

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2014, by and between **ALTO, LLC**, a California Limited Liability Company (“**Developer**”), and the **COUNTY OF EI DORADO**, a California Charter County (“**County**”). County and Developer are sometimes individually referred to herein as a “**Party**” respectively 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 California Government Code § 65864 *et seq.* (“**Development Agreement Statute**”), which authorizes County to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property.

B. Pursuant to California Government Code §65865, County has adopted procedures and requirements for the consideration of development agreements (County Ordinance Code Chapter 17.58). This Agreement has been processed, considered and executed in accordance with such procedures and requirements.

C. Developer owns that certain real property consisting of approximately 81.61 acres of undeveloped land within County, located in El Dorado Hills-Malcolm Dixon area, depicted on the “**Site Map**” attached as Exhibit A, and legally described in Exhibit B (the “**Property**”).

D. On May 5, 2009 County approved a rezoning (Z06-0005), a Planned Development (PD006-0006) and Tentative Subdivision Map (TM06-1408) for the subject Property (collectively hereinafter “**Project Approvals**”).

E. Developer seeks to develop a residential subdivision on the Property, and other public amenities and infrastructure, including on-site improvements and off-site improvements (collectively, and as more particularly described herein, the “**Project**”), all in the manner described in Project Approvals in accordance with this Agreement and the Project Approvals.

F. Subsequent to approval of this Agreement, County anticipates that applications for additional approvals, entitlements, and permits related to the development and operation of the Project will be submitted to implement and operate the Project (the “**Subsequent Project Approvals**”).

G. This Agreement furthers the public health, safety and general welfare in that the provisions of this Agreement are consistent with the 2004 General Plan (the “**General Plan**”). County and Developer have further determined that the Project is a development for which this Agreement is appropriate. This Agreement will reduce uncertainty, thereby encouraging planning for, investment in and commitment to use and development of the Property, all in accordance with this Agreement. Continued use and development of the Property in accordance

with this Agreement are anticipated, in turn, to provide substantial benefits to County and contribute to the provision of needed infrastructure for area growth, assure progressive installation of necessary improvements, provide public services appropriate to each phase of development of the Project, ensure attainment of the maximum effective utilization of resources within County at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement law and ordinances were enacted.

H. The Parties intend through this Agreement to (i) allow Developer to develop and operate the Project in accordance with the Project Approvals, and (ii) require that any Subsequent Project Approvals and Fees and Exactions with respect to the Project be governed by this Agreement.

I. The County has found that the Project and this Agreement are consistent with the General Plan and has conducted all necessary proceedings in accordance with County's rules and regulations for the approval of this Agreement.

J. In exchange for the benefits to County contained herein, County has taken or will take all actions required so that Developer may begin and consummate development of the Project, including the future processing approval of building plans and issuance of final maps and building permits, and other necessary or desired approvals and entitlements that are consistent with development of the Project and the Project Approvals.

K. In exchange for the benefits to County, Developer desires to receive the assurance that it may proceed with the Project in accordance with the Project Approvals, subject to the terms and conditions contained in this Agreement, and to secure the benefits afforded to Developer by the Development Agreement Statute.

L. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with CEQA and the Development Agreement Statute.

M. The Parties acknowledge that, in reliance on the agreements, representations and warranties contained in this Agreement, Developer will take certain actions, including making substantial investments and expenditures of monies, relative to the Property and the development of the Project.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged, and the authority contained in applicable law, the Parties agree as follows:

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Alto LLC-County of El Dorado  
Development Agreement  
040414

## ARTICLE 1. DEFINITIONS

### Section 1.01 Definitions.

“**Agreement**” shall have the meaning set forth in the introductory paragraph preceding the Recitals and shall include any amendment or modification hereto entered into by the Parties.

“**Annual Review Date**” shall mean the second January 1 occurring after the Effective Date and each January 1 thereafter during the Term.

“**Applicable County Laws**” shall have the meaning set forth in Section 3.03.

“**Assignee**” shall have the meaning set forth in Section 8.02.A.

“**Assignment**” shall have the meaning set forth in Section 8.02.A.

“**Breach**” shall have the meaning set forth in Section 9.01.

“**Breach Notice**” shall have the meaning set forth in Section 9.01.

“**Breaching Party**” shall have the meaning set forth in Section 9.01.

“**Business Day**” shall mean a day other than a Saturday, Sunday or holiday recognized by County.

“**CEQA**” shall mean the California Environmental Quality Act, Division 13 of the California Public Resources Code, Section 21000 and following.

“**CEQA Guidelines**” shall mean the Guidelines for the California Environmental Quality Act, Title 14 of the California Code of Regulations, Chapter 3, Section 15000 and following.

“**Changes in the Law**” shall have the meaning set forth in Section 3.11.

“**County**” shall mean the County of El Dorado.

“**Cure Period**” shall have the meaning set forth in Section 9.01.

“**Default**” shall have the meaning set forth in Section 9.01.

“**Developer**” shall have the meaning set forth in the introductory paragraph preceding the Recitals and shall include its permitted successors and assigns.

“**Effective Date**” shall have the meaning set forth in Section 2.01.

