



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

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MEMORANDUM

DATE: March 9, 2023

TO: Planning Commission

FROM: Julia Krog, Director

SUBJECT: S_2020-0001/DEV_2020-0001/AP_2022-0034 (Bella Vista) Redline of
Inclusionary Housing Agreement

Since publication of the original staff report and associated documents, Staff has worked with the applicant on several clarifications to the Inclusionary Housing Agreement, which is Exhibit D of Attachment 8 to the Planning Commission Resolution.

Please see attached proposed revisions to the Inclusionary Housing Agreement as show in redline.

Attachment:

Redline of Inclusionary Housing Agreement (Planning Commission Resolution, Attachment 8, Exhibit D)

EXHIBIT D
INCLUSIONARY HOUSING AGREEMENT

(Master Developer - Senior Housing and Moderate-Income For Sale Units)

BELLA VISTA SUBDIVISION

This INCLUSIONARY HOUSING AGREEMENT ("Agreement") is entered into as of this ____ day of _____, 2023, by and between the County of Mendocino, a political subdivision of the State of California (the "County"), and Rancho Yokayo, L.P., (the "Developer"), with reference to the following facts:

A. Developer is the owner of certain real property in the County of Mendocino, California described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property").

B. For the purposes of this Agreement, Developer intends to construct a total of 171 residential units known as Bella Vista Subdivision (hereinafter referred to as the "Master Development") on the Property and has applied for an amended vesting tentative subdivision map for the Property (File #S_2020-0001). Included in those 171 residential units are 39 age-restricted senior housing units and 132 non-age-restricted single-family residences. Of the non-age-restricted residences, 10% (13 units) will be sold to qualifying moderate income households.

C. This project includes reductions in development standards pursuant to Government Code section 65915 in exchange for which the Developer agrees to construct, or cause to be constructed, an on-site age-restricted senior housing development (the "Senior Units") consisting of 39 residences to be sold at market rates; and 13 on-site single family for-sale housing units as further described in Sections 3 through 5 below to be sold to moderate income qualifying households as described below.

D. This Agreement is executed in conjunction with the Restated Development Agreement which addresses a total of 39 age-restricted senior housing units (the "Senior Units"), and 132 non-age restricted housing units of which 90% will be market rate housing units (the "Market Rate Units") and 10% will be Affordable Units.

E. This Agreement shall be executed and recorded against the Property prior to the recordation of the final map in the case of subdivision of the Property.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

Section 1. Definitions. In addition to those terms defined in the Recitals to this Agreement, the following terms have the following meanings in this Agreement:

(a) "Adjusted for family size appropriate to the unit," as set forth in Section 50052.5 of the California Health and Safety Code, means a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(b) "Affordable Housing Cost" means the monthly Total Housing Cost to be paid by a Qualified Buyer which does not exceed a specified percentage of gross monthly income, adjusted for family size appropriate for the unit. As provided by California Health and Safety Code section 50052.5, for moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit.

(c) "Affordable Purchase Price" means a purchase price for an Affordable Unit that results in an Affordable Housing Cost.

(d) "Affordable Unit" means a housing unit reserved for ownership by Moderate Income Households at an Affordable Housing Cost.

(e) "Affordable Unit Property" means the legal parcel(s) of land on which the Affordable Units will be constructed, together with any Affordable Units and appurtenant improvements constructed on such land.

(f) "Approval" means any planned unit development or planned community development approval, subdivision approval, use permit, building permit or combined development permit for a residential development.

(g) "Buyer's Occupancy and Equity Sharing Agreement" shall mean an agreement, in the form provided by the County or its designee, to be executed by each buyer of an Affordable Unit and recorded against the Affordable Unit at the time of purchase by the buyer. The Buyer's Occupancy and Equity Sharing Agreement shall contain provisions consistent with Government Code Section 65915(c)(2)(C) regarding owner-occupancy of the Affordable Unit, limitations on any rental or leasing of the property, and equity-sharing provisions pertaining to the sale of the Affordable Unit.

(h) "County" shall mean the County of Mendocino or its designee, representative or other agency responsible for the County duties described herein.

(i) "First Approval" means the first Approval to occur with respect to the Master Development.

(j) "Homebuyer/County Deed of Trust" means the deed of trust, in the form provided by the County, executed by each buyer of an Affordable Unit at the time of purchase of the Affordable Unit that secures the buyer's performance under the Buyer's Occupancy and Equity Sharing Agreement and the Homebuyer/County Note.

