

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

ATTN: Planning Director
County of Nevada
950 Maidu Avenue
Nevada City, CA 95959

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE COUNTY OF NEVADA

AND

RISE GRASS VALLEY, INC.

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE COUNTY OF NEVADA
AND RISE GRASS VALLEY, INC.**

THIS DEVELOPMENT AGREEMENT (“Development Agreement”) is made and entered into this _____ day of _____, 2023, by and between the **COUNTY OF NEVADA**, a political subdivision of the State of California (“**County**”), and **RISE GRASS VALLEY, INC.**, a Nevada corporation (“**Developer**”). For the purposes of this Development 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 (the “**Development Agreement Statute**”), which authorizes the County and a party or person having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in real 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, the 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 Development Agreement has been processed, considered, and executed in accordance with 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 approximately 175.6 acres of real property in the County and a mineral estate consisting of 2,585 acres, which property is described in attached **Exhibit A** and shown on the map set forth in attached **Exhibit B** (the “**Property**”). The Centennial and Brunswick Industrial Sites are located within unincorporated western Nevada County. The 119-acre Brunswick Industrial Site (Assessor’s Parcel Numbers [APNs] 006-441-003, -004, -005, -034; and 009-630-037, -039) is located southwest of the intersection of East Bennett Road and Brunswick Road and is accessible from Brunswick Road or East Bennett Road. The 56.41-acre Centennial Industrial Site (APNs 009-550-032, -037, -038, -039, -040; and 009-560-036) is located southwest of the intersection of Idaho Maryland Road and Centennial Drive.

D. Project Background. The Property contains the historic Idaho-Maryland Gold Mine. The mine produced 2,414,00 ounces of gold between 1866 and 1956. All mining ceased in 1956. The Centennial Industrial Site was historically used by the Idaho-Maryland Mine to deposit mine tailings and waste rock. The only remaining mine structure at the Brunswick Industrial Site is an 85-foot tall concrete silo at the location of the existing New Brunswick mine shaft. The headframe that existed on top of the silo during operations was 135-foot tall until it was removed. A sawmill previously operated on the Brunswick Industrial Site into the early

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2000s. All structures related to the sawmill have been removed with the exception of a clay-lined pond, constructed for the sawmill circa 1988, and significant paved areas throughout the site. In or around 2017, Developer purchased the property and renamed the operation “Idaho-Maryland Mine Project” (“**IMM Project**”). Since purchasing the IMM Project, Developer has:

- 1) Conducted exploration drilling to locate gold bearing veins;
- 2) Prepared engineering and environmental reports;
- 3) Applied for a County Conditional Use Permit with a Reclamation Plan (“**CUP19-0004**) to allow for uses and facilities over the 80-year permit.
- 4) Applicant for a Rezone application to rezone the parcels located at the Brunswick Industrial Site from Light-Industrial with Site Performance Combining District (M1-SP) to Light Industrial with Mineral Extraction Combining District (M1-ME) to allow for surface mining facilities related to the underground mining operations, pursuant to the Nevada County Land Use and Development Code (LUDC), Section L-II 2.7.3 (RZN19-0002).
- 5) Applied for a Variance (VAR19-0003) to allow for construction of Headframes at 80 and 165 feet, two hoist buildings at 50 feet , and a processing plant at 64 feet, where 45 feet is required, pursuant to the Light Industrial Zoning District
- 6) Applicant for several Management Plans (MGT19-0039; MGT19-0040; MGT20-0009; MGT20-0010; MGT20-0011; MGT20-0012; MGT20-0013 to accomplish the following:
 - a. Allow for activities within the required 100-foot setback from the Riparian Area of a Perennial Watercourse (i.e., Wolf Creek and South Fork Wolf Creek), pursuant to Nevada County LUDC, Section L-II 4.3.17, at the Brunswick and Centennial Industrial Sites);
 - b. Minimize the direct impact to special-status plant species, pursuant to Nevada County LUDC, Section L-II 4.3.12, at the Centennial Industrial Site;
 - c. Allow development within locations of areas of Steep Slopes that are in excess of 30 percent and high erosion potential at both the Brunswick and Centennial Industrial Sites, pursuant to the Nevada County LUDC, Section L-II 4.3.13;
 - d. Allow for development within a building setback associated with a fault zone at the Brunswick Industrial Site, pursuant to the Nevada County LUDC, Section L-II 4.3.8; and