“**Federal/State Compliance Fees**” shall have the meaning set forth in Section 5.01.B.

**“Fees and Exactions”** shall mean a monetary exaction including in-kind contributions, other than a tax or special assessment, which are charged by County in connection with the Property, the Project, any Project Approval or this Agreement.

**“Force Majeure”** shall mean the period required to extend the performance of a Party under this Agreement due to: war; acts of terrorism; insurrection; strikes or lock-outs; riots; floods; earthquakes; fires; casualties; acts of nature; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; previously unknown environmental conditions discovered on or affecting the Property, the Project or any portion of either, including any delay caused or resulting from the investigation or remediation of such conditions; litigation or a referendum that enjoins construction or other work on the Property, the Project or any portion of either; litigation or a referendum that challenges this Agreement or the Project Approvals; unusually severe weather; a development moratorium, as defined in Section 66452.6(f) of the California Government Code, extending the expiration date of a tentative subdivision map; or any governmental entity’s failure to act in accordance with federal, state or local regulations or, where there is no time-frame legally required, in accordance with that governmental entity’s reasonable standard practice and custom.

**“General Plan”** shall have the meaning set forth in Recital G.

**“Initial Term”** shall have the meaning set forth in Section 2.03.

**“Mortgage”** shall have the meaning set forth in Section 6.01.

**“Mortgagee”** shall have the meaning set forth in Section 6.01.

**“Mortgagor”** shall have the meaning set forth in Section 6.01.

**“New County Law”** shall mean County’s laws, rules, regulations, official policies, standards and specifications, including those enacted or imposed by a citizen-sponsored initiative or referendum or by the County directly or indirectly in connection with any proposed initiative or referendum, in each case to the extent amended or otherwise imposed following the Approval Date.

**“Person”** shall mean any natural person or a corporation, partnership, trust, limited liability company, limited liability partnership or other entity.

**“Processing Fees”** shall have the meaning set forth in Section 5.01.A(1).

**“Project Approvals”** shall mean, individually or collectively as the context requires, the Project Approvals, as set forth in Recital D, and/or the Subsequent Project Approvals, as set forth in Recital F.

**“Property”** shall have the meaning set forth in Recital C.

**“Site Map”** shall have the meaning set forth in Recital C.

“**Subdivision Map Act**” shall have the meaning set forth in Section 3.08.

“**Subsequent Project Approvals**” shall refer to approvals by County which are discretionary in nature as opposed to ministerial, and as are further described in Recital F.

“**Term**” shall have the meaning set forth in Section 2.02.

“**Term Extension**” shall have the meaning set forth in Section 2.04.

## ARTICLE 2. EFFECTIVE DATE AND TERM

Section 2.01 Effective Date. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective (the “**Effective Date**”).

Section 2.02 Term. The “**Term**” of this Agreement shall be the Initial Term together with any Term Extension(s).

Section 2.03 Initial Term. The Term of this Agreement shall commence upon the Effective Date and shall extend for a period of ten (10) years thereafter (such period, the “**Initial Term**”).

Section 2.04 Term Extensions. County and Developer agree that it may be desirable for the Initial Term to be extended. Accordingly, Developer may request in writing that County extend the Initial Term for up to one (1) additional five (5) year period (a “**Term Extension**”). Such written request may be delivered to County not earlier than two hundred seventy (270) days nor later than sixty (60) days prior to the expiration of the then-current Term. Any such request shall be subject to the consent of County acting through its County Director of Development Services Department, which approval County agrees it shall not unreasonably withhold, condition or delay. If the Initial Term of this Agreement is extended in accordance with this Section 2.04, County shall promptly record in the Official Records of the County of El Dorado, California an instrument giving notice of the Term Extension.

Section 2.05 Project Integration and Description. The Parties intend that the Property be developed as a single, integrated Project. Accordingly, this Agreement and the Project Approvals shall permit the development and use of a residential subdivision.

Section 2.06 Developer Representations and Warranties. Developer represents and warrants to County that, as of the Approval Date:

A. Developer is the sole fee owner of the Property, and that no other Person holds any legal or equitable interests in the Property;

B. Developer: (i) is organized and validly existing under the laws of the State of California; (ii) to the extent required, has qualified and been authorized to do business in

the State of California and has complied with all requirements pertaining thereto; (iii) to the extent required, is in good standing and has all necessary powers under the laws of the State of California to own property and enter into and perform the undertakings and obligations of Developer under this Agreement; and (iv) is not in default with respect to payment of any general or special property taxes or assessments or other property based fees allocable to the Property;

C. No approvals or consents of any persons are necessary for the execution, delivery or performance of this Agreement by Developer, except as have been obtained;

D. The execution and delivery of this Agreement have been duly authorized by all necessary corporate action; and

E. This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

### **ARTICLE 3. DEVELOPMENT OF PROPERTY**

Section 3.01 Vested Rights. The Property is hereby made subject to the provisions of this Agreement. Developer shall have the vested right to develop the Property and the Project in accordance with and subject to the Project Approvals, the Subsequent Project Approvals, Applicable County Law and this Agreement, which shall control the permitted uses, density and intensity of use of the Property and the maximum height and size of buildings on the Property. To the extent any Applicable County Law is in conflict with Developer's vested rights secured by this Agreement, the vested rights secured by this Agreement shall prevail.

