



ORDINANCE No. _____

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (MIS16-0009) BETWEEN THE COUNTY OF NEVADA AND ANANDA CHURCH OF SELF-REALIZATION OF NEVADA COUNTY FOR THE 706-ACRE ANANDA VILLAGE COMPREHENSIVE MASTER PLAN LOCATED AT 14618 TYLER FOOTE ROAD, NEVADA CITY

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION I:

The Development Agreement submitted by Ananda Church of Self-Realization of Nevada County for Assessor's Parcel Numbers 61-170-12, 61-170-16, 61-170-23, 61-170-32, 61-170-34, 61-180-02, 61-180-03, 61-210-04, 61-210-19, 61-210-20, 61-230-06, 61-230-08, 61-240-02, 61-240-33, 61-240-34, 61-240-35, and 61-240-36, which are located at 14618 Tyler Foote Road in Nevada City, be approved, based on the following findings A-E:

- A. That Ananda Church of Self-Realization of Nevada County ("Developer") filed a Development Agreement application pursuant to Government Code section 65864 et seq. and Nevada County Land Use Development Code section L-II 5.18 for the 706-acre Ananda Village Comprehensive Master Plan located at 14618 Tyler Foote Road, Nevada City; and
- B. That the proposed Development Agreement (the "Development Agreement"), a copy of which is attached as Exhibit "A," was duly reviewed and recommended for approval by the Planning Commission after a public hearing on April 27, 2017, on a 5-0 vote; and
- C. That the Planning Commission's recommendation has been received; the Initial Study/Mitigated Negative Declaration certified by the Planning Commission on April 27, 2017, included a review of the Development Agreement; and the public hearing has been held and concluded as required for approval of the Development Agreement; and
- D. That the Development Agreement complies with the requirements of Government Code section 65856.2 and Nevada County Land Use Development Code section L-II 5.18; and
- E. That the Board finds that the information presented or obtained at the public hearing substantiates all of the facts necessary for approval of the Development Agreement and that the Development Agreement:
 - 1. Is consistent with the goals, objectives, policies and applicable land use designations of the Nevada County General Plan; and
 - 2. Complies with all of the provisions of the Nevada County Land Use and Development Code; and

3. Is consistent with the public convenience, general welfare and good land use practice, making it in the public interest to enter into the development agreement with the applicant; and
4. Will not:
 - a. Adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area; and
 - b. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site; and
 - c. Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare; and
 - d. Adversely affect the orderly development of property or the preservation of property values.

SECTION II:

Pursuant to Government Code section 65856.2 and Nevada County Land Use Development Code section L-II 5.18, the Development Agreement is approved, and the Chair of the Board of Supervisors is hereby authorized upon the effective date of this Ordinance to execute, on behalf of the County of Nevada, the Development Agreement by and between the County of Nevada and Ananda Church of Self-Realization of Nevada County, in the form attached, with authorized changes, if any, approved by the Board prior to adoption of this Ordinance and subject to such minor and clarifying changes consistent with the terms thereof as may be necessary and approved by County Counsel prior to execution thereof. Within ten (10) days after execution of the Development Agreement on behalf of the County, the Clerk of the Board of Supervisors shall record the Development Agreement and this Ordinance with the Recorder of the County of Nevada.

SECTION III:

If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION IV:

This Ordinance shall take effect and be in full force thirty (30) days from and after introduction and adoption, and it shall become operative on the _____ day of _____, 2017, and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the Supervisors voting for and against same in the Union, a newspaper of general circulation printed and published in the County of Nevada.

Exhibit A

DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF NEVADA AND ANANDA

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2017, by and between the COUNTY OF NEVADA ("County"), a political subdivision of the State of California, and Ananda Church of Self Realization of Nevada County California ("Developer"). For the purposes of this Agreement, County and Developer are referred to individually as "Party," and collectively as the "Parties."

RECITALS

- A. State Law. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864, *et seq.*, of the Government Code ("Development Agreement Legislation"), which authorizes County and any person having a legal or equitable interest in real property to enter into an agreement regarding the development of such property. All references in this Agreement to a "Code" refer to a code of the State of California unless otherwise specified.
- B. County Rules and Regulations. Pursuant to Government Code section 65865, County has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in Section L-II 5.18 of the Nevada County Land Use and Development Code ("County Development Agreement Regulations"). This Agreement has been processed, considered and executed in accordance with the County Development Agreement Regulations. County enters into this Agreement pursuant to the provisions of the Government Code, the County Development Agreement Regulations and applicable County policies.
- C. Land Ownership. Developer owns in fee 706 acres of real property in the County located at 14618 Tyler Foote Road, Nevada City, in the unincorporated territory of the County of Nevada, commonly known as Assessor's Parcel Numbers 61-170-12, 61-170-16, 61-170-23, 61-170-32, 61-170-34, 61-180-02, 61-180-03, 61-210-04, 61-210-19, 61-210-20, 61-230-06, 61-230-08, 61-240-02, 61-240-33, 61-240-34, 61-240-35, and 61-240-36. The property is more particularly described in Exhibit A and shown on the map set forth in Exhibit B, both attached hereto and incorporated herein by this reference ("Property"). Developer represents and warrants that it is the sole holder of all legal and equitable title in the Property excepting only liens for taxes and assessments not yet payable and rights-of-way and easements that cannot ripen into a fee.
- D. Parties Intent. Developer intends to develop the Property as a residential development of up to 195 dwelling units within multiple dwelling clusters; and additional various non-residential structures within the Living Wisdom School area (school uses), Village Center (commercial uses), Rajarshi Park (office and industrial uses), and Expanding Light Retreat (commercial uses), as shown on the Comprehensive Master Plan Map attached hereto as Exhibit C and incorporated herein by this reference ("CMP Map"). Due to the

