



September 11, 2020

David Kiff
Interim City Manager
City of Healdsburg
401 Grove Street
Healdsburg, CA 95448

Re: Montage Healdsburg (Formerly Saggio Hills) – Development Agreement between the City of Healdsburg and Sonoma Luxury Resort LLC – Proposed 3rd Amendment

Dear David:

First, thank you for agreeing to postpone the City Council meeting on Monday regarding the proposed 3rd Amendment to the Development Agreement (the “DA”) between the City of Healdsburg (“COH”) and Sonoma Luxury Resort LLC (“SLR”). In our view, such a meeting would be premature. More importantly, the manner in which the negotiations were represented was a surprise to us and we thought would present the issues in a counterproductive manner. It was our expectation that we would work together toward a mutual understanding of the needed modifications which would then be presented to the City Council for its review. The staff report focused on perceived disagreements, many of which do not in fact exist. And, to the extent there may be differences, those were still being discussed. Equally concerning to us, the staff report painted a picture that the proposed amendments are only benefitting the developer. In reality, the modifications are equally beneficial to the City.

The staff report fails to recognize the need for the proposed amendments and the opportunities presented. The staff report identifies the June 30, 2020 letter that Developer sent to the City but fails to reference the ongoing negotiations we were having as evidenced by the August 5, 2020 letter that I reviewed with you in person on that date (attached for reference) and therefore fails to pick up the most recent terms we have proposed and discussed. Again, making the staff report produced for Monday’s Council hearing unproductive.

Fire Substation: The presentation in the staff report ignores the City’s failure to provide the Developer with final approval of design plans that have been provided by us as required by the DA and direction to proceed with construction drawings. It further ignores that our inability to timely complete the grading and construct the fire substation is a direct result of the City’s failure to meet its obligations. It has been acknowledged by the City for several years now that it does not possess the funds for its share of the Fire Substation. Moreover,

the presentation fails to advise the Council that the City has extracted a very favorable requirement from CCS Healdsburg, LLC to construct the substation, thereby relieving the City of several million dollars of construction costs. The significant omission is that the arrangement with CCS is in violation of our DA.

The proposed amendment regarding the substation allows the City to capture the benefits of its agreement with CCS and accommodates the City's timing for construction. Likewise, we fulfill our obligation by conveying the property and contributing the funds necessary to complete the mass grading. While relocating the substation entry from Passalacqua Road is a benefit to us, it is also a benefit to the City. Enhancing the hotel will inure to the City as well as us because of the TOT contributions. The point is the substation amendment benefits both us and the City and the Council should be so informed.

Parkland: As with the substation, the fact that the Park site mass grading has not been completed is a result of the City's default in its obligations. Specifically, the City has completely failed to provide plans for the Park, as required by the DA. And, similar to the Fire Substation, it has been acknowledged that until the hotel is up and running for several years and generating much needed TOT for the City, the City does not have the funds for its share of the construction of the Park.

Moreover, the staff report misstates our position for the grading and trail construction. As detailed in our Aug 5th letter, our proposal is to obtain an estimate of total cost, which we would contribute. The staff report states we offered to contribute a total of \$250,000. Likewise, the staff report states that our offer is to contribute \$2,000,000, rather than the \$3,000,000 required by the DA. As can be seen by referencing the Aug 5th letter, we proposed the full \$3,000,000. Setting up a false disagreement is not productive.

Other Public Improvements: Our proposal for Passalacqua Road is based on the assumption that the Affordable Housing site will not be used by the City. If that is not agreed to, then clearly the Road will be improved to public standards as provided in the DA. However, given the fact that the road has not been improved to public standards to date is a direct result of both (a) the good faith efforts by the parties to date to evaluate the Affordable Housing alternatives and (b) that the Council itself asked the Developer and the City staff to explore possible alternatives for the last several months. There should be no cause to penalize the Developer by suggesting that the Hotel opening would be conditioned on a resolution to this matter that somehow benefits the City alone.

If the Affordable Housing is moved off-site, there is no reason for Passalacqua Road to be improved to public standards. If those parcels are retained by us, there will never be a housing development in need of access. The demand that we contribute the cost of bringing the road to full public standards when it is clear that will never occur is unacceptable. Either the decision to move the Affordable Housing off-site is a sound public policy approach or it is not. If it is, there is no basis for penalizing us. Nor does it make sense to construct the Emergency Vehicle Access ("EVA") now, just to have it torn out sometime in the future. We agree to constructing the EVA and the new parking facility.