Section 3.02 Initiatives and Referenda. Developer's vested rights, as set forth in this Agreement, the Project Approvals and the Subsequent Project Approvals, shall prevail over any County law or policy that is enacted or imposed by a citizen-sponsored initiative or referendum or by the County Board of Supervisors in connection with any proposed initiative or referendum, which County law or policy would conflict, directly or indirectly, with the Project Approvals, Applicable County Law or this Agreement or reduce or impede the development rights or assurances provided by this Agreement; provided, however, the Parties acknowledge that County's approval of this Agreement is a legislative action subject to referendum. Developer agrees and understands that County does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project.

Section 3.03 Applicable County Law. The Parties acknowledge and agree that 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 County all of its police power that cannot be so limited. This Agreement shall be construed to reserve to County all such power and authority that cannot be restricted by contract. Notwithstanding the

foregoing reservation of County, it is the intent of County and Developer that this Agreement be construed to provide Developer with the maximum rights afforded by law, including but not limited to, the Development Agreement Statute. Therefore, regardless of any future action by County, whether by ordinance, resolution, initiative or otherwise, the only laws, rules, regulations, official policies, standards and specifications of County applicable to the development of the Property and/or the Project shall be (collectively, “**Applicable County Law**”):

- (1) Those rules, regulations, official policies, standards and specifications of County set forth in the Project Approvals and this Agreement;
- (2) With respect to matters not addressed by and not otherwise inconsistent with, or in any way restrictive of, the Project Approvals and this Agreement, those laws, rules, regulations, official policies, standards and specifications (including County ordinances and resolutions) governing permitted uses, building locations, timing and manner of construction, densities, intensities of uses, design, heights and sizes, requirements for on- and off-site infrastructure and public improvements, fees and exactions; in each case to the extent in full force and effect on the Approval Date;
- (3) New County Laws that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure imposed at any time, provided such New County Laws are uniformly applied on a County-wide basis to all substantially similar types of development projects and properties;
- (4) New County Laws that revise County’s uniform construction codes, including County’s building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit issuance, provided, that such New County Laws are uniformly applied on a County-wide basis to all substantially similar types of development projects and properties;
- (5) New County Laws that are necessary to protect physical health and safety of the public; provided, that such New County Laws are uniformly applied on a County-wide basis to all substantially similar types of development projects and properties;
- (6) New County Laws that do not conflict with this Agreement or the Project Approvals, provided such new County Laws are uniformly applied on a County-wide basis to all substantially similar types of development projects and properties. Without limiting the generality of the foregoing, New County Laws will be deemed to conflict with the Agreement under this Section 3.03(6) if they: limit or reduce the density or intensity of development; limit or reduce the height or bulk of development on the Property, or any part thereof, or of individual proposed buildings or other improvements thereon; materially change, restrict, or condition any land uses, including permitted or conditional uses, of development within the Property; conflict with the Project Approvals; and

(7) New County Laws that do not apply to the Property and/or the Project due to the limitations set forth above, but only to the extent that such New County Laws are accepted in writing by Developer in its sole discretion.

Section 3.04 Preparation of Project Approvals and Applicable County Laws. Promptly following the Approval Date, the Parties, at Developer's sole cost and expense, shall use their respective good faith efforts to prepare two (2) sets of the Project Approvals and Applicable County Laws in full force and effect on the Approval Date, one (1) set for County and one (1) set for Developer, to which the Parties shall endeavor in good faith to add from time to time, Subsequent Project Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable County Law, there will be a common set available to the Parties. Failure to include (or to agree on what to include) in the sets of Project Approvals and Applicable County Law any Subsequent Project Approvals or New County Laws that constitute Applicable County Law shall not affect the applicability of any such Subsequent Project Approvals or New County Laws.

Section 3.05 Development Timing. The Parties acknowledge that Developer cannot at this time predict when, or the rate at which, or the order in which, the Property or any portion of the Property will be developed. Such decisions depend upon numerous factors that are not within the control of Developer, such as market orientation and demand, interest rates, general economic conditions, absorption, completion, availability of financing and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. The County of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that, unless otherwise provided for in this Agreement, Developer's vested rights under this Agreement include the right to develop the Property and the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its discretion, subject to the terms, requirements and conditions of the Project Approvals and this Agreement. Developer shall not be required to initiate, pursue or complete development of the Property or any portion of the Property within the Term or any other specific period of time. However, the foregoing does not exempt Developer from completing work required by a road improvement agreement, subdivision agreement or similar agreement in accordance with such agreement's terms.

Section 3.06 Regulation by Other Public Agencies. County and Developer acknowledge and agree that other governmental or quasi-governmental entities not within the control of County possess authority to regulate aspects of the development of the Property and the Project and that this Agreement does not limit the authority of such other public agencies. County shall cooperate with Developer in Developer's effort to obtain such permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Property and/or the Project; 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 3.07 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term or the term otherwise applicable to such Project Approvals. Without limiting the generality of the foregoing, pursuant to the Subdivision Map Act, any vesting or tentative maps heretofore or hereafter approved in connection with development of the Project or the Property shall be extended for the Term (and may be subject to other extensions provided under the Subdivision Map Act).

