, employees, agents, or independent contractors of the County. In providing any defense under this Section, Developer shall use counsel reasonably acceptable to the County Counsel. The provisions of this Section shall survive the termination or expiration of this Agreement.

Section 6.03. Advance Payment of Defense Costs. To secure its obligation under this Article 6, the County may require, upon the filing of a lawsuit or other legal proceeding contemplated in Section 6.01, the Developer to make an initial advance deposit of money sufficient to fund the expenses reasonably likely to be incurred by the County during the first six months of defending such suit. Thereafter, the County may require the Developer to make regular monthly advance deposits sufficient to ensure that the County has a defense fund that is adequate to cover defense costs reasonably likely to be incurred during the succeeding six month

period. The provisions of this Section shall survive the termination or expiration of this Agreement.

ARTICLE 7. PERIODIC REVIEW

Section 7.01. Conducting the Periodic Review. Pursuant to Yolo County Code § 8-10.701 and Government Code § 65865.1, the Director shall review the extent of good faith compliance by Developer with the terms of this Agreement on an annual basis, on or before the anniversary date of the recordation of this Agreement. A component of the Periodic Review is an annual monitoring report to be submitted to the Director by Developer within thirty (30) days of each anniversary date or, alternatively, within thirty (30) days of receiving a written request for such report from the Director, whichever occurs first. The procedure for the Periodic Review shall be as set forth in Title 8, Chapter 10 of the Yolo County Code, as may be amended from time to time, provided that any such amendments shall apply only to the extent that they do not conflict with the express terms of this Agreement.

ARTICLE 8. DEFAULT AND REMEDIES FOR DEFAULT

Section 8.01. Default. No party shall be in default under this Agreement unless it has failed to perform under the Agreement for a period of thirty (30) days after written notice from the other party of an event of default. The notice of an event of default shall specify in detail the nature of the alleged default and the manner in which the default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed to satisfy such requirement. Evidence of default may also arise in the course of periodic review as set forth in Article 7 of this Agreement. The 30-day notice period shall not apply if the default is of such a nature that it cannot be cured, in which event the non-breaching party shall be entitled to proceed in accordance with the remaining provisions of this Article.

Section 8.02. Remedies and Termination. After the expiration of the thirty (30) day period (or longer, as applicable), the party alleging default may, at its option, institute legal proceedings under this Agreement or give notice of its intent to terminate the Agreement pursuant to California Government Code § 65868 and relevant provisions of the Yolo County Code or may pursue such other administrative remedies as may be appropriate. Following notice of intent to terminate, the matter shall be scheduled for a public hearing before the Board to review and consider the matter within thirty (30) days. Except to the extent that California law may contain different notice or hearing requirements, notice of the public hearing shall be provided in accordance with the provisions of Yolo County Code § 8-10.801, and the public hearing shall be conducted in accordance with the provisions of Yolo County Code § 8-10.802. Following consideration of the evidence presented in the review, if no resolution is reached, the party alleging the default may give written notice of the termination of this Agreement and pursue any and all remedies that may be available in law or equity, including but not limited to specific performance or the rescission of this Agreement. The County may also refuse to issue a building permit for any structure on the Story Property if the permit applicant owns or controls property subject to this Agreement and if such applicant or any entity or person controlling such

applicant is in default under the terms and conditions of this Agreement unless such default is cured or this Agreement is terminated. In no event, however, shall either party be liable to the other for money damages for any default or breach of this Agreement.

Section 8.03. Specific Performance. The parties acknowledge that monetary damages and remedies at law are generally inadequate and that specific performance is an appropriate remedy for the enforcement of this Agreement and should be available to all parties for the following reasons:

- A. Due to the size, nature, and scope of the Project, it may not be practical, or possible, to restore the Project Site to its pre-existing condition once implementation of this Agreement has begun. After such implementation, the Developer may be foreclosed from other choices it may have had to utilize the Project Site and provide for other benefits. Developer has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement, and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it will not be possible to determine the sum of money that would adequately compensate Developer for its efforts. By the same token, the County will have invested substantial time and resources and will have permitted potentially irreversible changes to the Project Site, and it will not be possible to determine a sum of money that would adequately compensate the County for such undertakings.
- B. The use of the Project Site for the purposes and uses described in this Agreement and in the Project Approvals is unique.

Section 8.04. Cumulative Remedies. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, injunctive relief, and relief in the nature of mandamus. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

Section 8.05. Venue; Applicable Law; Attorneys Fees. Venue for all legal proceedings shall be the Superior Court for the State of California, County of Yolo. This Agreement shall be construed and enforced in accordance with the laws of the State of California. The prevailing party in such litigation, as determined by the Court, shall be awarded reasonable attorneys' fees in addition to statutory costs.

Section 8.06. Excusable Delay; Extension of Time for Performance. In addition to the specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, acts of terrorism, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the County, enactment of

conflicting state or federal laws or regulations, new or supplementary environmental laws or regulations enacted by the state or federal government, or litigation. An extension of time for such cause, including an extension of the Term, may be granted in writing by the unaffected party for the period of the excusable delay or longer, or as may be mutually agreed upon.

