

RECORDING REQUESTED BY
SONOMA COUNTY

July 19, 2022

WHEN RECORDED, RETURN TO:

Sonoma County
Clerk of the Board of Supervisors
575 Administration Drive
Room 100 A
Santa Rosa, CA 95403

Sonoma County
Attn: Linda Schiltgen
Deputy County Counsel
2550 Ventura Avenue
Santa Rosa, CA 95403

Space Above Reserved for Recorder's Use Only

DEVELOPMENT AGREEMENT

BY AND BETWEEN

SONOMA COUNTY

AND

ROYAL OAK DEVELOPMENT CO., LLC

RELATING TO THE DEVELOPMENT COMMONLY KNOWN AS

HYATT PLACE HOTEL

**Development Agreement by and between
Sonoma County and Royal Oak Development Co., LLC
Relating to the Development Commonly Known as Hyatt Place Hotel**

This Development Agreement ("Agreement") is entered into as of the Effective Date (defined in Section 1.03), by and between Sonoma County, a political subdivision of the State of California, ("County") and Royal Oak Development Co., LLC, a California Limited Liability Company ("Developer"). The County and Developer are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted Government Code section 65864 *et seq.* ("Development Agreement Statute"), which authorizes a county to enter into a development 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. Developer has a legal or equitable interest in certain real property consisting of an approximately 3.51-acre vacant parcel (APN 059-370-033), as depicted and more particularly described and depicted in attached Exhibit A (the "Subject Property").

C. The Parties desire to redevelop the Subject Property with the Hyatt Place Hotel (as defined below), which will provide benefits to the County and to the public.

D. By this Agreement, Developer will receive assurance that it may proceed with the development or redevelopment of the Subject Property for the Hyatt Place Hotel in accordance with the Applicable Law (defined in Section 2.03).

E. Consistent with Government Code section 65867, the County Planning Commission held a public hearing on an application for this Agreement on March 10, 2022 and adopted a resolution to recommend that the County Board of Supervisors approve this Agreement and the following related discretionary approvals for the Hyatt Place Hotel (each an "Approval," and collectively the "Approvals"): a Specific Plan amendment to change the Airport Industrial Specific Plan to allow height, building coverage and yard requirements for hotel uses to be exceeded with a use permit; a use permit, including conditions of approval, to allow construction of the Hyatt Place Hotel; design review; preliminary and final development plans to allow for construction of the Hyatt Place Hotel and associated infrastructure, utility, and roadway improvements; and any other approvals needed to provide for the development of the Project.

F. Consistent with Government Code section 65867, the County Board of Supervisors held a public hearing on an application for this Agreement on July 19, 2022 and adopted Ordinance No. [] to approve this Agreement. Prior to adopting that ordinance, the County Board of Supervisors approved the Approvals recommended by the Planning Commission.

G. To comply with the California Environmental Quality Act, the County Planning Commission adopted a resolution certifying a mitigated negative declaration (the “MND”) for the Hyatt Place Hotel and making findings. The MND has been adopted by the County Board of Supervisors. Since that MND was adopted, there have been no substantial changes to the Hyatt Place Hotel or the circumstances under which it will be undertaken, and no new information has become available, that would require a subsequent or supplemental environmental impact report to be prepared.

H. The County anticipates that during the Term (as defined below) of this Agreement and subsequent to the Effective Date, Developer will seek from County certain other implementing approvals, entitlements, and/or permits that are necessary or desirable for the Hyatt Place Hotel (each a “Subsequent Approval,” and collectively “Subsequent Approvals”). The Subsequent Approvals are any that may be necessary or desirable to develop the Hyatt Place Hotel and may include, but are not limited to, conditional use permits, design review approval, tree removal permits, acceptance or vacation of minor portions of rights of way, lot line adjustments, demolition permits, encroachment permits, site development permits, building permits, and any amendments to the foregoing. These Subsequent Approvals are further discussed in Section 2.03 of this Agreement.

I. The County Board of Supervisors has made a finding that this Agreement is consistent with the County’s General Plan and the County Ordinance Code, both as amended by the Approvals.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is acknowledged, County and Developer agree as follows.