Section 3.08 Vesting Tentative Maps. If a Vesting Tentative Map or any tentative map hereafter approved in connection with development of the Property is a vesting map under the Subdivision Map Act, Government Code §§ 66410 *et seq.* (“**Subdivision Map Act**”), and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to Developer for development of the Project, then and to that extent all rights and protections afforded Developer under the laws and ordinances applicable to vesting maps shall survive.

Section 3.09 Developer’s Right to Rebuild. County agrees that Developer may renovate or rebuild portions of the Project at any time within the Term should it become necessary due to any casualty, including natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval consistent with all prior Project Approvals and Applicable County Law. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Agreement, and shall comply with the Project Approvals, Applicable County Law, and the requirements of CEQA.

Section 3.10 Environmental Mitigation. The Parties intend that the Mitigated Negative Declaration previously adopted by County in connection with the Project Approvals is to be used not only in connection with the Project Approvals, but also to the extent applicable in connection with the Subsequent Project Approvals needed for the Project. Consistent with the CEQA and the CEQA Guidelines, including but not limited to Section 15162 thereof, County agrees to use the Mitigated Negative Declaration in connection with the processing of any discretionary Subsequent Project Approval to the maximum extent allowed by law and consistent with the requirements of CEQA.

Section 3.11 State and Federal Law. As provided in Section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability 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 by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than 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, or render substantially more expensive or time consuming, compliance with one (1) 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. Nothing in this Agreement shall preclude County or Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such Changes in the Law. If Changes in the Law preclude or substantially prevent or preclude, or render substantially more expensive or time consuming, performance of this Agreement in a manner that makes the Project economically infeasible, Developer, in its sole and absolute discretion, may terminate this Agreement by providing written notice thereof to County.

#### ARTICLE 4. PUBLIC BENEFIT

Section 4.01 Contribution for Community Benefit. In consideration for County entering into this Agreement and to provide a benefit to the community, Developer shall contribute the unrestricted sum of Thirty Thousand Dollars (\$30,000) for County to use in its discretion toward the public benefit.

#### ARTICLE 5. TAXES AND ASSESSMENTS; FEES AND EXACTIONS; FINANCING MECHANISMS

Section 5.01 Fees and Exactions. The following are the only Fees and Exactions applicable to the Property and the Project, which shall be applied without duplication.

A. Processing Fees.

(1) County may charge, and Developer agrees to pay, all reasonable processing fees imposed from time to time by County to cover the actual costs to County of processing applications for Project Approvals (“**Processing Fees**”), as such fees are uniformly applied on a County-wide basis to all substantially similar types of development projects. County shall use reasonable efforts to minimize Processing Fees.

(2) All Processing Fees shall be billed by County in a prompt and efficient manner, and in reasonable detail, including a general description of the services performed. Any bills for Processing Fees shall be paid within thirty (30) days of Developer’s receipt thereof, subject to Article 8.

B. Federal/State Compliance Fees. County may charge and Developer agrees to pay any new, increased or modified fees and exactions that are uniformly applied on a county-wide basis to all substantially similar types of development projects and are reasonably necessary to comply with the requirements of any Federal or State statute or regulation that is enacted or adopted after the Effective Date (“**Federal/State Compliance Fees**”).

C. Impact Fees. Developer shall pay the development impact fees in the amount and at the time set forth in the Project Approvals described in Recital D. Except as to (1) those development impact fees required or imposed by the State of California (e.g., Sterling School Impact Fees or Plant Mitigation Fees), (2) a County Capital Park Improvement development fee which may be subsequently enacted pursuant to the 2004 County General Plan Policy 9.2.2.5, and (3) those permit and processing fees set forth in in the Project Approvals or uniformly applied county-wide and payable at the time of building permit issuance (set forth on the attached Exhibit “C” hereto and incorporated herein) as of the Effective Date, no other development impact fees shall apply to the Project.

## ARTICLE 6. MORTGAGEE PROTECTION

Section 6.01 Mortgage Protection. Developer and any Assignee (collectively and individually, as the case may be, a “**Mortgagor**”) shall have the right, at any time and from time to time during the Term, to grant a mortgage, deed of trust or other security instrument (each a “**Mortgage**”) encumbering all or any portion of Mortgagor’s ownership interest in the Property for the benefit of any Person, including any deed of trust beneficiary or mortgagee (together with its successors in interest, a “**Mortgagee**”), as security for one or more loans related to the Property and/or the Project, or any portion of either. Notwithstanding the foregoing, this Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Agreement, including the lien of any Mortgage. No breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any Mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee’s sale, deed in lieu of foreclosure, lease termination, eviction or similar means of foreclosure. County shall cooperate reasonably with any Mortgagors or prospective Mortgagors in confirming or verifying the rights and obligations of a Mortgagee or Mortgagor under this Agreement.