- e. Allows limited grading within the required 100-foot buffer from the Wolf Creek 100-year floodplain boundary, subject to mitigations and conditions that must be complied with to ensure that the operations at the Centennial Industrial Site would not result in adverse effects to the 100-year floodplain associated with Wolf Creek.
- 7) An amendment to the Final Map for Bet Acres recorded in February 1987 in Book 7 of Subdivision Maps at Page 75 would be required to remove the “200’ Building Setback From Fault”, as shown on Sheet 4 of Final Map #85-7. The geotechnical support for removing this setback is provided in Chapter 4.6, Geology, Soils, and Mineral Resources of the EIR (AAM21-0002)
 - 8) A Boundary Line Adjustment would be required in order to transfer approximately 46.27 acres for three separate parcels (APN: 009-630-039, 006-441-034, 006-441-003) to reconfigure the property lines to resolve an issue of the proposed buildings crossing property lines at the Brunswick Industrial Site (LLA20-0006)

E. Idaho-Maryland Mine Project. Developer desires to implement its IMM Project (“Project”) on the Property. The proposed Project would reinitiate underground mining and gold mineralization processing for the Idaho-Maryland Mine over an eighty- (80) year permit period. producing one thousand (1,000) tons per day (365,000 tons per year) of gold mineralization as described in the CUP Resolution and Reclamation Plan to effectuate the Project. Following completion of mining and processing activities, the Project sites would be reclaimed to open space and industrial uses. The Project includes the issuance of a new Conditional Use Permit (“CUP19-0004”) with a proposed Reclamation Plan to correspond with the proposed mine.

F. 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 thereby realizing the public benefits to the County and private benefits to Developer, including those described in these Recitals. The complexity of the IMM Project and economic uncertainty of the gold markets make the Project difficult for Developer to undertake if the County had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with implementation of the Project. This Agreement furthers the public health, safety, and general welfare in that the provisions of this Agreement are consistent with the General Plan. The County and the Developer have further determined that the Project is an activity for which this Agreement is appropriate. This Agreement will reduce uncertainty, thereby encouraging, planning for, investment in and commitment to the mining and reclamation use and development of the Property in accordance with this Agreement. Continued use and development of the Property in accordance with the Agreement are anticipated in turn, to provide substantial benefits to the County and contribute to the provision of improvements, infrastructure and provide public services appropriate for each phase of the Project, ensure attainment of the maximum effective utilization of resources with the County at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

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G. Developer's Intention. The Parties intend through this Agreement to (i) allow Developer to implement the Project in accordance with the Existing Project Approvals and the Applicable County Laws (as defined below), and (ii) require that any Subsequent Project Approvals and Fees and Exactions with respect to the Project be governed by this Agreement. This Development Agreement also describes how the new Use Permit UXX-XXX will apply to the mining and reclamation of the Property.

H. Current Intention of Developer. It is Developer's present intention to implement the Project during the Term of this Development Agreement.

I. Existing Project Approvals. Concurrent with the approval of this Agreement, County will approve Project Approvals (the "**Existing Project Approvals**") as defined in Section 2.6 of this Agreement. As part of the Project Approvals, County has undertaken, pursuant to the California Environmental Quality Act (Public Resources Code section 21000, *et seq.* and section 15000, *et seq.*, of Title 14 of the California Code of Regulations, hereinafter collectively, "**CEQA**"), the required analysis of the environmental effects 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 will complete and certify an environmental impact report ("**EIR**") in connection with the Project, including the Project Approvals. County has also adopted a monitoring program to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed.

I. Subsequent Project Approvals. Subsequent to approval of this Agreement, County anticipates that applications for additional approvals, entitlements, and permits related to the development and operation of the Project as defined but not limited to the CUP Resolution and Resource Management Plan will be submitted to implement and operate the Project (the "**Subsequent Project Approvals**").

J. Consistent with 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 sections 65867, *et seq.*, and all other applicable ordinances, plans, policies, and regulations of the County.

K. Planning Commission Recommendation and Board of Supervisors Approval. On _____, 2023, the Nevada County Planning Commission (the "**Planning Commission**"), after giving notice as provided by law, held a public hearing to consider this Development Agreement, and recommended approval of this Development Agreement. On _____, 2023, the Nevada County Board of Supervisors (the "**Board of Supervisors**"), after giving notice as provided by law, held a public hearing to consider this Development Agreement.

L. County Best Served. The terms and conditions of this Development Agreement have undergone extensive review by County staff, its Planning Commission and its County

Board of Supervisors at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the County General Plan, the Development Agreement Legislation, and the County Development Agreement Regulations and, further, the County Board of Supervisors finds that the economic interests of County's residents and the public health, safety and welfare will be best served by entering into this Development Agreement.