AGREEMENT

Article I. DESCRIPTION OF THE SUBJECT PROPERTY, PROPOSED DEVELOPMENT, EFFECTIVE DATE, AND TERM.

Section 1.01. Description of Subject Property. This Agreement applies to development and of the Subject Property for the Hyatt Place Hotel on the Subject Property, as more particularly described and depicted in Exhibit A.

Section 1.02. Allowed Uses; Density or Intensity of Specified Uses; Maximum Height and Size of Proposed Structures: Consistent with the Approvals, Developer may develop the Subject Property with a six-story, hotel building containing approximately 116,000 square feet of gross floor area, excluding parking areas. The hotel will include up to 165 guest rooms, with a lobby, rooftop restaurant, bar, indoor pool area, fitness center, conference room and off-street parking, as such project is further described in the Approvals (the “Hyatt Place Hotel” or “Project”).

Section 1.03. Effective Date. The rights, duties, and obligations hereunder shall be effective and the Term (as defined in Section 1.05) shall commence on the “Effective Date,” which shall be the effective date of the Ordinance adopted by the Board of Supervisors approving this Agreement.

Section 1.04. Duration of the Agreement. The term of this Development Agreement shall commence on the Effective Date and shall expire five (5) years thereafter (“Initial Term”),

unless it is sooner terminated, or unless it is extended for Enforced Delay or tolled for a Third-Party Lawsuit (hereinafter defined), as provided in Section 1.05.

Section 1.05. Extended Term. The Term of this Agreement may be extended beyond the Initial Term only in the manner provided subsections (a) and (b) below. The Initial Term, together with any extensions of the Initial Term under this Section 1.05, are collectively referred to as the "Term."

(a) *Extension for Enforced Delay.* If Developer encounters an Enforced Delay (as defined in this Section 1.05(a) and desires to extend the Term because of that delay, Developer shall give the County written notice of the request for an Enforced Delay. If that written notice does not state the duration of the Enforced Delay because the delay remains ongoing, Developer shall give the County written notice of the date the Enforced Delay ends within ninety (90) days after the end of the delay. The Director of the Permit and Resource Management Department ("Director") shall review the request for the extension for Enforced Delay and shall determine whether the request qualifies pursuant to this paragraph, which determination will not be unreasonably withheld. If approved, the Director will provide Developer written notice of the approval of the request for the extension of the Term, which shall be extended for as many days as the Enforced Delay occurs, as determined by the Director. For the purposes of this Agreement, "Enforced Delay" means a delay or default resulting arising only from one or more of the following: (A) a natural disaster or other Force Majeure, including acts of war, extreme weather, natural disaster, fire, explosions, floods, earthquakes, pandemics, strikes of employees, civil disturbance terrorism, and acts of the government that requires development activities to cease; (B) the interruption of services by suppliers for a substantial period of time when no alternative suppliers are available, (C) the unavailability of construction materials for a substantial period of time when no substitute materials are available, or (D) any other severe occurrence that is beyond Developer's reasonable control, as determined by the County Community Development Director in his or her sole discretion.

(b) *Tolling for Third-Party Lawsuit.* If a third-party files a lawsuit to challenge this Agreement, the County's certification of the MND, the Approvals, or the Subsequent Approvals (each a "Third-Party Lawsuit"), Developer may request that the Term be tolled during the pendency of the Third-Party Lawsuit by providing a written notice ("Tolling Notice") to the County within thirty (30) days after the commencement of the lawsuit. The tolling of the Term will begin upon the County's receipt of the Tolling Notice, and it will end on the earliest of the following to occur: (A) the date on which a court issues a final judgment in the Third-Party Lawsuit and the expiration of all appeal periods following that judgment, or (B) the date the Third-Party Lawsuit is dismissed. If, in a Third-Party Lawsuit, the court issues a temporary restraining order or injunction prohibiting Developer from taking actions to proceed with the Hyatt Place Hotel, the Term will automatically be tolled beginning on the date the temporary restraining order or injunction is issued, and ending on the date the temporary restraining order or injunction is lifted or vacated.

Article II. STANDARDS, LAWS, AND PROCEDURES GOVERNING THE PROPOSED DEVELOPMENT.