Section 6.02 Mortgagee Not Obligated. No Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. Upon acquisition of the Property or any portion thereof pursuant to the terms of a Mortgage, the Mortgagee may elect to terminate this Agreement by providing written notice thereof to County or may develop and operate the Property and the Project under, and subject to, this Agreement. If Mortgagee, or any Person that acquires the Property or any portion thereof from Mortgagee, elects to develop and operate the Property and the Project under, and subject to, this Agreement, County and such Mortgagee or Person shall work together in good faith to make such amendments as may be reasonably necessary for the Parties to effectuate the terms and obligations of this Agreement.

Section 6.03 Notice of Default to Mortgagee. If County receives a notice from a Mortgagee requesting a copy of any Breach Notice or other notice of default given to Developer under this Agreement and such notice specifies the address for service thereof to Mortgagee, then County agrees to deliver to such Mortgagee, concurrently with service thereon to

Developer, any such Breach Notice or other notice of default given to Developer under this Agreement. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the Breach or other default claimed. If a Mortgagee shall be required to obtain possession in order to cure any default, then vis-à-vis the Mortgagee, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed one hundred twenty (120) days from County's notice.

## **ARTICLE 7. SUBSEQUENT PROJECT APPROVALS; AMENDMENTS; COOPERATION**

Section 7.01 Subsequent Project Approvals. Developer and County acknowledge and agree that Developer may submit applications for Subsequent Project Approvals which are of a discretionary as opposed to ministerial in nature. In connection with any Subsequent Project Approval, County shall exercise its discretion in accordance with Applicable County Law, the Project Approvals, this Agreement and the rights vested in Developer by this Agreement, including construction, occupancy and use of the vested development. Any conditions, terms, restrictions and requirements for subsequent discretionary actions imposed or required by County, including those provided for herein, shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement. County agrees that it will act on all applications for Subsequent Project Approvals as expeditiously as is reasonably feasible, consistent with Applicable County Law and the County's standard custom and practice.

Section 7.02 Approval Indemnity; Cooperation in the Event of Legal Challenge. Developer shall indemnify, defend with counsel reasonably acceptable to County, and hold harmless County and its officials and employees from and against any and all litigation, claims, costs, damages, losses, or liabilities challenging the validity of this Agreement and any Subsequent Project Approvals or the underlying CEQA action in connection therewith. In addition, Developer shall reimburse County, within thirty (30) days following County's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by County in connection with the litigation challenge, including County's administrative, legal and court costs, in the event that County shall either: (a) elect to joint representation by Developer's counsel; or (b) retain other experienced litigation attorney. In addition, County and Developer, at Developer's sole cost and expense, shall cooperate in the event of any court action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or any Subsequent Project Approvals and County shall, upon request of Developer, appear in the action and defend its approval of this Agreement and any Subsequent Project Approval, except that County shall not be required to be an advocate for Developer. Nothing herein shall authorize Developer to settle such legal challenge on terms that would constitute an amendment or modification of this Agreement or any Subsequent Project Approvals, unless such amendment or modification is approved by County in accordance with the Applicable County Laws.

## ARTICLE 8. ASSIGNMENTS

Section 8.01 No Amendment Required. No sale, transfer, ground lease, assignment or other conveyance of all or a portion of the Property, nor any Assignment in accordance with Section 8.02, shall require the amendment of this Agreement.

### Section 8.02 Assignment.

A. Requirements. Developer shall not sell, transfer, assign or otherwise convey, in whole or in part (each, an “**Assignment**”), its rights or obligations under this Agreement to any Person (each, an “**Assignee**”) without the consent of County, which County agrees it shall not unreasonably withhold, condition or delay; provided, that, no such consent shall be required for any Assignment of Developer’s right or obligations under this Agreement to an Affiliate of Developer, although County shall be provided with a copy of the assignment and assumption or similar agreement effectuating such Assignment. Within fifteen (15) days of County’s receipt of notice of any Assignment for which County’s consent is required, County shall provide such consent if:

(1) County receives (i) a form of assignment and assumption or similar agreement effectuating such Assignment that clearly outlines the rights and obligations of Developer that are being Assigned and (ii) contact information for Assignee;

(2) for any such Assignment that occurs prior to the Fee Payment Date, County receives evidence that demonstrates to County’s reasonable satisfaction that the Assignee or the Persons Controlling the Assignee have the financial resources necessary to pay any unpaid Fees when due under this Agreement;

(3) Developer is not in Default under this Agreement or the Assignee agrees to cure any Default; and

(4) for any such Assignment that occurs prior to the completion of the off-site improvements, the Assignee assumes the rights and obligations of Developer with respect thereto, including those contained in any Subdivision or Offsite Improvement Agreement and provides acceptable security for any improvements required by such Agreement.

B. Assignment of Agreement in Connection with Property Transfer. Developer’s rights and obligations under this Agreement shall run with the portions of the Property to which such rights and obligations relate. Accordingly, (i) Developer shall not sell, transfer, assign or otherwise convey any portion of the Property without making an Assignment of the rights and obligations under this Agreement that correspond to the portion being sold, transferred, assigned or otherwise conveyed and (ii) any Assignment of this Agreement in accordance with this Section 8.02 shall be coupled with a sale, transfer, assignment or other conveyance of the corresponding portion of the Property. Any sale, transfer, assignment or other conveyance of a portion of the Property shall be made in compliance with the Subdivision Map Act.