long term nature and unique financing of the development, no minimum time schedules for construction of various uses are included but all proposed uses as described within the CMP are hereinafter referred to collectively as the “Project”.

- E. Purpose of Development Agreement. The purpose of this Agreement is to develop the Project in conformance with the laws stated in Paragraphs A and B above, to facilitate the implementation of the Project Approvals through the development of the Project, thereby realizing the public benefits to the County and private benefits to Developer, including those described in these Recitals. The development of the Project requires ongoing investment by the Developer and development will only be allowed when the design of the required infrastructure for a building or portion of development has been approved, and occupancy of any structures will only be allowed when such infrastructure has been built and approved by the County.
- F. Project Approvals. Concurrent with the approval of this Agreement, County will approve Project Approvals for the Property as defined in Section 1.5 of this Agreement. As part of the Project Approvals, County has undertaken, pursuant to the California Environmental Quality Act (Section 21000, *et seq.*, of the Public Resources Code and Section 15000, *et seq.*, of Title 14 of the California Code of Regulations; hereinafter, collectively, “CEQA”), the required analysis of the environmental effect which would be caused by the Project and has determined those feasible mitigation measures which will eliminate, or reduce to an acceptable level, the adverse environmental impacts of the Project. County has completed and certified a Mitigated Negative Declaration in connection to the Project.
- G. Consistent with the General Plan. The County, after conducting all duly noticed public hearings, has found that this Agreement is consistent with the County’s General Plan, Nevada County Land Use and Development Code section L-II 5.18, Government Code section 65867, *et seq.*, and all other applicable ordinances, plans, policies and regulations of County.
- H. Planning Commission – Board of Supervisors Approval. On April 27, 2017, the Nevada County Planning Commission (“Planning Commission”), after giving notice as provided by law, held a public hearing to consider Developer’s application for the Project, including this Agreement, and recommended that the Nevada County Board of Supervisors (“Board of Supervisors”), approve Developer’s application for the Project, including this Agreement. On _____, 2017, the Board of Supervisors, after giving notice as provided by law, held a public hearing to consider Developer’s application for this Agreement.
- I. County Best Served. The terms and conditions of this Agreement have undergone review by County staff, its Planning Commission and its Board of Supervisors at publicly noticed meetings and have been found to be in conformance with the County General Plan, the Development Agreement Legislation and the County Land Use and Development Code, and that the interests of County’s residents and the public health, safety and welfare will be served by entering into this Agreement.

- J. County Ordinance. On _____, 2017____, the Board of Supervisors adopted Ordinance No. _____, approving this Agreement and authorizing the Chair of the Board of Supervisors to execute the Agreement (“Ordinance”). The Ordinance becomes effective on _____, 2017____, a copy of which is attached hereto as Exhibit D.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, County and Developer agree as follows:

ARTICLE 1.

GENERAL PROVISIONS

- 1.1 Incorporation of Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.
- 1.2 Parties.
- (a) County. The County of Nevada is a political subdivision of the State, with offices located at 950 Maidu Avenue, Nevada City, CA 95959. The term “County”, as used in this Agreement, shall include the County of Nevada and any assignee of or successor to its rights, powers and responsibilities.
- (b) Developer. Developer is Ananda Church of Self-Realization of Nevada County, a California religious non-profit 501(c)(3) organization, with offices located at 14618 Tyler Foote Road, Nevada City, California. The term “Developer”, as used in this Agreement shall include any permitted assignee or successor-in-interest as herein provided.
- 1.3 Property Subject to this Agreement. All of the Property, as described in Exhibit A and shown in Exhibit B, shall be subject to this Agreement.
- 1.4 Term.
- (a) Effective Date. This Agreement shall become effective upon the date the Enacting Ordinance becomes effective (“Effective Date”).
- (b) Term of Agreement. The term of this Agreement (Term”) shall commence upon the Effective Date and shall continue in full force and effect for fifteen (15) years, unless the Term is terminated or modified as set forth in this Agreement or by mutual agreement of the parties. Upon request of the Developer, the Term of Agreement may be extended for five (5) years, with a maximum of two (2) extensions, for a total of ten (10) years. Each request for an extension shall be subject to review by the Planning Department and approval by the County Board of Supervisors. The extensions will be subject

to any new state and federal laws, including health and safety regulations in effect at the time of the extension request.