M. County Ordinance. On _____, 2023, the Board of Supervisors adopted Ordinance No. _____, approving this Agreement and authorizing the Chair of the Board of Supervisors to execute the Agreement ("Ordinance"), a copy of which is attached hereto as **Exhibit H**. The Ordinance becomes effective on _____, 2023.

NOW, THEREFORE, in consideration of the promises, mutual covenants and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged and the authority contained in the Development Agreement Statute, the Parties agree as follows.

ARTICLE 1

DEFINITIONS

1.1 "Administrative Amendment" shall have the meaning set forth in **Section 7.1**.

1.2 "Affiliate" shall mean any Person that directly or indirectly Controls, is Controlled by or is under Common Control with, a Party (or a partner or managing or other member of a Party, as the case may be).

1.3 "Agreement" shall have the meaning set forth in the introductory paragraph preceding the Recitals and shall include any amendment or modification hereto entered into by the Parties in accordance with **Section 7.1**

1.4 "Annual Review Date" shall mean the second January 1 occurring after the Fee Payment Date and each January 1 thereafter during the Term.

1.5 "Applicable County Laws" shall have the meaning set forth in **Section 3.2**.

1.6 "Approval Date" shall have the meaning set forth in **Recital L**.

1.7 "Assignee" shall have the meaning set forth in **Section 8.2**.

1.8 "Assignment" shall have the meaning set forth in **Section 8.2**.

1.9 "Board of Supervisors" shall mean the Board of Supervisors of County.

1.10 "Breach" shall have the meaning set forth in **Section 6.1**.

1.11 "Breach Notice" shall have the meaning set forth in **Section 6.1**.

1.12 "Breaching Party" shall have the meaning set forth in **Section 6.1**.

1.13 “Business Day” shall mean a day other than a Saturday, Sunday or holiday recognized by the City.

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

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

1.16 “Changes in the Law” shall have the meaning set forth in Section 3.3.

1.17 “City” shall mean the City of Grass Valley.

1.18 “County Executive Officer” shall mean the County Executive Officer (“CEO”) of County.

1.19 “Control” shall mean the possession (direct or indirect) by one Person (and/or such Person and its Affiliates) of day-to-day control of the activities of a Person.

1.20 “Commercial Production” shall mean production maintained for a period of 3 months at a minimum of 800 tons gold mineralization processed per day.

1.21 “Common Control” shall mean that two Persons are both Controlled by the same other Person or Persons.

1.22 “Controlled,” “Controlling Interest” and “Controlling” have correlative meanings.

1.23 “Cure Period” shall have the meaning set forth in Section 8.1.

1.24 “Default” shall have the meaning set forth in Section 8.1.

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

1.26 “Development Agreement Statute” shall have the meaning set forth in Recital A.

1.27 “Effective Date” shall have the meaning set forth in Section 2.5.

1.28 “EIR” shall mean the Final Environmental Impact Report for the Project approved by the City on the Approval Date.

1.29 “Existing Project Approvals” shall have the meaning set forth in Recital H.

1.30 “Federal/State Compliance Fees” shall have the meaning set forth in Section 5.02.B.

1.31 “Fee Deposit Date” shall mean the date that is one hundred twenty (120) days following the Effective Date, which date shall be extended as set forth in **Section 9.06** where delays are due to force majeure.

1.32 “Fee Payment Date” shall mean the date that is ninety-one (91) days following the Fee Deposit Date, which date shall be extended as set forth in **Section 9.06** where delays are due to force majeure.

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

1.34 “Force Majeure” shall mean the period required to extend the performance of a Party under this Agreement due to: war; acts of terrorism; insurrection; strikes or lock-outs not caused by, or outside the reasonable control of, Developer; riots; floods; earthquakes; fires; casualties; acts of nature; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; previously unknown environmental conditions discovered on or affecting the Property, the Project or any portion of either, including any delay caused or resulting from the investigation or remediation of such conditions; litigation or a referendum that enjoins construction or other work on the Property, the Project or any portion of either; litigation or a referendum that challenges this Agreement or the Existing Project Approvals; unusually severe weather; failure of County to file a Notice of Determination with respect to the Project EIR in accordance with all applicable laws and regulations and in any event within five (5) days of the Approval Date; litigation regarding the EIR or any other environmental review of the Project; any governmental entity’s failure to act in accordance with federal, state or local regulations or, where there is no timeframe legally required, in accordance with that governmental entity’s reasonable standard practice and custom; or a Default of this Agreement by the other Party.