C. Effect of Assignment. Following any Assignment in accordance with this Section 8.02, the Assignee shall succeed to the rights and obligations of Developer with respect to the portion of this Agreement that were subject to such Assignment, and Developer shall continue to be obligated under this Agreement with respect to any other portions of this Agreement retained by Developer.

D. Release of Assigning Developer. Following any Assignment in accordance with this Section 8.02, Developer shall, automatically and without the need for further documentation, be released from its obligations under this Agreement with respect to the portion of this Agreement so Assigned and, upon Developer's request therefor, County shall confirm any such release in writing in a form reasonably approved by County and Developer.

## ARTICLE 9. DEFAULT; REMEDIES; TERMINATION; INDEMNITY

Section 9.01 Breach. The failure or delay by either Party to perform any term or provision of this Agreement shall constitute a breach of this Agreement. In the event of alleged breach of any term or provision of this Agreement (each, a "**Breach**"), the Party alleging such Breach (the "**Alleging Party**") shall give the other Party (the "**Breaching Party**") notice thereof specifying the nature of the Breach and the manner in which such Breach may be cured (the "**Breach Notice**"). The Breaching Party shall have thirty (30) days following receipt of the Breach Notice to cure such Breach; provided, that if such Breach may not be reasonably cured within thirty (30) days and within such thirty (30) days the Breaching Party commences to cure such Breach then such cure period shall be extended for so long as the Breaching Party diligently prosecutes such cure to completion, but, subject to Section 9.06, not to exceed one hundred twenty (120) days following receipt of the Breach Notice (any such period, the "**Cure Period**"). During the Cure Period, the Breaching Party shall not be in default under this Agreement. The failure of any Party to give notice of any Breach shall not be deemed to be a waiver of such Party's right to allege any such Breach or other Breach at any other time. If the Breaching Party has not cured a Breach for which it has received a Breach Notice within the Cure Period therefor, the Breaching Party shall be in default and a default shall be deemed to have occurred ("**Default**").

### Section 9.02 Remedies.

A. During the pendency, and prior to cure, of a material Default by Developer as determined by County Board of Supervisors, County shall have the right to refuse to issue any permits or other approvals to which Developer would otherwise have been entitled pursuant to this Agreement. This provision is in addition to and shall not limit any actions that County may take to enforce the conditions of the Project Approvals.

B. In the event of a Default by County or Developer, the Alleging Party shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code Section 65868 and regulations of County implementing such section.

Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867 and County regulations implementing such section. Following consideration of the evidence presented in such review before the County Board of Supervisors, the Alleging Party may give written notice of termination of this Agreement to the other Party.

C. In the event of a Default by County or Developer, the Parties intend that the primary remedy for the Alleging Party shall be specific performance of this Agreement. A claim for actual monetary damages against the Breaching Party may only be considered if specific performance is not granted by the court.

D. In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with the purpose of this Agreement except as limited by Section 9.02.C.

Section 9.03 Enforceability of Agreement. County and Developer agree that unless this Agreement is amended or terminated in accordance with this Agreement, this Agreement shall be enforceable by any Party notwithstanding any change(s) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or any other land use ordinances or building ordinances, resolutions or ordinances or other regulations adopted by County which changes, alters or amends the general plan, specific plan, zoning ordinance, subdivision ordinance or any other land use ordinances or building ordinances, resolutions or ordinances or other regulations applicable to the development of the Property at the time of the approval of this Agreement as provided by Government Code Sections 65866 and 65867.5.

Section 9.04 Periodic Review. Within sixty (60) days prior to each Annual Review Date, Developer shall submit a written request to County to undertake a review of Developer's good faith compliance with this Agreement. Such request shall be accompanied by evidence reasonably necessary to demonstrate Developer's good faith compliance with the provisions of this Agreement. Developer shall work with County in good faith in connection with any such review, including by providing such additional information as County may reasonably request in connection therewith. Failure of County to conduct the review shall be deemed a finding of good faith compliance. County shall undertake any such review in accordance with County's duly adopted procedures therefor.

Section 9.05 Delay Due to Force Majeure; Extension of Time of Performance. No Party shall be deemed to have breached any term or provision of this Agreement or be in default hereunder, and all performance and other dates specified in this Agreement shall be extended, where a Party fails to perform a term or provision of this Agreement due to Force Majeure. The occurrence of Force Majeure shall cause the date for performance of such terms or provisions to be extended for the period of the Force Majeure, which shall be deemed to commence and terminate as of the time of the commencement and termination, respectively, of the cause.

Section 9.06 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable County Law, the Parties shall meet at the request of any Party at which meeting they shall attempt in good faith to resolve any such disputes. Nothing in this Section 9.06 shall in any way be interpreted as requiring that Developer and County reach agreement with regard to any such dispute, nor shall the outcome of these meetings be binding in any way on County or Developer unless expressly agreed to by County and Developer in writing.