Section 2.01. Vested Right to Develop. Developer shall have the right to pursue the Hyatt Place Hotel in accordance with the Applicable Law (defined in Section 2.03), including the Approvals, the Subsequent Approvals after they are granted, and the provisions of this Agreement. Notwithstanding the foregoing or anything to the contrary in this Agreement, County will apply to the Hyatt Place Hotel the then-current federal and state laws and

regulations, including the California Building Standards Codes (including the California Fire Code), and all local amendments to those codes, to the extent that those codes have been adopted by County and are in effect on a Countywide basis. The parties acknowledge and agree that the County is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to the County all of its police power which cannot be so limited. In the event of any conflict or inconsistency between this Agreement and the Applicable Law, or between this Agreement and any Subsequent Approvals, to the fullest extent legally possible, this Agreement shall prevail and control. County and Developer acknowledge and agree that other public agencies not within the control of County possess authority to regulate aspects of the development of the Project separately from or jointly with the County, and this Agreement does not limit the authority of such other public agencies. Developer shall, at the time required by Developer in accordance with Developer's construction schedule, apply for all such other permits and approvals as may be required by other governmental entities in connection with the development of, or the provision of services to, the Project. Developer shall also pay all required fees when due to such public agencies. Developer acknowledges County does not control the amount of any such fees. County shall cooperate with Developer in Developer's efforts to obtain such permits and approvals, provided, however, County shall have no obligation to incur any costs, without compensation or reimbursement, or to amend any County policy, regulation or ordinance in connection therewith.

Section 2.02. Development Standards. The permitted uses of the Subject Property, the density and intensity of uses, the maximum height, bulk, and size of the proposed building, provisions for reservation or dedication of land for public purposes and the location of public improvements, the general location of public utilities, and other terms and conditions of development applicable to the Hyatt Place Hotel shall be as set forth in Section 1.02 of this Agreement and in compliance with Applicable Law (defined in Section 2.03), (collectively, "Development Standards").

Section 2.03. Applicable Law. "Applicable Law" consists of the rules, regulations, and official policies governing the Development Standards in Section 2.02 applicable to the Hyatt Place Hotel existing as of the Effective Date. As provided in section 65869.5 of the Government Code, this Agreement shall not preclude the applicability to the Hyatt Place Hotel 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 by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than the County, created or operating pursuant to the laws of the State of California ("Changes in the Law").

In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and County and Developer agree to such action as may be reasonably required. Notwithstanding the foregoing, if Changes in the Law preclude or substantially limit or delay performance in a manner that makes the Hyatt Place Hotel economically infeasible, Developer may, in its sole and absolute discretion, may terminate this Agreement by providing written notice of such termination to the County.

Section 2.04. Subsequent Approvals. Developer and County acknowledge and agree that Developer may submit applications for Subsequent Approvals, including both Subsequent Ministerial Approvals and Subsequent Discretionary Approvals. In connection with any

Subsequent Approval, the County shall exercise its discretion in accordance with Applicable Law, the Subsequent Approvals, and any reservations of authority as set forth in Section 2.04.

(a). *Subsequent Ministerial Approvals.* “Subsequent Ministerial Approvals” are permits or approvals that are required by Applicable Law that that are to be issued upon compliance with uniform, objective standards and regulations. They include, without limitation, applications for road construction permits or authorizations; grading and excavation permits; building permits, including electrical, plumbing, mechanical, Title 24 Electrical, and Title 24 Accessibility permits or approvals; encroachment permits; water connection permits; and any other similar permits required for the development and operation of the Hyatt Place Hotel.

(b). *Subsequent Discretionary Approvals.* “Subsequent Discretionary Approvals” are all other approvals, including amendments to the Hyatt Place Hotel Approvals that may be proposed by Developer.

(c). *Processing Applications for Subsequent Approvals.*

1. Developer acknowledges that County cannot begin processing applications for Subsequent Project Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (1) provide to County in a timely manner any and all documents, applications, plans and other information necessary for County to carry out its obligations hereunder; and (ii) cause Developer’s planners, engineers and all other consultants to provide to County in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Developer and County to cooperate and diligently work to obtain any and all Subsequent Project Approvals.