- 1.5 Project Approvals. All entitlements are subject to the Conditions of Approval, which shall be thereafter incorporated herein by reference. Concurrent with or prior to the approval of this Agreement, County will approve or has approved the following land use entitlements for the Property, which entitlements are also the subject of this Agreement:
- (a) A Rezoning of the Property (Z15-001) proposing to alter the boundaries of the existing Rajarshi Park PD-SP zone to fit the existing disturbed area, and to correct a zoning map error in the location and size of the zoning boundaries; to alter the boundaries of the existing Village Center C1-PD-SP zone to correct a zoning map error in location, size and configuration of the zoning area; and to rezone 1.16 acres of AG-PD-SP zoning to PD-SP adjacent to the existing Village Center.
 - (b) A Use Permit (U15-002) for an updated Comprehensive Master Plan to allow multiple, dwelling clusters and additional non-residential development including office, industrial, and commercial uses. The Use Permit/ Comprehensive Master Plan is incorporated herein by reference.
 - (c) Adoption of a Wetlands Habitat Management Plan (MTG15-004) for the mitigation of potential impacts to onsite wetlands.
 - (d) Adoption of an Oak Habitat Management Plan (MGT15-005) for the mitigation of potential impacts to oak woodlands.
 - (e) Adoption of a Steep Slopes Management Plan (MGT17-0004) to minimize impacts to approximately a 400-foot section of Brindaban Way that would be constructed through intermittent areas of slopes over 30 percent in order to access Cluster M.
 - (f) A Petition for Exceptions (M15-005) to the Nevada County Road Standards to allow a 100-foot section of the proposed extension of Village Drive to exceed the 16% standard, but not exceed an 18% road grade.
 - (g) Two Lot Line Adjustments (LLA16-0008 and LLA LLA16-00014) to reconfigure parcel boundaries to meet applicable building setbacks and site development standards for individual lots.
- 1.6 Subsequent Approvals. The Parties agree that in order to develop the Property as contemplated in this Agreement, the Project may require additional entitlements, development permits, and use and/or construction approvals other than the Project Approvals, which may include, but not limited to, conditional use permits, variances, development plan review approvals, improvement agreements, grading permits, building permits, lot line adjustments, site plans, waste water system and

well permits, certificates of occupancy, landscaping plans and encroachment permits (collectively, “Subsequent Approvals”). At such time as any Subsequent Approval is approved by the County, such Subsequent Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals, shall be treated as a Project Approval under this Agreement, and shall thereafter be incorporated herein by reference. Subsequent approvals shall be processed as follows:

- (a) The County will process non-residential construction consistent with the Comprehensive Master Plan with an Administrative Development Permit (ADP) review. The ADP application will include all details that were not provided in the Master Plan Use Permit, including those normally required for a non-residential Use Permit application.
- (b) The County will process the proposed development of a residential cluster or portion of a cluster with a building permit review.
- (c) For proposed uses inconsistent with the Comprehensive Master Plan, see Section 5.2 of this Development Agreement.

- 1.7 Compelling Public Necessity. In the event that a subsequent health and/or safety issue that amounts to a “compelling public necessity” is discovered, e.g., a new environmental health hazard, which would necessitate a reconsideration or amendment of the previously approved Agreement, the Parties shall meet and confer in good faith to reconsider or amend of the previously approved Agreement to address the issue.

ARTICLE 2.

DEVELOPMENT OF THE PROPERTY

2.1 Developer’s Obligations.

2.1.1. Compliance. In consideration of County entering into this Agreement, Developer agrees that development of the Property shall be in conformance with and that Developer will comply with all of the terms, covenants, obligations and requirements of the Conditions of Approval, Project Approvals and this Agreement. The parties acknowledge and agree that County’s agreement to perform and abide by the covenants and obligations of County set forth in this Agreement is a material consideration for Developer’s agreement to perform and abide by its long term covenants and obligations, as set forth herein.

2.1.2. Public Benefits. Developer shall provide the following public benefits:

- (a) Prior to issuance of the first residential building permit, the Developer must complete construction of the secondary/emergency access road extending Almora Way from existing Cluster B to Sages Road.

Construction completion consists of applying for a grading permit and receiving County Approval, with engineer's certification, that the road meets the all-weather, compacted surface and load requirements for a Fire Safe road. The secondary/emergency access route shall remain open to the community during emergencies, including but not limited to flood, fire and medical events, and shall remain unlocked at all times.

- (b) Developer shall grant an easement to neighboring properties which are identified in Exhibit E, for a road constructed to fire-safe standards to replace a substandard section of Sages Road at the northeast corner of Ananda, APN 61-210-20, as shown on Exhibit F thereby providing fire engine access to these properties. This easement shall be granted prior to the issuance of any grading permits for the road construction work. The terms of the easement may include reasonable conditions, e.g., no parking, no gates, no damage to the servient estate, on its use, including, without limitation, a requirement that the grantees complete construction of the road in compliance with County standards before any use of the easement for access will be allowed.
- (c) Prior to issuance of building permits, the Master Plan approved by the County shall indicate the Developer's designation of a 54-acre portion of the property an open space conservation area to be used only as dedicated oak habitat mitigation area(Mitigation Areas 1, 2, 3, and 4 as shown in Figures 2, 3, and 4 of the Oak Habitat Management Plan prepared by Beedy Environmental Consulting dated April 2014, within portions of APNs 61-210-19, 61-210-20, 61-230-06, 61-230-08, 61-240-02, 61-240-34, 61-240-36), The Master Plan shall restrict use of those areas as provided in the Oak Habitat Management Plan.
- (d) Developer will maintain a recycling drop-off point for the general community open during the business hours the recycling area is open to the Amanda community, location marked on Exhibit G. The recycling drop-off point will accept materials that Waste Management, Inc., accepts in their comingled recycling containers (paper, household plastic, metal, etc.). Materials accepted at the drop-off will be clearly posted in the drop-off area. The recycling drop-off will not accept items that need to be handled outside of the comingled collection bins, such as but not limited to household hazardous waste, used oil, tires, electronics and paint.
- (e) Developer and the North San Juan Fire Protection District shall enter into an agreement for the provision of a fire engine garage or other fire protection benefit reasonably satisfactory to the District. The agreement shall be completed and a copy provided to the County not later than January 15, 2018.