(k) "Homebuyer/County Note" means the promissory note, in the form provided by the County, executed by each buyer of an Affordable Unit at the time of purchase of the Affordable Unit.

(l) "Median Income" means the median household income for Mendocino County as determined annually by the California Department of Housing and Community Development.

(m) "Moderate-Income Household" means persons and families who are not "lower income households" and whose gross incomes do not exceed 120 percent of the area median

income adjusted for family size for Mendocino County as determined annually by the California Department of Housing and Community Development.

(n) "Qualified Buyer" means a Moderate-Income Household who has been determined by the County or its designee to be qualified to purchase an Affordable Unit.

(o) "Referral List" shall mean the list of Qualified Buyers of the Affordable Units provided by the County or its designee to the Developer pursuant to Section 7 below.

(p) "Total Housing Costs" means the monthly recurring expenses required for the unit pursuant to Section 6920 of Title 25 of the California Code of Regulations, including principal and interest on a mortgage loan (based on an assumed thirty-year term and an assumed 5% down payment) and any loan insurance fees associated therewith, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, a reasonable allowance for utilities, and homeowner association fees. The Total Housing Cost shall be the monthly average of estimated costs for the first (1st) calendar year of a household's occupancy.

Section 2. Satisfaction of Affordable Housing Obligation and Conditions of Approval. The Affordable Housing conditions of the First Approval shall be satisfied with respect to the Property when Developer constructs or causes to be constructed the Affordable Units meeting the requirements of Sections 3 through 5, in compliance with the schedule set forth in Section 6 below and the Affordable Units are sold to Qualified Buyers in compliance with this Agreement. An amendment to this Agreement will be required to receive final subdivision map or other County approval for additional housing units on the Property above the requested total of 158 dwelling units identified by Developer in the First Approval application, to make any changes to the Affordable Units as they are described in Sections 3 through 5 of this Agreement, or to otherwise change the terms of this Agreement.

Section 3. Number of Affordable Units. As a condition to the satisfaction of Developer's affordable housing requirements for the Master Development, Developer shall construct, or cause to be constructed, 13 Affordable Units which shall be affordable to Moderate-Income Households.

Section 4. Location of Affordable Units. The Affordable Units shall be constructed on the Property, with no Affordable Units required to be constructed in Phases 1 and 2, a minimum of three units to be constructed within Phase 3 and within each subsequent Phase until there are a total of thirteen (13) Affordable Units among the non-age restricted units to be constructed within the Master Development. The Phasing Plan is attached hereto as **Exhibit B**. The Affordable Units shall be scattered within the Project and intermingled with the Market Rate Units. The legal parcel(s) of land on which the Affordable Units will be constructed, together with any Affordable Units and appurtenant Improvements constructed on-such land, is referred to herein as the "Affordable Unit Property". Prior to recordation of the first Subsequent Final Map, the Applicant shall submit a conceptual plan for the review and approval of the Director of Planning that identifies the locations of the affordable housing parcels throughout the entire Project Site. The identified parcels for affordable housing may only be modified with the written approval of the Director of Planning, which approval shall not be unreasonably withheld.

Section 5. Appearance, Size and Bedroom Count. The Affordable Units shall be detached single family homes. The Affordable Units are to be constructed within the Project among the Market Rate Units and they shall be of the same general design and exterior

appearance as the Market Rate Units, with three bedrooms and two bathrooms per unit, and shall be subject to the Project Design Guidelines.

Section 6. Schedule for Developing Affordable Units. Developer shall provide the Affordable Units as described in Sections 3, 4 and 5 and as follows:

(a) Upon satisfying all requirements for issuance of building permits, the County will release building permits for each phase as submitted by Developer per Phasing Plan as shown in **Exhibit B** and described in subsections (b) and (c) below.

(b) The final building inspections for the Affordable Units in each phase shall be completed prior to or concurrent with the final building inspections for the Market Rate Units. If the project does not proceed in phases, Developer and Director of Planning and Building Services shall negotiate in good faith to establish a schedule that ensures that issuance of subsequent construction permits is premised upon prior completion of Affordable Units.

(c) For the final phase of construction, prior to issuance of any building permits for any market rate unit in that phase, the Developer will enter into an Agreement to Construct (in a form approved by County Counsel) and shall furnish a completion bond, or other financial security with a construction cost inflation factor, to ensure construction of Affordable Units. The Director of Planning and Building shall approve the financial security.