2. Upon submission by Developer of all appropriate applications and processing fees for any pending Subsequent Approval, County shall, to the full extent allowed by law, promptly and diligently, subject to County ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer’s currently pending Subsequent Project Approval applications.

3. With the Hyatt Place Hotel Approvals, County has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Applications for Subsequent Ministerial Approvals that are consistent with this Agreement and Approvals shall be processed and considered in a manner that is consistent with the vested rights granted by this Agreement and shall be deemed to be tools to implement those final policy decisions and shall be approved by County so long as they are consistent with this Agreement and the existing project Approvals. While County expressly reserves its discretion with respect to all Subsequent Discretionary Approvals, County agrees that it shall not use its authority in considering any application for a Subsequent Discretionary Approval to change the policy decisions reflected by the Hyatt Place Hotel Approvals or otherwise to prevent or frustrate the further development of the Hyatt Place Hotel.

Section 2.05. No Conflicting Enactments. The County, or the electorate through the adoption of referenda and initiatives, may enact new or modified rules, regulations, or official policies after the Effective Date (each a “Later Enactment,” and collectively, “Later Enactments”), and such Later Enactments shall be included within the Applicable Law. All Later Enactments shall be applicable to the Hyatt Place Hotel only to the extent that application of any Later Enactment does not modify the Hyatt Place Hotel, does not prevent or impede development of the Hyatt Place Hotel, and does not conflict with this Agreement. Any Later

Enactment shall be deemed to conflict with this Agreement if the enactment seeks to accomplish any one or more of the following results, either with specific reference to the Hyatt Place Hotel or the development or redevelopment of the Subject Property, or as part of a general enactment that would otherwise apply to the Subject Property:

- (a) Reduce the density or intensity of the Hyatt Place Hotel under the Applicable Law;
- (b) Change any land use designation or permitted use of the Subject Property for the Hyatt Place Hotel as described in the Applicable Law;
- (c) Require, for any work necessary to develop the Hyatt Place Hotel on the Subject Property, the issuance of permits, approvals, or entitlements by County other than those required by Applicable Law; or
- (d) Materially limit the processing of, the procuring of applications for, or approval of the Subsequent Approvals in accordance with the Applicable Law (defined in Section 2.03).

Notwithstanding the foregoing, County shall not be precluded from applying a Later Enactment to the Hyatt Place Hotel where the Later Enactment is: (a) specifically mandated by changes in state or federal laws or regulations adopted after the Effective Date, as provided in Government Code section 65869.5; (b) specifically mandated by a court of competent jurisdiction; (c) required by changes to the California Building Standards Codes (including the California Fire Code), and similar safety regulations that may change from time to time, including all local amendments adopted by the County and are in effect on a Countywide basis; (d) increases to fee schedules to recover the actual cost of services provided during the term of the Agreement that are applied uniformly on a Countywide basis; or (e) required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk on the health or safety of the surrounding community, as determined by County in its reasonable discretion. Except as expressly provided by this Agreement and to the maximum amount permitted by the Development Agreement Statute, this Agreement does not restrict County's exercise of its police powers, and County reserves those powers to itself.

Section 2.06. Conflict of State or Federal Laws. In the event that state and/or federal law(s) and/or regulation(s) enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, the Party identifying the conflict shall provide the other Party, as soon as practicable after the conflict becomes known to the notifying Party, written notice of the conflict, a copy of the law(s) and/or regulation(s) that give rise to the conflict, and a statement explaining the nature of the conflict. Within thirty (30) days after that notice is given, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement so as to comply with the state and/or federal law(s) and/or regulation(s) giving rise to the conflict, pursuant to Government Code section 65869.5. If Developer does not consent to an amendment that is required to make this Agreement consistent with state and/or federal law(s) and/or regulation(s) in accordance with Government Code section 65869.5, County will provide Developer written notice of the immediate suspension of this Agreement, and the Agreement shall remain suspended until the date the Agreement is so amended. The Term shall not be tolled or extended for any period of suspension under this Section 2.05.

Section 2.07. Life of Approvals. The term of any Approval and any Subsequent Approval shall be deemed extended for the longer of the Term of this Agreement or the term otherwise applicable to such Approval or Subsequent Approval.