- (f) Developer will maintain a helicopter-landing site for the benefit of the community for emergency purposes, location marked on Exhibit G.
- (g) Developer will maintain dedicated 30,000 gallons of fire protection water storage as well as fire hydrants to maintain current ISO ratings thereby benefitting adjoining properties within 1,000 feet of qualifying fire hydrants.
- (h) Developer will allow Village ponds to be used as helicopter water sources for the community, and will allow fire engines and water tenders to access and draw water from Village hydrants as needed for emergencies within the North San Juan Fire Protection District in the event of a fire emergency.
- (i) Developer will maintain the use of the Village Green as a site for training exercises for use by the North San Juan Fire Protection District.
- (j) Developer will maintain the Village Community Center building as a Red Cross emergency/evacuation center, and will maintain the Village Center as a shelter-in-place retreat per the Ananda-Red Cross agreement.

2.1.3. Water Supply Thresholds. Because residential development may occur over an extended time, in order to ensure an adequate water supply as development occurs, the Developer commits to preparing an analysis and making necessary well and infrastructure improvement when certain Water Supply Thresholds are met. The thresholds are triggered either by completion of a certain number of residential units or by water usage reaching a certain Maximum Day Demand, whichever comes first. Once a threshold has been reached, prior to issuance of building permits for any further development, Developer shall provide adequate water storage and water infrastructure, and adaptive groundwater management considering sustainable well capacity, as set forth in the Conditions of Approval.

- (a) Threshold 1 is triggered after the earliest of 1) the completion of 36 new residential units (for a total of 123 total dwelling units on the project site), or 2) if Maximum Day Demand (MDD) in the previous year exceeds 86 gpm. Once Threshold 1 is triggered, further review of the water system is required as outlined in Condition of Approval C.8.
- (b) Threshold 2 is triggered after the earliest of 1) the construction of an additional 36 new units (for a total of 159 total dwelling units on the project site), or 2) if MDD in the previous year exceeds 112 gpm. Once Threshold 2 is triggered, further review of the water system is required as outlined in Condition of Approval C.8 for the remaining development allowed under the Master Plan.

- (c) Note that there are currently 85 units on the site: 2 more units may be constructed under previous approvals (87 units total) before new units associated with the Use Permit will begin to be counted toward Threshold 1.
- (d) Notwithstanding the number of units constructed, Developer agrees and warrants that the dwelling units shall be capped at, and shall not exceed 195 dwelling units.

2.1.4. Septic and Water System.

- (a) Annual fees for operating permits for the existing and future centralized sewage disposal fields will be billed on a time and materials basis.
- (b) Pursuant to Nevada County General Plan Policy 3.16, the Developer shall insure long-term maintenance of the community water and septic system by adherence to guidelines set forth by the California Environmental Protection Agency and the State Water Resources Control Board.

2.1.5. Infrastructure, and Roadway Improvements. Developer agrees that infrastructure and roadway improvements shall be constructed in accordance with the terms, covenants and requirements of the Project Approvals and of Chapter XVI, Fire Safety, and Chapter XVII, Road Standards, of the Nevada County Land Use and Development Code in effect at the time the road is constructed. Any such new requirements shall only apply to new road and infrastructure construction.

2.2 Developer's Rights. Developer shall have the right to develop the Project on the Property in accordance with the Project Approvals and the Vested Elements, as set forth below. The permitted uses of the Property, the maximum density and/or number of residential units, the non-residential uses, the minimum size and dimensions of the proposed parcels, including but not limited to, the Village Center, the Rajarshi Industrial Park, and the Expanding Light Retreat, types of land uses, and other terms and conditions of development applicable to the Property are as set forth in:

- (a) The Project Approvals
- (b) The General Plan of County on the Effective Date;
- (c) The Nevada County Land Use and Development Code on the Effective Date;
- (d) Other rules, regulations, ordinances and policies of the County applicable to Development of the Property on the Effective Date; and
- (e) This Agreement.

The foregoing items (a) through (e), inclusive (“Vested Elements”), are hereby vested subject to the provisions of this Agreement.

2.3 County’s Obligations.

2.3.1. County hereby agrees to be bound with respect to the Vested Elements, subject to Developer’s compliance with the terms and conditions of this Agreement. Nothing in this section shall be deemed to eliminate or diminish the requirement that Developer obtain any required Subsequent Approvals for the Project in accordance with County requirements.