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

1.36 “General Plan Resolution” shall have the meaning set forth in **Recital J**.

1.37 “Initial Term” shall have the meaning set forth in **Section 2.5**.

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

1.39 “Off-Site Improvements” shall mean, individually or collectively as the context requires, the Off-Site Wastewater Improvements and the Off-Site Water Improvements.

1.40 “Party” and “Parties” shall have the meaning set forth in the introductory paragraph preceding the Recitals.

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

1.42 “**Project**” shall have the meaning set forth in **Recital E**.

1.43 “**Project Approvals**” shall mean, individually or collectively as the context requires, the Existing Project Approvals and the Subsequent Project Approvals.

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

1.45 “**Subsequent Project Approvals**” shall have the meaning set forth in **Recital I** and include (and are limited to) Subsequent Discretionary Approvals and Subsequent Ministerial Approvals.

1.46 “**Term**” shall have the meaning set forth in **Section 2.5**.

1.47 “**Term Extension**” shall have the meaning set forth in **Section 2.5**.

ARTICLE 2

GENERAL PROVISIONS

2.1 **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. In the event of inconsistency between the Recitals and the Articles of this Agreement, the provisions of the Articles shall prevail.

2.2 **Parties.**

(a) **County.** County is a political subdivision, with offices located at 950 Maidu Avenue, Nevada City, CA 95959. “**County**,” as used in this Development Agreement, shall include the County and any assignee of or successor to its rights, powers, and responsibilities.

(b) **Developer.** Developer is a Nevada corporation with offices located at 333 Crown Point Circle, Grass Valley, CA 95945. “**Developer**,” as used in this Development Agreement, shall include any permitted assignee or successor in interest as herein provided.

2.3 **Property.** All of the Property, as described in **Exhibit A** and shown in **Exhibit B**, shall be subject to this Development Agreement.

2.4 **Relationship between County and Developer.** It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the County and the Developer and that Developer is not an agent of County. County and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in

connection herewith shall be construed as making County and Developer joint venturers or partners.

2.5 Term.

(a) Effective Date. This Development Agreement shall become effective upon the date the Enacting Ordinance becomes effective (“**Effective Date**”).

(b) Initial Term of Agreement. The term (“**Term**”) of this Development Agreement shall commence upon the Effective Date and shall continue in full force and effect for twenty (20) years thereafter unless extended or earlier terminated as provided herein.

(c) County and Developer agree that it may be desirable for the Initial Term to be extended. Accordingly, Developer may request in writing that County extend the Initial Term for up to two (2) additional ten (10) year periods (each such period, a “**Term Extension**”). Such written request may be delivered to County not earlier than two hundred seventy (270) days nor later than sixty (60) days prior to the expiration of the then-current Term. The request for an extension shall be subject to review by the Planning Department and approval by the County Board of Supervisors. The Board of Supervisors shall not unreasonably withhold, condition, or delay its consent to approve the Term Extension. Board of Supervisors shall provide such consent if as of the date of such receipt, Developer is (i) not in Breach (for the avoidance of doubt, County shall have delivered a Breach Notice with respect to any such Breach and Developer shall have not cured any such Breach as of the date of such receipt), or (ii) in Breach (for the avoidance of doubt, County shall have delivered a Breach Notice with respect to any such Breach as of the date of such receipt), but Developer cures Breach prior to the end of such thirty- (30) day period. If the Initial Term of this Agreement is extended in accordance with this Section 2.5, County shall promptly record in the Official Records of Nevada County, California, an instrument giving notice of the Term Extension. All Term Extensions will be subject to any new local, state and federal laws, including health and safety regulations in effect at the time of the extension request. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the Public Benefits of the Project.

2.6 Project Approvals. County will consider and may approve or has approved the following land use entitlements for the Property, which entitlements are also the subject of the Agreement:

(a) Environmental Impact Report. Certification of the Final Environmental Impact Report (“**EIR19-0001**”) (State Clearinghouse No. 2020070378) prepared pursuant to the California Environmental Quality Act and known as “**Idaho-Maryland Mine Project Final Environmental Impact Report**” (“**EIR**”) as adequate and complete by written findings, and a Mitigation Monitoring Program.