Section 2.08. Timing of Construction and Completion. The Parties acknowledge that Developer cannot, at this time, predict when or the rate at which the Hyatt Place Hotel will be constructed. The Parties agree that there is no requirement that Developer commence or complete construction or use of the Hyatt Place Hotel within any particular period of time during the Term of this Agreement.

Section 2.09. Processing Subsequent Approvals. The Subsequent Approvals shall be deemed mechanisms to implement those final policy decisions reflected by the Approvals and other provisions of Applicable Law. Upon submission by Developer of an application for a Subsequent Approval, County shall cooperate and diligently work to promptly process and consider approving that application in accordance with section 2.03. County shall retain its discretionary authority in its consideration of any and all Subsequent Approvals that involve discretionary decisions. The County will consider an application for a Subsequent Approval with reference to the Applicable Law, any applicable state or federal law, Later Enactments, and this Agreement.

Section 2.10. No Limitation on Future Discretionary Actions. Except to the extent that this Agreement expressly provides otherwise, nothing in this Agreement requires the County, or any of its boards or commissions, to adopt any future ordinances or resolutions, to enter into any other agreements with Developer, or to exercise its discretion in any particular manner in the future.

Article III. PUBLIC BENEFITS.

Section 3.01 Fire Engine Contribution. In consideration of the vested rights and associated benefits conferred upon Developer by this Development Agreement, Developer shall pay the Sonoma County Fire District ("SCFD") Two Hundred and Fifty Thousand and No/100 Dollars (\$250,000) ("Developer Funding Obligation") to fund SCFD's purchase of a "Fire Engine" as provided in this Section 3.01. "Fire Engine" means a vehicle designated for firefighting operations that is equipped with firefighting apparatus and a ladder. This proposed \$250,000 public benefit offered by Developer for Sonoma County Fire District shall be in addition to Developer's payment of the County's recently adopted fire impact fee, which currently imposes a fee of \$1.26 per square foot, or an additional fee of \$146,160 on the Hyatt Place Hotel.

(a) *Annual Payment to SCFD.* Developer shall pay the Developer Funding Obligation over a ten-year period, without interest, by paying SCFD (a) \$25,000 on the first day of the first month that is 60 days after the Effective Date, and (b) nine additional installments of \$25,000 each on the same day of each subsequent year until paid in full. Notwithstanding the foregoing, in the event of a Third-Party Lawsuit described in Section 1.05(b) such payment may be delayed for a period equal to the tolling of the Term of this Agreement as described in such subsection. Such obligation shall survive termination of this Agreement, provided that vertical construction of the Project has commenced prior to such termination.

(b) *Accelerated Payment.* If the SCFD provides evidence to Developer that SCFD has received additional funding from other sources which, in combination with the Developer Funding Obligation, will enable the SCFD to purchase a Fire Engine ("Additional Funding Evidence"), Developer will pay the remaining Developer Funding Obligation to SCFD within ninety (90) days of Developer's receipt of the Additional Funding Evidence. SCFD must provide evidence in form and substance reasonably satisfactory to Developer. If Developer determines the evidence provided is not satisfactory, Developer shall have thirty (30) days to notify SCFD

that additional evidence is needed. If Developer does not timely notify SCFD of the need for additional evidence, then the evidence provided shall be deemed to be satisfactory.

Section 3.02 **Developer Dedication of Right of Way and Maintenance Along Project Frontage.**

(a) *Dedication of Public Right of Way.* Developer shall grant County a right of way easement over certain portions of the Subject Property fronting Airport Boulevard as set forth in Use Permit Conditions 92-122.

(b) *Maintenance.* After the improvements are constructed, Developer shall maintain and repair the landscaping and sidewalk improvements located on certain portions of the Subject Property fronting Airport Boulevard and North Laughlin Road as set forth in Use Permit Conditions 92-122.