2.3.2. Upon submission by Developer of completed applications and processing fees for any Subsequent Approval, County shall use its best efforts to promptly and diligently process all applications for Subsequent Approvals, including land use and construction approvals, permits, plans and maps necessary to implement the Project, in accordance with the terms of this Agreement, the Project Approvals, the County’s General Plan and the Nevada County Land Use and Development Code. Developer acknowledges that County cannot promptly process Subsequent Approvals until Developer submits complete applications and responds to requests for additional information, if applicable, on a timely basis.

2.3.3. Subject to the provisions of Section 2.4 of this Agreement, the County shall not enact any initiative, ordinance, policy, resolution, General Plan amendment or other measure that relates to the density or intensity of development on the Project, or the rate, timing or sequencing of the development or the construction of the Project on all or any part thereof, or that is otherwise in conflict, either directly or indirectly, with this Agreement.

2.4 Changes to Applicable Law and Regulations.

2.4.1. Notwithstanding anything to the contrary in Section 2.2 of this Agreement, in addition to the Vested Elements, only the following changes to the General Plan and the Nevada County Land Use and Development Code (“Land Use Regulations”) adopted by the County after the Effective Date shall apply to and govern the Project from the Effective Date through the remainder of this Agreement:

- (a) Future Land Use Regulations that are of general applicability to the entire County and that either are not in conflict with this Agreement or have been consented to in writing by Developer;
- (b) County ordinances, resolutions, policies or actions reasonably adopted or pursued by the County in order to comply with preemptory State and/or Federal laws (the “New Law”). In the event such laws prevent or preclude compliance with one or more provisions of this Agreement, then immediately following the enactment of the New

Law, the Parties shall meet and confer in good faith to determine whether the New Law applies to the Property, and whether suitable amendments to this Agreement can be made, in order to maintain Developer's right to develop the Project.

- (c) In the event the Parties, after having engaged in good faith negotiations, are unable to agree on such amendments, the Parties shall consider whether suspension of any provision of this Agreement is appropriate, and if so, what the terms and conditions of any such suspension should be. In the event that the Parties, after having engaged in good faith negotiations are unable to agree on the suspension issues, either Party shall have the right to terminate this Agreement by giving the other Party sixty (60) days written notice of termination.
- (d) Developer or County shall have the right to institute litigation relating to the New Law, and raise any issues regarding its applicability or validity. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued. Provided, however, that if any action that County would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the New Law, County shall not be required to undertake such action until the litigation is resolved, or the New Law is otherwise determined invalid, inapplicable, or is repealed. In the event that such judgment invalidates the New Law, or determines that it does not affect the validity of this Agreement, this Agreement shall remain in full force and effect, and its term shall be extended by the amount of time between the effective date of the New Law, and the effective date of the judgment. In the event that such judgment determines that the validity of this Agreement is, directly or indirectly affected by the New Law, the provisions of subparagraph 2.4.1. (c) above shall apply.

2.4.2. Upon execution of the Agreement, Developer shall prepare two (2) sets of Vested Elements as provided in Section 2.2 of this Agreement, one (1) set for County and one (1) set for Developer, so that if it becomes necessary in the future to refer to any of the Vested Elements, there will be a common set available to both Parties.

2.4.3. The provision of section 10.9 of this Agreement relating to estoppel certificates shall apply to any request made by Developer to County with respect to the life of any entitlement covered by this subparagraph. Nothing in this section shall be construed to, or operate to extend the term of this Agreement.

ARTICLE 3.

DEVELOPMENT FEES

3.1 Development Fees.

Processing Fees. Developer shall pay County all fees, including without limitation, building permit, plan check, inspection, water and waste water system permit fees, improvement plan, application and processing or other County development-related and/or developer user fees (collectively “Ministerial fees”) in accordance with the County’s legally adopted fee programs, at the rates in effect for the Project, and similarly situated projects, at the time at which any Ministerial Fees become due and payable. New Ministerial Fees that are adopted during the Term of this Agreement shall be applied to the Project, including without limitation all Project Approvals and Subsequent Approvals, notwithstanding any other provision in this Agreement.

Impact Fees. An impact or mitigation fee is a monetary exaction other than a tax or assessment that is legally imposed by County or other public agency on Developer in connection with any approval for the Project for the purpose of defraying all or a portion of the cost of public services and/or facilities (including but not limited to construction, improvement, operation, and maintenance of such facilities) attributable to the burden created by the Project. Developer shall pay said impact or mitigation fees in accordance with the program and at the rates, if any, in effect when said fees become due and payable to the County.

3.2 Dedications. No dedication of an interest in land shall be imposed by the County as a condition of Project development except as set forth in the Vested Elements or if required as a condition of obtaining a Discretionary Approval.

3.3 Taxes and Assessments. The County may impose new taxes and assessments without consent of Developer on the Property in accordance with the then-applicable laws, but only if such taxes or assessments are also imposed on other land and/or projects similarly situated within the jurisdiction of the County, and only if the impact thereof does not fall disproportionately on the Property as compared with other similarly situated land and projects within the County's jurisdiction or portion of the County's jurisdiction subject to the tax or assessment. The amount of any taxes or assessments may be increased over time so long as the increase is applied consistently to all land or projects subject thereto. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property.