(b) Conditional Use Permit. CUP19-0004 to establish proposed mine expansion operations and fees along with a Reclamation Plan and associated financial assurances to reclaim the project site to a condition suitable for industrial uses as allowed under the properties’ existing zoning. To ensure the process of restoring the land to a condition that is readily adaptable for alternative land uses

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(c) Variance. A variance that will allow for structures to be more than forty-five (45) feet tall.

(d) Merger of Parcels. A voluntary merger of parcels APNs 006-441-003, 006-441-004, 006-441-005, 006-441-034 and 990-630-037 and 009-630-039.

(e) Rezone – Rezone of Brunswick Industrial Site from Light Industrial (“**M1**”) with Site Performance Combining District (“**SP**”) to Light Industrial with Mineral Extraction Combining District (“**M1-ME**”) to allow for mining operations to allow for surface to sub-surface access.

(f) Final Map- Bet Acres. Amendment to Final Map for Bet Acres recorded in February 1987 of Subdivision Maps at Page 75 to remove the “200 Building Setback from Fault,” as shown on Sheet 4 of Final Map No. 85-7; Line Adjustment to transfer approximately 46.27 acres for three separate parcels (APN: 009-630-039, 006-441-034, 006-441-003) to reconfigure the property lines to resolve an issue of the proposed buildings crossing property lines at the Brunswick Industrial Site; Variance to the Building Height Limits to allow for the construction of several structures up to a height of 165 feet, where a maximum height of 45 feet is required, pursuant to the Light Industrial Zoning District (Nevada County LUDC, Section L-II 2.5 – Industrial Uses, Table L-II 2.5.E); Rezone application to rezone the parcels located at the Brunswick Industrial Site from M1-SP to Light Industrial with Mineral Extraction Combining District (M1-ME) to allow for surface mining facilities related to the underground mining operations, pursuant to the Nevada County Land Use and Development Code (“**LUDC**”), Section L-II 2.7.3.

(g) Resource Management Plans. Management Plans to accomplish the following: (1) allow for development within the required 100-foot setback from the Riparian Area of a Perennial Watercourse, pursuant to the Nevada County LUDC, Section L-II 4.3.17, at the Brunswick and Centennial Industrial Sites; (2) minimize the direct impact to special-status plant species, pursuant to the Nevada County LUDC, Section L-II 4.3.12, at the Centennial Industrial Site; (3) allow development within locations of areas of steep slopes that are in excess of 30 percent and with high erosion potential at both the Brunswick and Centennial Industrial Sites, pursuant to the Nevada County LUDC, Section L-II 4.3.13; (4) allow for development within a building setback fault zone at the Brunswick Industrial Site, pursuant to the Nevada County LUDC, Section L-II 4.3.8; (5) allow limited grading within the County’s 100-foot buffer from the Wolf Creek one hundred- (100) year floodplain boundary, subject to mitigations and conditions that must be complied with to ensure that the operations at the Centennial Industrial Site would not result in adverse effects to the hundred- (100) year floodplain associated with Wolf Creek.

(i) Subsequent Approvals. The Parties agree that in order to develop the Property as contemplated in this Development Agreement, the Project may require additional entitlements, development permits, and use and/or construction approvals other than the Project Approvals, which may include without limitation: conditional use permit amendments, reclamation plan amendments, grading permits, building permits, lot line adjustments, 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

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terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a “**Project Approval**” under this Development Agreement.

(j) Incorporation by Reference. The following are made a part of this Agreement by reference with the same force and effect as if the provisions therein were specifically and fully set out herein as those provisions and regulations may be amended from time to time:

1. California Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710/et seq), hereinafter referred to as “**SMARA**.”
2. Public Resources Code (PRC) Section 2207 (relating to annual reporting requirements).
3. State Mining and Geology Board regulations (hereinafter referred to as “**State regulations**”) for surface mining and reclamation practice (California Code of Regulations (“**CCR**”), Title 14, Division 2, Chapter 8, Subchapter 1, Sections 3500/et seq).

2.7 Developer Representations and Warranties.

Developer represents and warrants to County that, as of the Approval Date:

- (a) Developer is the sole fee owner of the Property, and to the knowledge of Developer, no other Person holds any legal or equitable interests in the Property other than those recorded against the Property as reflected in the Official Records of Nevada County, California;
- (b) Developer: (i) is organized and validly existing under the laws of the State of Nevada; (ii) to the extent required, has qualified and been authorized to do business in the State of California and has complied with all requirements pertaining thereto; (iii) to the extent required, is in good standing and has all necessary powers under the laws of the State of California to own property and enter into and perform the undertakings and obligations of Developer under this Agreement; and (iv) is not in default with respect to payment of any general or special property taxes or assessments or other property based fees allocable to the Property;
- (c) No approvals or consents of any persons are necessary for the execution, delivery, or performance of this Agreement by Developer, except as have been obtained;
- (d) The execution and delivery of this Agreement have been duly authorized by all necessary corporate action; and
- (e) This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