Section 3.03 **Fair Share Contribution.**

Prior to issuance of building permits, the developer shall pay to the Sonoma County Department of Transportation & Public Works a fair share of the cost of fourteen point six percent (14.6%) for the future intersection improvements of the Airport Boulevard/North Laughlin Road-Skyline Boulevard intersection. The method for calculating equitable fair share is based on the Caltrans Guide for the Preparation of Traffic Impact Studies, Appendix B, Methodology for Calculating Equitable Mitigation Measures, subject to the review and approval of PRMD and DTPW. The estimated cost of the intersection improvement is \$1,000,000 as included in the Five Year Capital Improvement Plan, 2021-2026. The estimated contribution from the Applicant would be \$146,000. This contribution would support the public benefit for funding for future improvements to the Airport Boulevard and North Laughlin Road intersection and Sonoma County Airport entranceway and maintenance of public improvements.

Article IV. AMENDMENTS.

Section 4.01. **Amendment of this Agreement.** This Agreement may be amended from time to time, in whole or in part, only by mutual written consent of the Parties or their successors in interest, in accordance with the provisions of Government Code sections 65867, 65867.5, and 65868. Following any amendment of this Agreement, the amended Agreement will be recorded in accordance with Government Code section 65868.5.

Section 4.02. **Amendments of Approvals or Subsequent Approvals.** No Subsequent Approval that is granted pursuant to this Agreement, or amendment of an Approval or Subsequent Approval that is consented to by Developer, shall require an amendment to this Agreement, and the Subsequent Approval or amendment of Approval or Subsequent Approval shall be deemed to be incorporated into this Agreement as of the date of the approval or amendment is effective.

Article V. DEFAULTS; PERIODIC REVIEW.

Section 5.01. **Default and Litigation.**

(a) *Default.* Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of ninety (90) days following written notice of such failure from the non-defaulting Party (unless such period is extended by written

mutual consent), shall constitute a default under this Agreement. Written notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such ninety (90) day period, then, within that ninety (90) day period, the defaulting Party shall begin acting to cure the default and shall continue acting diligently to complete the cure. If the default is not cured as required by this Section 5.01(a), the non-defaulting Party may pursue legal action in accordance with Section 5.01(b).

(b) *Litigation.* If a default is not cured in the manner required by Section 5.01(a), the non-defaulting Party shall provide the defaulting Party written notice ("Dispute Notice") that specifies, in reasonable detail, the reasons for that a default and dispute exists, and what, if any, reasonable actions may be taken to cure the default and resolve the dispute. Within thirty (30) days after the Dispute Notice is given, the Parties will meet in person and confer in good faith in an attempt to resolve the dispute. In addition to any other rights or remedies, if, following the meet and confer process, the non-defaulting Party determines that the dispute cannot be resolved informally, the non-defaulting Party may institute legal action to cure, correct, or remedy the default, enforce any covenant or agreement herein, enforce by specific performance the obligations and rights of the Parties hereto, or obtain any other remedy consistent with this Agreement.

(c) *No Waiver of Tort Claims Act.* Nothing in this Agreement shall relieve a non-defaulting Party from satisfying any applicable requirements of the California Tort Claims Act.

Section 5.02. Periodic Review. The Parties shall review the agreement for annual compliance in accordance with the Development Agreement Statute.

Section 5.03. Termination.

(a) *Termination by County.* If County elects to consider terminating this Agreement due to a material default by Developer, then County shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the County Board of Supervisors in the manner set forth in the Development Agreement Statute.

(b) *Termination by Developer.* Developer may terminate this Agreement at its sole discretion. Developer shall give the County, by certified mail, written notice of termination of this Agreement under this Section 5.03(b) and this Agreement shall be terminated thirty (30) days after that notice is given.

Section 5.04. Attorneys' Fees. In any legal action or other proceeding, including an Enforcement Action, brought by either Party to enforce or interpret this Agreement, each Party shall bear its own costs and attorney's fees, unless a statute expressly provides otherwise.

Section 5.05. Notice of Compliance. Within sixty (60) days after Developer's written request and submission of a report documenting compliance with the terms of this Agreement, but no more often than once per calendar year, County will execute and deliver to Developer a written "Notice of Compliance" in recordable form, duly executed and acknowledged by County, which certifies the following, but only if the County, in its sole discretion, determines the following to be true based on the County's actual knowledge as of the date the notice is given:

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

(b) There are no known current uncured defaults under this Agreement or, in the alternative, specifying the dates and nature of any such default. Developer may record the County's Notice of Compliance.