Section 7. Sale by Developer to Qualified Buyers: County Affordable Homebuyer Referral List. No later than completion of each phase of construction, the Developer shall market the Affordable Units for sale to Qualified Buyers. The County shall compile an Affordable Homebuyer Eligibility Waiting List comprised of Qualified Buyers for the Affordable Units. No later than sixty (60) days preceding the anticipated date of the final building inspection for an Affordable Unit, the Developer shall provide the County with written notice of the availability of the Affordable Unit for sale, including the model name/type (size, square footage and number of bedrooms), location, with specific reference to this Agreement by date and name of the Developer who executed the Agreement and location of the Property described in **Exhibit A** of this Agreement. No later than fifteen (15) business days after receipt of such notice, the County shall provide to Developer a Referral List with the names, addresses, and telephone numbers of at least five (5) Qualified Buyers from the County's Affordable Homebuyer Eligibility Waiting List (or if fewer than five (5) households are on said list, all households on said list). ~~Developer shall conduct all additional screening and selection of applicants.~~ Developer shall contact the Qualified Buyers on the Referral List and offer the Affordable Units to such persons in the order provided in the Referral List. Developer shall market the Affordable Units only to the households referred by the County and shall select a Qualified Buyer for the Affordable Unit from the list of households provided by the County. Developer may contact the County to request a referral of additional Qualified Buyers if necessary. Selected Qualified Buyers shall be responsible for obtaining their own financing for the Affordable Units. Developer shall comply with applicable fair housing laws in the marketing and sale of the Affordable Units. Purchase contracts between Developer and Qualified Buyers shall include requirements that buyers execute documents for the benefit of the County described in Section 9 below.

Section 8. Affordable Purchase Prices. The Affordable Units shall be sold to Eligible Buyers at an Affordable Purchase Price calculated pursuant to the formula specified by the County ~~or its designee~~ which formula shall be based on

the definitions of Affordable Housing Cost and Total Housing Costs in Section 1, herein.

Developer shall notify the Department at least thirty (30) days prior to offering an Affordable Unit for sale to allow the County adequate time to calculate and notify the Developer of the Affordable Purchase Prices currently applicable to such units. Developer acknowledges and agrees that Affordable Purchase Prices are determined based on current income levels in the County, changes to which are published annually by the California Department of Housing and Community Development, the number of bedrooms in the Affordable Unit, and ~~the County's determination of~~ prevailing mortgage interest rates, homeowners' association dues, property taxes and assessments, and insurance costs, all of which are subject to change from time to time. Developer agrees that the Affordable Purchase Prices of the Affordable Units shall be calculated by the County in its reasonable exercise of discretion in interpreting the requirements and shall be binding upon Developer. The Affordable Purchase Price established for each Affordable Unit by the County shall be the absolute maximum price that the Developer may charge for the Affordable Unit or may receive as compensation for the Affordable Unit. The Developer may request a meeting with the Director of Planning & Building Services to discuss the Affordable Purchase Price established for an Affordable Unit. The Developer may not charge or receive any additional amount for an Affordable Unit regardless of whether the additional amount is (a) for options, upgrades or additional improvements to the unit, (b) paid through escrow or outside of escrow, (c) paid prior to, after or as part of the purchase escrow or (d) paid in cash or in kind.

Section 9. Homebuyer Documents and Security Instruments. Prior to the sale of each Affordable Unit, Developer shall ensure that:

(a) The Qualified Buyer and the County execute a Buyer's Occupancy and Equity-Sharing Agreement consistent with Government Code section 65915(c)(2)(C) which shall be recorded against the Affordable Unit Property at close of escrow on the Sale to the Qualified Buyer. The Buyer's Occupancy and Equity-Sharing Agreement shall be recorded junior only to the lien of the deed of trust securing the Qualified Buyer's first mortgage loan, unless otherwise approved in writing by the County. The Buyer's Occupancy and Equity-Sharing Agreement shall apply for a term of thirty (30) years from the date of first transfer and shall include provisions for Equity-Sharing should a transfer occur prior to the 30-year term.

(b) The Qualified Buyer signs a Homebuyer/County Note that obligates the Qualified Buyer to pay the County any excess sales proceeds received by the Qualified Buyer if the Qualified Buyer fails to comply with the Buyer's Occupancy and Equity-Sharing Agreement on resale of the Affordable Unit.