Affordable Housing: It was our clear impression that there was general agreement with staff, the City Council and the public that locating an alternative site for Affordable Housing was a desired outcome. It was in that spirit we proposed such a site that appears to be better suited to accommodate the Affordable Housing. Instead of acknowledging the benefits of the alternative site, the staff report recommends that we adhere to the DA by conveying Parcels 5 & 6 to the City. On the other hand, staff is recommending that the City be relieved of its obligation to construct Affordable Housing as required by the DA and instead the DA should be amended to allow the City to achieve an alternative goal of providing for the “missing middle.” We are certainly willing to accommodate the City’s current housing needs, but only if part of a fair agreement that recognizes the benefits to both parties.


We continue to believe that the proposal to amend the DA as proposed represents a beneficial outcome for both us and the City. As with the Park and Fire Substation, the City has failed to comply with the DA by not providing plans for the Affordable Housing site.

Summary: The Second Insubstantial Amendment recites that the City has no plans for the Affordable Housing site or the ultimate improvements and that the City has failed to complete Park Land design. It further acknowledges that the City’s failure has caused our inability to complete our obligations. If an agreement is not reached on the 3rd Amendment, we would argue that the City is in default and proceed with the mass grading as currently depicted on the submitted plans when the grading season restrictions accommodate that work. That is, we will proceed with full compliance of the DA and demand the City do likewise.

It remains our hope that a mutually agreed upon approach can be achieved. In order to move forward productively it is necessary that staff recognize, and the City Council be advised that it is a two-way street with all parties benefitting. Now that the City Council meeting has been postponed, we look forward to a re-set and reaching a fair and reasonable 3rd Amendment with staff and then returning to Council with a more equitable set of parameters to out forth.

Sincerely,

Sonoma Luxury Resort LLC,
a Delaware limited liability corporation



By: Robert S. Green, Jr.
Its: Authorized Representative

cc: Chris Smith
Alex Hill
Les Perry



August 5, 2020

David Kiff
Interim City Manager
City of Healdsburg
401 Grove Street
Healdsburg, CA 95448

Re: Montage Healdsburg (Formerly Saggio Hills) - Development Agreement between the City of Healdsburg and Sonoma Luxury Resort LLC - Proposed 3rd Amendment

Dear David:

Thank you for forwarding the City's draft counter proposal dated July 21, 2020 to the terms of a 3rd Amendment to the Development Agreement (the "DA") between the City of Healdsburg ("COH") and Sonoma Luxury Resort LLC ("SLR"). We respectfully submit the following comments.

First, we feel that it is important to articulate that many of the changes we find ourselves discussing are due to the City's inability to perform upon its obligations now and in the past relative to the construction of the Fire Substation, the design and construction of the Park and the decisions regarding the development of the Affordable Housing site. We understand the circumstances surrounding the City's delays and have been working for quite some time now to find reasonable and fair solutions to these circumstances, but also believe that a recognition and acknowledgement of those facts by the City is critical when developing a fair and equitable set of revised terms.

Further, the City has essentially proposed an alternative to its obligation to fund its share of the Fire Substation, by entering into an agreement with a third party. However, after reading through the draft Development Agreement with that party it appears to SLR that the City may not have the right, without SLR's express written consent, to enter into such an agreement. And not without appropriate modifications to the SLR DA.

Additionally, we were surprised to hear City staff's dramatic change in course from that which the City Council articulated several months ago in a public hearing. Wherein Council was clear that it encourages the location of the Affordable Housing site to a more appropriate offsite location, closer to town and public services and infrastructure. We were also surprised that, contrary to the terms of the DA, staff is suggesting the implementation of a housing product and range of housing prices that are outside of the restrictive covenants of the DA. Recall also that the City has a responsibility to make a percentage of the units in question available to the employees of the Hotel. We are willing

to discuss such changes to the requirements and intent of the DA, but only to the extent that we are also provided some consideration for relief from the strict terms of the DA as well.