Article VI. INDEMNITY.

Developer shall indemnify, defend (with counsel reasonably acceptable to the County), and hold harmless County and its boards, commissions, officers, employees, and agents from all liabilities, claims, demands, and losses, including for personal injury, death, and property damage, costs and expenses, including attorney's and expert's fees (collectively, "Liabilities") that arise from activities or operations of Developer, or its contractors, subcontractors, agents, or employees, under this Agreement, or that are related to the development of the Hyatt Place Hotel. Developer's obligations under this Article VI apply to all Liabilities suffered or alleged to have been suffered, regardless of whether County prepared, supplied, or approved plans or specifications for the Hyatt Place Hotel. However, the obligations of this Article VI do not apply to any Liabilities that arise solely from the operation of public improvements and facilities following the County's acceptance of those improvements and facilities. If this Article VI conflicts with the requirements of the Indemnity Agreement, the requirements of the Indemnity Agreement shall prevail.

Article VII. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP.

The Hyatt Place Hotel is a private undertaking of Developer. Neither Party is acting as the agent of the other in any respect hereunder. Each Party is an independent contracting entity with respect to the terms and provisions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership, joint venture, or joint enterprise between or among the Parties to this Agreement.

Article VIII. SALE, ASSIGNMENT, OR TRANSFER.

Section 8.01. Approval of Sale, Assignment, or Transfer. Except as expressly set forth in Section 8.02, Developer shall have the right to sell, assign, or transfer this Agreement, and all of its rights, duties, and obligations hereunder, to any person or entity at any time during the Term, subject to the prior written approval of the Director. That notice shall include the contact information for the proposed purchaser, assignee, or transferee, and information that enables the Director to determine the experience, qualifications, and financial resources of the proposed purchaser, assignee, or transferee. The Director must render a decision on a request for such approval within forty-five (45) days after receipt of Developer's written request for County's consent to Developer's sale, assignment, or transfer of this Agreement, and the approval will be deemed granted if no decision is made at the end of such period. The Director will consent to Developer's sale, assignment, or transfer of this Agreement if the Director determines that the purchaser, assignee, or transferee possesses the experience, qualifications, and financial resources to complete and operate the Hyatt Place Hotel, or applicable portions thereof, which consent and determination shall not be unreasonably withheld. Within ten (10) days after a sale, assignment, or transfer of this Agreement under this Section 8.01, County and purchaser, assignee, or transferee shall execute a writing to amend this Agreement to substitute purchaser,

assignee, or transferee for Developer, and to include purchaser's, assignee's, or transferee's contact information in Article IX.

Section 8.02. Sale, Assignment, or Transfer to Affiliate. Notwithstanding Section 8.01, Developer, at its sole discretion, may sell, assign, or transfer this Agreement to an entity of which a majority owner is also a majority owner of Developer ("Affiliate"). Developer shall provide County written notice at least forty-five (45) days in advance of any sale, assignment, or transfer of this Agreement under this Section 8.02. The notice shall (a) identify the purchaser, assignee, or transferee, (b) include contact information for the purchaser, assignee, or transferee, and (c) include all relevant filings with the California Secretary of State to establish common majority ownership of Developer and the purchaser, assignee, or transferee. Within ten (10) days after a sale, assignment, or transfer of this Agreement under this Section 8.02, County and Affiliate shall execute a writing to amend this Agreement to substitute Affiliate for Developer and to include Affiliate's contact information in Article IX.

Section 8.03. Continuing Obligations. Beginning on the date of the sale, assignment, or transfer of this Agreement by Developer to another person or entity, that other person or entity shall be required to satisfy all of Developer's obligations under this Agreement. However, Developer shall continue to be obligated to defend, indemnify, and hold harmless County and its boards, commissions, officers, employees, and agents from all Liabilities that arise before the sale, assignment, or transfer of this Agreement.

Article IX. NOTICES.