(c) The Qualified Buyer signs a Homebuyer/County Deed of Trust to secure performance of the Buyers covenants under the Buyer's Occupancy and Equity-Sharing Agreement and payment of the amounts due under the Homebuyer/County Note if the Qualified Buyer fails to comply with the terms of the Buyer's Occupancy and Equity-Sharing Agreement. The Homebuyer/County Deed of Trust shall be recorded against the Affordable Unit, subordinate only to the Buyer's Occupancy and Equity-Sharing Agreement

Section 10. County Approval of Documents. The following documents, to be approved in writing by the County Director of Planning and Building Services prior to issuance of building permits for the Affordable Units, shall be used in connection with the development and sale of the Affordable Units.

(a) Form of Purchase and Sale Agreements for sale of the Affordable Units (to be prepared by the Developer).

(b) Form of Resale Restriction, Homebuyer/County promissory note, and Homebuyer/Security Deed of Trust (to be prepared by the County).

Section 11. Compliance Reports, Inspections, Monitoring. Following completion of construction of any of the Affordable Units, the Developer under penalty of perjury, shall submit an annual compliance report to the Department of Planning and Building Services commencing twelve (12) months following the date of issuance of a final certificate of occupancy for the first Affordable Unit to be completed and continuing until all Affordable Units have been sold to Qualified Buyers. Developer shall retain all records related to compliance with obligations under this Agreement for a period not less than five (5) years from the date of sale of all Affordable Units in the Master Development and make them available to County employees or others designated by the County for inspection and copying upon ten (10) business days' written notice. Developer shall permit County employees or others designated by the County to inspect the Property to monitor compliance with this Agreement following five (5) business days' written notice to Developer provided however that such inspection shall only include Affordable Units not yet sold to Qualified Buyers. The County shall be further entitled to monitor compliance with this Agreement and the Developer shall cooperate fully in such monitoring.

Section 12. Release of Property From Agreement. The covenants and conditions herein contained shall apply to and bind, during their respective periods of fee ownerships Developer and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Property and shall run with and burden such portions of the Property until terminated in accordance with this Section 12. Until portions of the Property are released from the burdens of this Agreement pursuant to this Section 12, the owners of fee title to the Property shall expressly make the conditions and covenants contained in this Agreement a part of any deed or other instrument conveying any interest in such property. Upon completion of final building inspections for one hundred percent (100%) of the Affordable Units in each phase of development, the Property within that phase of development, except for the Affordable Unit Property, shall be released from the burdens of this Agreement by the Director of Planning and Building Services. As Affordable Units are sold to Qualified Buyers in compliance with this Agreement, and Buyers Occupancy and Equity Sharing Agreement and Homebuyer/County Deeds of Trust are recorded against the Affordable Units, the portions of the Affordable Unit Property sold to Qualified Buyers shall be released from the burdens of this Agreement.

Section 13. Default and Remedies.

(a) Breach by the County. Failure of the County to cure any County default under the terms of this Agreement within sixty (60) days after the delivery of a notice of default from the Developer will constitute a default under this Agreement. The Developer's sole remedy against the County in the event of an uncured default is an action for specific performance.

(b) Breach by the Developer. Failure of the Developer to cure any default in the Developer's obligations under the terms of this Agreement within sixty (60) days after the delivery of a notice of default from the County will constitute a default under this Agreement and a failure to satisfy the conditions of Approval with respect to the Property and, in addition to remedies for breach of this Agreement, the County may exercise any and all remedies available to it under the Subdivision Map Act, Mendocino County Code or otherwise, with respect to the Developer's failure to satisfy the conditions of approval including but not limited to:

(i) withholding, conditioning, suspending or revoking any permit, license, subdivision approval or map, or other entitlement for the Master Development, including without limitation final inspections for occupancy and/or certificates of occupancy;

(ii) instituting against the Developer, or other parties, a civil action for declaratory relief, Injunction or any other equitable relief, or relief at law, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation;

(iii) where one or more persons have received financial benefit as a result of violation of this Agreement, the County may assess, and institute legal action to recover as necessary, a penalty in any amount up to and including the amount of financial benefit received, in addition to recovery of the benefit received;

(iv) any other means authorized under the Mendocino County Code.

Section 14. County Remedies Cumulative. No right, power, or remedy given to the County by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such document, or by any statute or otherwise against Developer and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 15. Attorneys' Fees and Costs. Should any legal action be brought by either party for breach of this Agreement or to enforce any provisions herein, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.