If, at the end of these negotiations it is clear to SLR that we will achieve little to no benefit from the revisions to the DA, we are fully prepared to go forward with our development of these three sites as stipulated in the DA. In doing so we would expect the City to fulfill its obligations of providing timely design information for the grading of the Park site, a confirmation of the grading plan submitted for the grading of the Affordable Housing site and the capital for each of the three components.

That said, we believe that we are still close to finding reasonable and equitable alternative solutions to each matter and that, if the City does take a more two-sided approach to these negotiations, we can solve these matters to our mutual benefit.

With that in mind we respectfully resubmit the following, slightly revised proposed terms of the 3rd Amendment to the DA:

Fire Substation

1. **SLR Approval of the Comstock DA terms as they impact our DA** – SLR has not consented to allowing its DA with the COH to be modified by virtue of the COH's DA with Comstock. The obligations of SLR and the COH are to be maintained unless the parties can agree to terms of the contemplated 3rd Amendment to the DA between SLR and COH as outlined below.
2. **Design Approval** – SLR must maintain complete approval rights over the final design of the architecture and landscaping to ensure that the quality and architectural style of the building SLR designed is carried out by Comstock and COH.
3. **Redesign** – COH and Comstock will assume all responsibility for redesign, construction documentation, Major Design Review processing and physical construction of the Fire Substation.
4. **Capital Contribution** – SLR will pay the remainder of its \$1.75M commitment towards construction of the substation upon opening of the hotel. To date we have spent \$153,414 on design and planning of the project. The balance, or \$1,596,586 would be paid to the City no later than its receipt of Certificate of Occupancy of the hotel.
5. **Grading** - If the mass grading of the Fire Substation site is executed by SLR and it can be carried out while the Park site mass grading is executed, SLR will incorporate such Fire Substation mass grading into its grading operation. However, if the Fire Substation is to be mass graded before the Park site, and/or SLR will only be providing capital to the COH for the future grading of the Park site, Comstock and the COH will be responsible for the grading execution. In any event, under no circumstance does SLR want to be responsible for the fine grading and over-excavation or recompacting of the Fire Substation Building pad

- itself if a third party is going to build the building over top of it. Therefore, if any party other than SLR builds the building, any such fine grading and over-excavation or recompacting activity will be the responsibility and cost of the party who builds the building.
6. **Temporary Facilities** – COH will confirm that until the Fire Substation is constructed and operational, no temporary facilities at the hotel site will be required and that a Certificate of Occupancy will be granted upon the completion of all other building safety measures and that the existing fire substation will be able to meet the fire and life safety needs of the hotel in the interim.
 7. **Land Conveyance** – Unless modified hereby, land conveyance will be pursuant the DA and upon conveyance of any land the parties will abide to the requirements of the DA.
 8. **Default Plan** – Should the parties not be able to agree on the terms of a 3rd Amendment to the DA by November 1, 2020, they agree to default to the existing plan under the DA, wherein SLR will grade the Fire Substation Site based on the grading plan outlined in item 5 above beginning in the Spring of 2021 and SLR will pay the remainder of its original \$1.75M obligation and the COH will be required to contribute the remainder of the capital for the Fire Substation per the terms of the existing DA.

Park Site

1. **Design** - COH has yet to develop a definitive plan for the final design of the Park. COH has not yet established a definitive timeframe for construction of the Park. COH shall provide a conceptual design for the Park as its best estimate of the Parks' eventual configuration by the end of September 2020.
2. **Capital Contribution** – SLR is required under the DA to provide COH with \$3M towards construction of the Park Site. To date SLR has remitted \$200,000 to the City for Park planning and design activities, leaving a balance due of \$2.8M when COH is ready to move forward with its final design and with construction. SLR is also required to provide mass grading of the site and provide a ten-foot-wide trail through the Park site. Since COH cannot predict when it will need these funds, which could be several years from now, but SLR desires to resolve this matter in the near term, SLR proposes to deliver the remaining \$2.8M to COH no later than its receipt of Certificate of Occupancy of the hotel opening to settle its responsibility for the construction contribution.
3. **Grading** – Once the City provides a preliminary site plan and conceptual grading plan for the Park, SLR will have its Sitework Contractor provide a grading cost estimate for the work. SLR will deliver the amount of the Sitework Contractor's Park grading cost estimate to the City within 90 days to settle its responsibility for grading of the Park site.
4. **Park Trail** – Once the City delivers the Conceptual Park site plan, SLR will have its Sitework Contractor provide a cost estimate for the construction of the Park