3.4 Life of Development Approvals and Permits.

- (a) It is the intent of the Parties that the Term of the Vested Elements shall be the same as, and coterminous with, the Term of this Agreement. To accomplish this intent, the life of any Use Permit, which has been or may be adopted for the Project shall automatically be extended for the Term of the Agreement.
- (b) Without limiting the foregoing, the Term of this Agreement and any of the Vested Elements shall not include any period of time during which (i) the actions of public agencies that regulate land use, development or the provision of services to the Property prevent, prohibit or delay the construction of the Project; (ii) a condition of approval could not be satisfied because the condition of approval necessitated action by a public agency, and the public agency did not take such action; or (iii) a lawsuit involving any of the Vested Elements is pending. The Term of this Agreement shall be extended by the length of the period of time during which any situation described in (i) through (iii) exists.

- 3.5 Development Timing. This Agreement contains no requirement that Developer must initiate or complete development of the Project or Property or any portion thereof within any period of time set by County. It is the intention of this provision that Developer be able to develop the Project in accordance with Developer's own schedule. However, nothing herein shall be construed to relieve Developer from any time conditions in any permit or to excuse the timely completion of any act which is required to be completed within a time period set by any applicable code or permit provisions.

ARTICLE 4.

ANNUAL REVIEW

- 4.1 Annual Review. The annual review required by Section 65865.1 of the Government Code shall be conducted as provided by Section L-II 5.18 (F) of the Nevada County Land Use and Development Code in effect as of the date of this Agreement. Failure to conduct the annual review, standing alone, is not a breach of the Agreement.
- 4.2 Relationship to Default Provisions. The above procedures shall supplement and shall not replace the default provisions and procedures of ARTICLE 6 of this Agreement.

ARTICLE 5.

AMENDMENTS

- 5.1 Amendments to Agreement. This Agreement may be amended or modified from time to time or canceled in whole or in part by mutual consent of both Parties or their respective successors-in-interest or assigns in writing in accordance with Government Code Sections 65867, 65867.6 and 65858 as follows:
- (a) Administrative Agreement Amendments. Any amendment to this Agreement which does not relate to (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for reservation and dedication of land, including the location or size of areas committed to open space, (iv) conditions, terms, restrictions and requirements relating to subsequent Discretionary Actions, (v) any conditions or covenants relating to the Project or use of the Property, (iv) significant changes in the Project Approvals or any infrastructure construction, maintenance or securitization requirements, or (vii) monetary contributions by Developer, shall be determined to be an “Administrative Agreement Amendment” and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute any amendment hereto. Such amendment may be approved by the County Executive Officer or designee and does not require action by the Board of Supervisors. All other amendments to this Agreement shall be processed and approved in accordance with the same procedure, including without limitation, public notice and hearing requirements, as used for approval of this Agreement.
 - (b) Any Minor Administrative Amendment to a Project Approval or Subsequent Approval, as defined in Section 5.2 below, shall not require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement.
 - (c) No amendment, modification, waiver or change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which expressly refers to this Agreement and is signed by the duly authorized representatives of both parties, their successors or assigns.
- 5.2 Amendments to Project Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:
- (a) The Planning Director shall have the authority to approve minor administrative changes to the Project Approvals in accordance with, and as defined by, Section L-II 5.8 of the Land Use and Development Code (“Minor Administrative Amendment”), including the following:
 - (i) Changes to location of residential units within a residential Cluster provided the total number of units is not exceeded.

- (ii) Adjustment of location of building envelopes to protect sensitive resources or avoid environmental constraints, without an increase of proposed impact area.
 - (iii) Change in size and layout of non-residential development from concept plans within Use Permit areas without an increase of development impact area and without an increase in total building area within the impact area.
 - (iv) Any change in use of a non-residential building in a Use Permit area, as long as the use is within the scope of the permitted uses for that area (e.g. school, retreat, C1 or custom PD-SP uses) and does not result in substantially increased traffic or other physical impacts that would trigger an environmental review under CEQA.
- (b) Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be a Minor Administrative Amendment as set forth above, shall be subject to review, consideration and action pursuant to the applicable substantive and procedural provisions of the County's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations in effect when such an amendment or modification request is approved. Any such approved amendment or modification shall be reflected in an amendment to this Agreement and/or its pertinent exhibits. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be a Minor Administrative Amendment or otherwise permitted by this Agreement, shall be considered a new discretionary action by County ("Discretionary Action") and may be subject to further CEQA review. County shall not be precluded from considering and/or applying any County law or other rule, regulation, standard or policy which is in effect at the time such Discretionary Action is acted upon by County.

ARTICLE 6.