Section 9.07 Surviving Provisions. In the event this Agreement expires or is earlier terminated, neither Party shall have any further rights or obligations hereunder, except for: Section 9.08, which shall survive with respect to any Claims arising on or prior to the date of any such expiration or earlier termination.

Section 9.08 Indemnity and Hold Harmless. Developer shall indemnify and hold County and its elected and appointed officers, agents, employees, and representatives harmless from and against any and all claims, costs, liabilities and damages (including reasonable, out-of-pocket attorney's fees and costs) (collectively, "**Claims**") for bodily injury, death, or property damage resulting directly or indirectly from the development and construction of the Project by or on behalf of Developer (including Developer's contractors, subcontractors, agents or employees) under this Agreement, except to the extent such Claims are caused by the sole negligence or willful misconduct of County, its elected and appointed officers, agents, employees, representatives, contactors or subcontractors.

## **ARTICLE 10. MISCELLANEOUS PROVISIONS**

Section 10.01 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

Section 10.02 Findings. County hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.

Section 10.03 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 full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, the Party adversely affected may (in its sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other Party.



Section 10.04 Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Project Approvals shall be deemed to refer to this Agreement, the Project Approval or the Subsequent Project Approvals as they may be amended from time to time, whether or not the particular reference refers to such possible amendment, except as specifically provided otherwise. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for both 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. Unless the context clearly requires otherwise, in this Agreement, including its Exhibits, (i) the plural and singular shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) “shall”, “will”, or “agrees” are mandatory, and “may” is permissive; (iv) “or” is not exclusive; (v) “include”, “includes” and “including” are not limiting and shall be construed as if followed by the words “without limitation”; (vi) “days” shall mean calendar days; (vii) reference to any Recital, Article, Section, Exhibit, or any defined term shall be deemed to refer to the Recital, Article, Section, Exhibit or defined term of this Agreement and (viii) if the last day of any period to give notice, reply to a notice, meet a deadline or to undertake any other action occurs on a day that is not a Business Day, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding Business Day.

Section 10.05 Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, and all other persons acquiring all or a portion of the Property or the Project, whether by operation of law or in any other 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 California law including California Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Property and is binding upon Developer of all or a portion of the Property and each successive Developer during its development of such Property or portion thereof.

Section 10.06 Notices. Any notice, communication, consent or approval required or permitted hereunder by or between County or Developer must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party’s facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a Business Day shall be deemed to have been given and received on the next Business Day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days

after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address in substitution of the address to which such notice or communication shall be given. Any notices or communications shall be given to the Parties at their addresses set forth below (as the same may be revised in accordance with the preceding sentence):

If to County: County of El Dorado  
330 Fair Lane  
Placerville, California 94667  
Attention: Clerk, Board of Supervisors

If to Developer: Alto LLC  
805 University Avenue  
Sacramento, California 95825  
Attention: Gary Sparks, Managing Member

With a copy to: William Neasham, Esq.  
Neasham & Kramer LLP  
340 Palladio Parkway  
Suite #535  
Folsom, CA 95630

Section 10.07 Counterparts; Entire Agreement; Exhibits. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original. This Agreement, together with the attached Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof. The Exhibits attached to this Agreement are incorporated herein for all purposes.

Section 10.08 Amendments; Administrative Actions. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties. The County Director, Development Services Department or his or her designee, in consultation with the County Counsel, is authorized (but not required) to enter into any amendments to this Agreement or grant any consent or waiver (each, an “**Administrative Action**”) so long as such Administrative Actions do not materially modify (i) the Term or time for Developer’s performance, (ii) permitted uses of the Property, (iii) provisions for the reservation or dedication of land, (iv) the density or intensity of use of the Property or the maximum height or size of proposed buildings, (v) vested rights of Developer, (vi) monetary payments by Developer, (vii) the construction of off-site improvements, or (viii) water or wastewater allocations. Nothing in this Section 10.08 shall be deemed to prevent the County Director, Development Services Department or the Developer from bringing any Administrative Action to the County Board of

Supervisors and/or the Planning Commission, as may be appropriate or applicable, for their consideration. An Administrative Action shall, except to the extent otherwise required by federal law, state law or Applicable County Law, become effective in accordance with their terms and without notice or public hearing.

Section 10.09

Section 10.10 Recordation of Development Agreement. Pursuant to California Government Code § 65868.5, no later than ten (10) days after the later to occur of the full execution and delivery of this Agreement or the Effective Date, the County Clerk shall record an executed copy of this Agreement in the Official Records of the County of El Dorado, California.

Section 10.11 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties that: (i) the subject development is a private development; (ii) County has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that County accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Project Approvals, and Applicable County Law; and (iv) County and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between County and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between County and Developer.

Section 10.12 Waivers. No Party shall be deemed to have waived any provision of this Agreement unless it does so in writing, and no “course of conduct” shall be considered to be such a waiver, absent such a writing.

Section 10.13 California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. All references in this Agreement to County’s laws, rules, regulations, official policies, standards and specifications, including those enacted or imposed by a citizen-sponsored initiative or referendum or by the County directly or indirectly in connection with any proposed initiative or referendum, shall be to the Applicable County Laws.