Unless this Agreement expressly provides otherwise, any notice, demand, or communication required hereunder between County and Developer shall be in writing, and may be given either personally, by overnight delivery, or by registered or certified mail (return receipt requested), to the address specified below:

Sonoma County:

Sonoma County Permit and Resource Management Department
Attn: __Deputy Director Scott Orr
2550 Ventura Avenue
Santa Rosa, CA 95403

With copies to:
Sonoma County Counsel's Office
Land Use Chief Deputy
575 Administration Drive, Rm. 105A
Santa Rosa, CA 95403

Royal Oak Development Co., LLC

Royal Oak Development Co., LLC

Attn: []

[]

[]

[]

With copies to:
Perkins Coie LLP
Attn: Cecily Barclay
505 Howard Street
Suite 1000
San Francisco, CA 94105

A Party may change its address listed above by giving the other Party written notice in accordance with this Article IX at least 10 days before the change in address becomes effective. Unless this Agreement expressly provides otherwise, a notice shall be deemed effective on the day it is given if given personally, on the next business day following the date of deposit for overnight delivery, and three business days following the date of mailing if given by registered or certified mail (return receipt requested).

Article X. MISCELLANEOUS.

Section 10.01. No Third-Party Beneficiary Rights. This Agreement is not intended nor shall it be construed to create any third-party beneficiary rights in any person or entity that is not a Party to this Agreement

Section 10.02. Governing Law, Interpretation of Agreement. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in Sonoma County or, in the case of any federal claims, in federal court for the Northern District of California.

Section 10.03. Severability. If any term of this Agreement, or its application to any situation, is held invalid or unenforceable, in a final judgment that is no longer subject to rehearing, review or appeal by a court of competent jurisdiction, then the invalid term is severed, and the remaining parts of this Agreement, and the application of any part of this Agreement to other situations, shall continue in full force and effect.

Section 10.04. Covenants Running with the Land. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, and assigns (including any person or entity acquiring an interest in any portion of the Subject Property or Hyatt Place Hotel). All of the terms and provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code section 1468.

Section 10.05. Further Acts. Each Party shall execute and deliver any and all additional documents and instruments, and perform such further acts, that the executing, delivering, or

performing Party determines, in its sole discretion, to be necessary or proper to achieve the purposes of this Agreement.

Section 10.06. Counterparts. This Agreement, and any and all amendments and supplements to it, may be executed in counterparts, and all counterparts together shall be construed as one document.

Section 10.07. Recordation of Agreement. Not later than ten (10) days after the Parties enter into this Agreement, the Clerk of the Board of Supervisors shall cause this Agreement to be recorded in the Official Records of Sonoma County. Developer shall reimburse County for the cost to record this Agreement within thirty (30) days after Developer receives County's written request for reimbursement.

Section 10.08. Cooperation in the Event of Legal Challenge. In the event of any legal or equitable action or proceeding instituted by a third party challenging the validity of any provision of this Agreement or the procedures leading to its adoption or the issuance of any or all of the Approvals or Subsequent Approvals, the Parties agree to cooperate in defending said action or proceeding. Developer shall diligently defend any such action or proceeding and shall bear the litigation expenses of defense, including attorneys' fees. County shall retain the sole option to employ independent defense counsel at Developer's expense. Developer further agrees to hold County harmless from all claims for recovery of the third party's litigation expenses, including attorneys' fees. The requirements of this Section 10.08 are in addition to the requirements of the Indemnity Agreement. If this Section 10.08 conflicts with the requirements of the Indemnity Agreement, the requirements of the Indemnity Agreement shall prevail. The obligations of this Section 10.09 shall survive the expiration or termination of this Agreement.

Section 10.09. Exhibit. The following exhibit is attached to this Development Agreement and incorporated herein as though set forth in full for all purposes:

EXHIBIT A. Map and Legal Description of the Subject Property.

[Additional Exhibits associated with public right of way and maintenance obligations as described in Section 3.02 TBD.]

[Remainder of page left blank – signatures on next page.]

In witness whereof, the Parties have entered into this Agreement as of the Effective Date.

DEVELOPER:

ROYAL OAK DEVELOPMENT CO., LLC

By: _____

Print: _____

Title: _____

Date: _____

COUNTY:

SONOMA COUNTY

By: _____

Print: _____

Title: _____

Date: _____

Exhibit

Exhibit A – Map and Legal Description of the Subject Property