DEFAULT, REMEDIES, TERMINATION

- 6.1 Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 10.3 of this Agreement regarding permitted delays and Section 9.2 of this Agreement regarding a mortgagee's right to cure, any failure by either Party to perform any material term or provision of this Agreement shall constitute an "Event of Default" (i) if such defaulting Party does not cure such failure within sixty (60) days following written notice of default from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to

completion with diligence and continuity the curing of such failure. Any notice of default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of termination of this Agreement or institution of legal proceedings with respect thereto. The waiver by either Party of any default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

- 6.2 Remedies and Termination. If, after notice and expiration of the cure periods and procedures set forth in Section 6.1 above the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal or arbitration proceedings pursuant to Sections 6.3 or 6.4 below and/or terminate this Agreement. In the event that this Agreement is terminated pursuant to this Section 6.2 and litigation, mediation or arbitration is instituted and results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.
- 6.3 Legal Action by Parties. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.
- 6.4 Termination.
- (a) Expiration of Term. Except as otherwise provided in this Agreement, this Agreement shall be deemed terminated and of no further effect upon the expiration of the Term as set forth in Section 1.4 of this Agreement.
- (b) Final Recordation. The parcels reflected in the final map of the Project shall be released from and no longer be subject to the provisions of this Agreement without the requirement of executing or recording any further document or instrument.
- (c) Survival of Obligations. Upon the termination of this Agreement pursuant to Section 6.2 above or this Section 6.5, neither Party shall have any further right or obligation with respect to the Property under this Agreement except with respect to any obligation which is specifically set forth as surviving this Agreement.

ARTICLE 7.

COOPERATION AND IMPLEMENTATION

- 7.1 Further Actions and Instruments. The Parties to this Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Agreement, subject to satisfaction of the conditions of this Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.
- 7.2 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of County may possess authority to regulate aspects of the development of the Property separately from or jointly with County, and this Agreement does not limit the authority of such other public agencies. Developer or County (whichever is appropriate) shall apply in a timely manner for the permits and approvals which may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. County shall cooperate with Developer in its endeavors to obtain such permits and approvals.
- 7.3 Cooperation in the Event of Legal Challenge. In the event of any legal action challenging the validity of any provision of this Agreement, or the procedures leading to its adoption, the Parties hereby agree to affirmatively cooperate in defending said action. Developer agrees to bear all litigation expenses of defense, including any appeals, and including reasonable attorneys' fees. Developer shall be entitled to any award of reasonable attorneys' fees arising out of any such legal action. Developer shall have sole authority to select legal counsel for its defense.
- 7.4 Revision to Project. In the event of a court order issued as a result of a successful legal challenge, County and Developer shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Agreement and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Vested Elements; or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements; or (iii) any conflict with the intent of Section 2.2 of this Agreement.
- 7.5 Indemnification Agreement. County and Developer shall enter into a mutually acceptable indemnification agreement in a form substantially similar to Exhibit H attached hereto.

ARTICLE 8.

TRANSFERS AND ASSIGNMENTS

- 8.1 Right to Assign. Developer shall be permitted to sell, transfer or assign its rights and interests under this Agreement with respect to all or a portion of the Property concurrent with the sale, transfer or assignment of the underlying portion of the Property with the prior written approval of the County, not to be unreasonably withheld.
- 8.2 Release upon Transfer. Upon the sale, transfer or assignment of Developer's rights and interests under this Agreement pursuant to Section 8.1 above, Developer shall be released from its obligations and liabilities under this Agreement with respect to that portion of the Property sold, transferred or assigned and any subsequent default or breach with respect to the transferred or assigned rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Agreement, provided that (a) Developer has provided to County notice of such transfer, and (b) the transferee executes and delivers to County a written agreement in which (i) the name and address of the transferee is set forth and (ii) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Agreement with respect to that portion of the Property sold, transferred or assigned, and (iii) Developer is not in material default of the terms and conditions of the Project Approvals and this Agreement. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 8.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.
- 8.3 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective successors in interest, and all persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code. Each covenant to do or refrain from doing some act on the Property hereunder (a) is for the benefit of such Property and is a burden upon such Property, (b) runs with such Property, (c) is binding upon each Party and each successive owner during its ownership of such Property or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such Property, or any portion thereof, and shall benefit the Property hereunder, and each other person or entity succeeding to an interest in such Property.

ARTICLE 9.

MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

- 9.1 Mortgagee Protection. 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 deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof 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 any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

- 9.2 Mortgagee Obligations. Notwithstanding the provisions of Section 9.1 above, a Mortgagee who does not seek the benefits of this Agreement shall not be required to develop or complete the Project as contemplated by this Agreement or to assume Developer's obligations or other affirmative covenants hereunder, except for those obligations and covenants which County determines are reasonably necessary to protect the public health, safety or welfare, or the health, safety or welfare of Project residents.
- 9.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If County receives a notice from a Mortgagee requesting a copy of any Notice of Default given Developer hereunder and specifying the address for service thereof, then County shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by County that Developer has committed a default, and if County makes a determination of noncompliance hereunder, County shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Developer. Each Mortgagee shall have the right (but not the obligation) during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in County's notice.
- 9.4 Technical Amendments to this ARTICLE 9. The County agrees to reasonably consider and approve technical amendments to the provisions of this ARTICLE 9, which are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders.

ARTICLE 10.