ARTICLE 9. MISCELLANEOUS PROVISIONS

Section 9.01. Incorporation of Recitals and Preamble. The Recitals contained in this Agreement, and the introductory preamble preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

Section 9.02. Covenants. All of the provisions of this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Story Property, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws including, without limitation, California Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Story Property, as appropriate, runs with the Story Property, and is binding upon the owner of all or a portion of the Story Property and each successive owner during its ownership of such property.

Section 9.03. Right to Assign; Non-Severable Obligations. Except as otherwise provided herein, Developer shall have the right to sell, encumber, convey, assign, or otherwise transfer, in whole or part, its rights, interests and obligations to a third party during the term of this Agreement. No assignment shall be effective, however, until the County approves the assignment by action of its Board of Supervisors and the assignee enters into a written agreement with the County to perform the all of the legal obligations of Developer under this Agreement that are reasonably related to the rights and interests proposed for assignment. Approval shall not be unreasonably withheld, provided: (i) the assignee has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and (ii) the proposed assignee has adequate experience with residential developments, as appropriate, of comparable scope and complexity to the Project to be undertaken within the Project Site and has successfully completed such developments.

Section 9.04. Unapproved Transfers or Assignments Void. Any assignment or attempted assignment in violation of Section 9.03, above, shall be unenforceable and void and shall not release Developer from any of its obligations hereunder.

Section 9.05. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in fully force and effect unless amended, modified, or terminated by mutual consent of the parties. Notwithstanding the foregoing, if a Court of competent jurisdiction over this Agreement determines that the vested rights provided by this Agreement are invalid, void or unenforceable,

the Developer may (in its sole discretion) terminate this Agreement by providing written notice of such termination to the County.

Section 9.06. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals, and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 9.07. Construction. Each reference in this Agreement to any of the Project Approvals or Subsequent Approvals shall be deemed to include any amendment of the Project Approvals or Subsequent Approvals, whether or not the particular reference refers to or contemplates such amendment. This Agreement has been reviewed and revised by legal counsel for both the County and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 9.08. Conflicts With Yolo County Code. The provisions of Title 8, Chapter 10 of the Yolo County Code, entitled “Development Agreements,” are incorporated herein by this reference. However, in the event of a conflict between a specific provision of the Yolo County Code and a specific provision of this Agreement, this Agreement shall prevail.

Section 9.9. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party’s right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

Section 9.10. No Joint Venture or Partnership. The County and Developer hereby renounce the existence of any form of joint venture, partnership, or other legal entity between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the County and the Developer.

Section 9.11. Notices.

Section 9.11.01. All notices required by this Agreement will be deemed to have been given when made in writing and delivered or mailed to the respective representatives of the County and the Developer at their respective addresses, as follows:

For the Developer:

Esparto Story, LLC.
Attn: Raul Melendez
PO Box 1029
Woodland, CA 95776
Emerald Homes LT, LLC

For the County:

Yolo County Administrative Officer
625 Court Street, Room 202
Woodland, CA 95695

~~Attn: Jeffery Lynn Robinson
634 N. Santa Cruz Ave, Suite 100
Los Gatos, CA 95030~~

~~With a copy to:~~

~~Mark L. Armstrong
412 Cliffside Drive
Danville, CA 94526~~

With a copy to:

Yolo County Counsel
625 Court Street, Room 201
Woodland, CA 95695

Section 9.11.02. In lieu of written notice to the above addresses, any party may provide notices through the use of facsimile machines provided confirmation of deliver is obtained at the time of transmission of the notices and provided the following facsimile telephone numbers are used:

To the Developer:	Emerald Homes LT, LLC	(408) 399-4397
	Mark L. Armstrong	(925) 831-9081
	ESPARTO STORY, LLC	(530) 564-1477

To the County:	County Administrative Officer	(530) 666-8147
	County Counsel	(530) 666-8279

Section 9.11.03. Any party may change the address or facsimile number to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days before the effective date of such change.

Section 9.11.04. All notices will be effective upon receipt and will be deemed received through delivery if personally served or served using facsimile machines, or on the fifth day following deposit in the mail if sent by first class mail.

Section 9.12. No Third Party Beneficiaries. This Agreement is not intended to, and will not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

Section 9.13. Authorized Representatives. The persons executing this Agreement on behalf of the parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of their respective party and to bind their respective party to the terms and conditions of this Agreement. The persons executing this Agreement on behalf of their respective party understand that both parties are relying on these representations in entering into this Agreement.

ARTICLE 10. ENTIRE AGREEMENT, COUNTERPARTS, AND EXHIBITS

This Agreement constitutes the entire agreement between the County and Developer and supersedes all prior negotiations, representations, or other agreements, whether written or oral,

between the same parties with respect to the matters covered herein. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A
Exhibit B

Legal Description of Story Property
Tentative Subdivision Map No. 4691

ARTICLE 11. RECORDATION

Pursuant to Government Code § 65868.5, no later than ten (10) days after the County enters into this Agreement, the County Clerk shall record an executed copy of this Agreement in the Official Records of the County of Yolo.

EXHIBIT A

**LEGAL DESCRIPTION OF
STORY PROPERTY**

EXHIBIT B

TENTATIVE SUBDIVISION MAP NO. 4691