- Trail. SLR will deliver the amount of the Sitework Contractor's Park Trail cost estimate to the City within 90 days to settle its responsibility for construction of the Park Trail.
5. **Creek and Wetlands Monitoring** – SLR shall only maintain responsibility for creek restoration monitoring and wetland mitigation in accordance with work it has performed to date and for the required 5-year term from the date of that work. COH will assume all responsibility for any new design and or construction in the future.
 6. **Land Conveyance** – Unless modified hereby, land conveyance will be pursuant the DA and upon conveyance of any land the parties will strictly abide to the requirements of the DA.
 7. **Default Plan** – Should the parties not be able to agree on the terms of a 3rd Amendment to the DA by November 1, 2020, they agree to default to the existing plan under the DA, wherein SLR will grade the Park Site based on the grading plan outlined in item 3 above beginning in the Spring of 2021 and SLR will only pay the remainder of its original \$3M obligation once the Park Construction begins, whenever that may be, per the terms of the existing DA.

Affordable Housing Site

1. **Goal** - The parties acknowledge that it is desire of the City Council and the public to move the Affordable Housing ("AH") to an offsite location closer to town and public services and infrastructure if possible.
2. **Affordable Housing Deposit** – To date SLR has placed \$1M into escrow for the COH's Affordable Housing planning and design efforts. These funds will be released to COH for the use of planning one or more offsite affordable housing sites are secured.
3. **Offsite Property Purchase funds** – SLR proposes to provide the City with the funds to acquire the Vercelli site or another offsite property chosen by the COH for an amount not to exceed \$4M. Such offsite property is to be identified by the parties by no later than the issuance of a Certificate of Occupancy for the hotel. SLR will provide these funds upon the closing of the COH acquisition of such property in exchange for SLR being relieved of any further responsibility to provide COH with the AH site on its property.
4. **SLR Site Ownership** – SLR would retain ownership of the SLR Affordable Housing site, however SLR will place an open space easement over the site. A portion of the site between Passalacqua Road and the creek to the south may be used for vineyard planting at SLR's option, but no other use would be allowed.
5. **Trail and Trailhead lot** – SLR will extend a trail through the AH site to connect the Park trail to the Fox Pond recreation area at SLR's cost and provide a permanent easement for public use of the AH site trail. In exchange for COH relieving SLR of any further responsibility to construct a public trail on the northwesterly most hilltop of the site, SLR will construct a gravel trailhead parking lot at end of Parkland Farms Blvd. SLR will provide and easement to the

- COH for the public use of the Gravel Trailhead Parking lot. The offer of dedication of the public easement for the northwest trail that currently appears on the project First Final Map will be rescinded.
6. **EVA and Utilities** – SLR would build an Emergency Vehicle Access (“EVA”) road through the site connecting Passalacqua Road to Parkland Farms Blvd. The access road would include a water and power loop.
 7. **Passalacqua Road** – Since Passalacqua Road will no longer be open to public passage through to Parkland Farms Road, the existing Passalacqua Road will remain a private street, with no further public improvements required and SLR’s offer to dedicate it to COH will be rescinded and COH will be relieved any future maintenance obligations on Passalacqua Road.
 8. **Restrictive Covenants Eliminated** – No restrictive covenants would be placed upon the offsite locations of Affordable Housing by SLR.
 9. **Default Plan** – Should the parties not be able to agree on one or more properties for offsite affordable housing by November 1, 2020, they agree to default to the existing plan under the DA. If so, COH will timely approve the grading and improvement plans for the onsite Affordable Housing project to allow SLR to grade the site and install the improvements to the Affordable Housing site and the balance of the improvements to Passalacqua Road as per the DA beginning in the Spring of 2021.

Pump Station

1. COH shall formally accept the Pump Station and, now that it has been operated by the City for over a year, no further warranty period or bond shall be required.

We look forward to discussing your responses to these matters and answering any questions you may have.

Thank you very much.

Sincerely,
Sonoma Luxury Resort LLC,
a Delaware limited liability corporation



By: Robert S. Green, Jr.
Its: Authorized Representative

cc: Chris Smith
Alex Hill
Les Perry