MISCELLANEOUS PROVISIONS

- 10.1 Project Is a Private Undertaking. It is specifically understood and agreed by the Parties that (a) the development contemplated by this Agreement is a private development, (b) that neither Party is acting as the agent of the other in any respect hereunder, and (c) that Developer shall have full power over and exclusive control of the Property herein described subject only to the limitations and obligations of Developer under this Agreement.
- 10.2 No Joint Venture or Partnership. Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making County and Developer joint ventures or partners.

10.3 Force Majeure. Neither party shall be deemed to be in default where delay in performance of any or all of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations, court actions, or any other cause beyond the reasonable control of such Party which substantially interferes with carrying out the development of the Project. If a delay occurs because of such events, the time for performance by either party under this Agreement shall be extended upon that party's request by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay.

10.4 Notices, Demands and Communications Between the Parties. Written notices, demands, correspondence and communications between County and Developer shall be sufficiently given if delivered personally (including delivery by private courier); dispatched by certified mail, postage prepaid and return receipt requested; delivered by nationally recognized overnight courier service; or delivered by email provided receipt of the email is confirmed, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of County and Developer indicated below:

County: Planning Director
County of Nevada
950 Maidu Avenue
Nevada City, CA 95959
Planning@co.nevada.ca.us

Developer: Ananda Church of Self-Realization of Nevada County
14618 Tyler Foote Road
Nevada City, CA 95959
atman@ananda.org

with copy to: P. Scott Browne Law Offices
P. Scott Browne
131 S. Auburn Street
Grass Valley, CA 95945
scott@scottbrowne.com

Any notice given as required herein shall be deemed served the earlier of seventy-two (72) hours after deposit with the United States mail or upon receipt. A party may change its address for notices by giving first class, postage prepaid notice in writing to the other party as required herein and thereafter, notices shall be addressed and transmitted to the new address.

10.5 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 parties shall follow the procedure set forth in Section 2.4 in an effort to preserve the

Agreement to the extent feasible. If the term or terms held to be invalid are so central to the functioning and/or purposes of the Agreement, that the parties cannot fashion a work-around, after compliance with Section 2.4 of this Agreement, either party may terminate this Agreement and it shall have no further force and effect.

- 10.6 Headings. All headings and subheadings 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.
- 10.7 Construction of Agreement. This Agreement has been reviewed and revised by legal counsel for both Developer and County, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.
- 10.8 Entire Agreement. This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of twenty-two (22) pages including the Recitals, and eight (8) exhibits, attached hereto and incorporated herein by reference, which constitute the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits are as follows:
- Exhibit A Legal Description of the Property
 - Exhibit B Map of the Property
 - Exhibit C Comprehensive Master Plan Map
 - Exhibit D Ordinance Adopting Development Agreement
 - Exhibit E Neighboring Properties Identification
 - Exhibit F Neighbor's Emergency Access Route with easement
 - Exhibit G Public Benefit Map
 - Exhibit H Indemnification Agreement
- 10.9 Estoppel Certificates. Either Party may, at any time during the Term of this Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or if amended, the Party shall describe the amendments, and (c) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, the Party shall describe the nature and amount of any such defaults. The Party receiving a request hereunder shall execute and return such certificate, or give a written, detailed response explaining why it will not do

so, within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that no default exists. Either the County Executive Officer or the Planning Director of County shall have the right to execute any certificate requested by Developer hereunder. County acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

- 10.10 Execution and Recordation. Pursuant to Section 65868.5 of the Government Code, within ten (10) days after the effective date of this Agreement, the Clerk of the Board shall record this fully executed Agreement with the Nevada County Recorder. Thereafter, if this Agreement is terminated, modified or amended pursuant to ARTICLE 5, ARTICLE 6, OR ARTICLE 7 of this Agreement, the County Clerk shall record notice of such action with the Nevada County Recorder. The cost of any recordation shall be borne by Developer.
- 10.11 No Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not thereafter constitute a waiver of such Party's right to insist and demand strict compliance by the other party with the terms of this Agreement.
- 10.12 Time Is of the Essence. Time is of the essence for each provision of this Agreement for which time is an element.
- 10.13 Applicable Law. This Agreement and any dispute arising hereunder shall be construed and enforced in accordance with the laws of the State. The Parties agree that venue for any legal action brought under this Agreement shall be Nevada County.
- 10.14 No Third-Party Beneficiaries. County and Developer hereby renounce the existence of any third-party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third-party beneficiary status.
- 10.15 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.
- 10.16 Authority. Each person signing below represents and warrants that he or she has the authority to bind his or her respective Party and that all necessary boards of directors', shareholders', partners', County Board of Supervisors', or other approvals have been obtained.

IN WITNESS WHEREOF, County and Developer have executed this Agreement as of the date first set forth above.

DEVELOPER:

ANANDA CHURCH OF SELF-
REALIZATION
14618 TYLER FOOTE ROAD
NEVADA CITY, CA 95959
501(c)(3) organization

By: _____
Peter Goering Ananda Village Manager

COUNTY:

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

By: _____
Hank Weston, Chair,
Nevada County Board of Supervisors

ATTEST

By: _____
Julie Patterson-Hunter
Clerk of the Board

Approved as to form:

P. Scott Browne Law Offices
P. Scott Browne
Attorney for Developer

Approved as to form:

Alison A. Barratt-Green
County Counsel