Section 16. Appointment of Other Agencies. At its sole discretion, the County may designate, appoint or contract with any other public agency, for-profit or non-profit organization to perform some or all of the County's obligations under this Agreement.

Section 17. Hold Harmless. Developer will indemnify, defend and hold harmless (without limit as to amount) County and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to the Master Development, the Affordable Units, or Developer's performance or non-performance under this Agreement, including the performance or non-performance of any of Developer's officers, employees, agents and subcontractors.

~~**Section 18. Insurance Requirements.** Until the sale of Affordable Units to Qualified Buyers in compliance with this Agreement, Developer and its successors and assigns acquiring title to the Affordable Unit Property shall obtain, at their expense, comprehensive general liability insurance for development of the Affordable Units, naming Indemnitees as additional named~~

~~insureds with aggregate limits of not less than Five Million Dollars (\$5,000,000), for bodily injury and death and property damage, including coverages for contractual liability and products and completed operations, purchased by Developer or its successors or assigns from an insurance company duly licensed to engage in the business of issuing such insurance in the State, with a current Best's Key Rating of not less than A-V, such insurance to be evidenced by an endorsement which so provides and delivered to the Department prior to the issuance of any building permit for the Inclusionary Units.~~

Section 4918. Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the party to receive such notice at the addressed set forth below:

TO THE COUNTY:

County of Mendocino
Dept of Planning and Building Services
860 N. Bush Street
Ukiah, California 95432
Attn: Director

With a copy to;

County of Mendocino
Office of County Counsel
County Administrative Office
501 Low Gap Road, Room 1030
Ukiah, California 95432
Attn: County Counsel

TO THE DEVELOPER:

Guillon, Inc. Construction
2550 Lakewest Drive, No. 50
Chico, CA 95928
Attn: Doug Guillon

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

Section 2019. Integrated Agreement. This Agreement constitutes the entire Agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the parties hereto.

Section 2420. Duration and Amendment of Agreement; Assignment. This Agreement shall remain in effect for so long as the Property is subject to inclusionary housing obligations pursuant to a vesting tentative map. This Agreement, and any section, subsection, or covenant contained herein, may be amended only upon the written consent of the Director of the Department of Planning and Building Services, who shall have authority to approve or disapprove minor or technical amendments on behalf of the County. If the amendment makes a substantive or material change to this Agreement, it shall be effective only following approval of

the governmental authority that gave the First Approval for the Master Development. In the event that the Restated Development Agreement for the Master Development is assigned pursuant to its terms, this Agreement shall also be assigned to the same assignee pursuant to an agreement, the form of which shall be approved by the County Counsel.

Section 2221. No Claims. Nothing contained in this Agreement shall create or justify any claim against the County by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Master Development.

Section 2322. Applicable Law. This Agreement shall be governed by California law.

Section 2423. Waivers. Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Developer shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 2524. Title of Parts. and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 2625. Multiple Originals: Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 2726. Recording of Agreement. The Developer shall cause this Agreement, or a memorandum thereof, to be recorded against the Property, in the Official Records of the County of Mendocino, concurrently with the recordation of the Restated Development Agreement.

Section 2827. Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall nevertheless, be and remain in full force and effect.

Section 2928. Implementation Memorandum. When necessary and convenient for the purpose of implementing this Agreement, the Developer and the County, through the Director of Planning and Building, may enter into one or more Implementation Memorandums ("IM"). The purpose of the IM is to guide the Developer's compliance for matters not expressly provided for in this Agreement. Any IM must be consistent with this Agreement and shall be subject to review and approval by the County Counsel.

Section 3029. Exhibits. The following exhibits are attached to this Agreement:

- Exhibit A Legal Description of the Property
- Exhibit B Phasing Plan

DRAFT

IN WITNESS WHEREOF, the County of Mendocino, a political subdivision of the State of California, has authorized the execution of this Affordable Housing Agreement in duplicate by its Chair of the Board of Supervisors and attested to by its County Clerk of the Board under the authority of Ordinance No. _____, adopted by the Board of Supervisors of the County on _____, 2023, and Landowner has executed this Affordable Housing Agreement.

"COUNTY"

"DEVELOPER"

COUNTY OF MENDOCINO,
a political subdivision of the State of California

RANCHO YOKAYO LP,
a California limited partnership

Chair of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By _____
County Counsel

DRAFT