Section 10.14 Estoppel Certificate. Within thirty (30) days of a written request of either Party to the other Party, the other Party shall provide written certification stating: (a) whether or not this Agreement is in full force and effect and a binding obligation of the Parties; (b) whether or not this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments and/or modifications; and (c) to the knowledge of the certifying Party, whether or not the requesting Party is in default in the performance of its obligations under this Agreement and, if so, describing the same in detail.

Section 10.15 No Third-Party Beneficiaries. The Parties expressly agree and acknowledge that there are no third-party beneficiaries to this Agreement, nor do the Parties intend for there to be any third-party beneficiaries to this Agreement.

Section 10.16 Time of Essence. Time is of the essence of each and every provision of this Agreement.

Section 10.17 Venue. Any dispute arising out of or related to this Agreement shall be brought and tried in the County of El Dorado Superior Court.

Section 10.18 Subsequent Applications. Nothing in this Agreement shall be construed as preventing Developer from submitting a new or modified application for any land use entitlements or approvals for the Property not contemplated by this Agreement. Any approvals or entitlements with respect to such applications shall supersede this Agreement.

Section 10.19 Referendum on Agreement. The Parties acknowledge that County's approval of this Agreement is a legislative action subject to referendum within thirty days (30) from the date of adoption of the approving ordinance as provided for in California Elections Code Section 9237.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and County as of the Effective Date.

**COUNTY:**

COUNTY OF EL DORADO,  
a California Charter County

Approved as to Form:  
County Counsel

By: \_\_\_\_\_  
Name: Ron Briggs  
Title: Chairman, Board of Supervisors

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ALTO LLC:**

Alto LLC,  
a California Limited Liability Company

By: \_\_\_\_\_  
Name: Gary Sparks  
Title: Managing Member

**EXHIBIT A**

**Site Map**

See Site Map in Board of Supervisors Approvals dated May 5, 2009.

**EXHIBIT B**

**Legal Description of Property**

**The Land situated in the State of California, County of El Dorado, Unincorporated Area, described as follows:**

**The East Half of the Northeast Quarter of Section 14, Township 10 North, Range 8 East, M.D.B. & M.**

**Said Parcel is also shown as Tract 1 on that certain Record of Survey filed May 4, 1989 in the Office of the County Recorder in Book 16 of Surveys, at age 101.**

**El Dorado County Assessor Parcel No. 126-100-19**

Exhibit B

Alto LLC-County of El Dorado  
Development Agreement  
040414

**EXHIBIT C**

**El Dorado County Development Services Department Residential Permit Fee Worksheet**

<b>Development Services Fees</b>			
<b>BUILDING USE</b>	<b>Sq. Ft.</b>	<b>VALUE PER Sq.Ft</b>	<b>VALUATION</b>
Dwelling		\$116.91	
Garage / Shop / Storage / Deck / Covered Porch		\$44.58	
Fire Sprinklers for Dwelling <i>including</i> attached Garage (total sq')		\$2.48	
Unfinished Dwelling Space		\$93.53	
Convert Unfinished Dwelling Space to Finished		\$23.38	
Convert Garage / Shop / Deck to Dwelling Space		\$72.33	
Remodel Valuation			
<b>TOTAL VALUATION</b>			
Building Services Fee: Perm MH (x 0.00795)      TIM (x 0.01060)      Non-TIM (x 0.01250)			
Encroachment: \$273.00			
Grading: \$435.00			
Planning Review Fee:			
<b>Development Services Total Fees (min. \$100.00)</b>			

<b>Other Agency Fees Due At Permit Issuance</b>	
SMIP Fee (State Mandated for earthquake related programs): Total Valuation x	
Green Fee (State Mandated on all permits): \$1.00 per \$25,000 of Total Valuation	
Rare Plant Mitigation Fee (if applicable) MIT 1 \$885.00 / MIT 2 \$386.00	
Surveyors Office Addressing Fee: \$25.00	
El Dorado Hills Safety Zone (if applicable): \$215.00	
Community Service District: (Cameron Park / El Dorado Hills / Georgetown)	
Fire District Fee: <i>Contact the appropriate district for their review and/or impact fees</i>	
Department of Transportation - Traffic Impact Mitigation Fee: <i>Call (530) 621-5941</i>	
Environmental Management - Review / Septic System Fees: <i>Call (530) 621-5300</i>	
Note: If your parcel is not serviced by a well and/or septic system, contact the appropriate water/sewer district for fees / service.	
<b>Other Agency Total Fees Due at Permit Issuance</b>	

<b>YOUR ESTIMATED TOTAL FEE (DOES NOT INCLUDE SCHOOL FEES)</b>
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<p><b>School District Fees</b>          (based on date of permit issuance, not date of permit application)          Contact the Superintendant of Schools for fees (530) 295-2202  <b>A separate check is required, make check payable to E.D.C.O.E.</b></p>	
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<p><i>Please note that this is only an estimate and does not constitute a quote, as fees are subject to change without notice.          When submitting your application, please <b>do not</b> bring a pre-printed check. Thank you.</i></p>
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Exhibit C

Alto LLC-County of El Dorado  
 Development Agreement  
 040414