2.8 Operation of Project. The operation of the Project shall consist of the following primary elements:

- (a) Dewatering the existing underground mine workings;
- (b) Mining existing and new underground mine workings;
- (c) Processing Ore and Rock;
- (d) Placing engineered fill at the Centennial and Brunswick Industrial Sites; and
- (e) Exporting of Engineered fill from the Brunswick Industrial Site to support local construction projects.

ARTICLE 3.

IMPLEMENTATION OF THE PROJECT

3.1 Developer's Obligations.

3.1.2 Compliance. Developer agrees that implementation of the Project shall be in conformance with all of the terms, covenants, obligations, and requirements of the Project Approvals and this Development Agreement.

3.1.3 Project Implementation. Developer shall have the right to implement the Project on the Property in accordance with the Project Approvals and this Development Agreement.

3.1.4 Public and Other Benefits. County is desirous of gaining the benefits constituting either those public benefits that may be in excess of any benefits or mitigation required under the law, or those public benefits that are fundamentally required by County Ordinance or as CEQA mitigation or required by other laws, all of which will be available from the development of this Property, including but not limited to:

- (a) providing a local source of aggregate to keep infrastructure construction and maintenance costs down, as the quantity and quality of available rock material allows;
- (b) implementing the County's General Plan goals and policies by reducing vehicle miles traveled ("VMT") and associated traffic, air quality, and noise impacts associated with the importation of aggregate from outside of the region;
- (c) mining of valuable mineral resources recognized by the State and County (as reflected by the State Department of Conservation's MRZ and County's ME designations);
- (h) as set forth in Exhibit X, Agreement between Rise and Ophir Hill Fire Protection District) in excess of any mitigation requirements required by law or the EIR, providing new equipment (fire engine and associated equipment) via a lump sum payment of

\$1,000,000 at the commencement of mine dewatering and funding for three additional full-time personnel for the Ophir Hill Fire Protection District, up to \$240,000 per year (adjusted by the CPI Index based on equivalent dollars in January 2022) at the commencement of Commercial Production, to cease upon cessation of gold production until such time as Commercial Production recommences. This provision shall survive the termination of this Agreement;

(i) providing land for and constructing an emergency helicopter landing site on Brunswick site for emergency use and medical evacuations in the surrounding community, as feasible depending on the phase of mine development;

(j) providing land and facilities at Brunswick site for staging of emergency services during fires or natural disasters in the surrounding area;

(k) providing, at its own cost with no public funding, additional approximately twenty-four- (24) person professional mine rescue teams, tradespeople (electricians, mechanics, millwrights), engineers, and professional managers to assist emergency services during fires or natural disasters in the surrounding area;

(l) in excess of any mitigation requirements required by law or the EIR, providing increased fire protection along Brunswick Road through installation of fire hydrants concurrently with potable water line extension proposed for the Project;

(m) Developer shall place a Knox lock or equivalent locking mechanism to the satisfaction of County fire officials on all mine gates. Developer shall allow for emergency ingress and egress through the site in the event of a traffic accident on Brunswick Road requiring a bypassing of that section of road or in order to access emergency helicopter landing onsite;

(n) Developer will construct and dedicate to the Nevada Irrigation District a potable water line to approximately thirty (30) properties in addition to the 7 properties identified by the EIR as potentially susceptible to well draw-down;

(o) If the voluntary clean-up of the Centennial property is approved by DTSC and all other regulatory agencies, Property Owner will fund and commence Centennial site remediation prior to the start of commercial production of the Project;

(p) Subject to the acceptance of the Northern Sierra Air Quality Management District, Developer will fund for one (1) Air Pollution Control Specialist full time staff person for the Northern Sierra Air Quality Management District, up to \$100,000 per year (adjusted by the CPI Index based on equivalent dollars in January 2022) at the commencement of Commercial Production, to cease upon cessation of Commercial Production until such time as Commercial Production recommences. The Northern Sierra Air Quality Management District's acceptance of this offer is evidenced by Exhibit X (Agreement between Rise and the Northern Sierra Air Quality Management District.) This provision shall survive the termination of this Agreement;

(q) Developer shall reimburse the County, in accordance with the procedures set forth in Section _____ herein, for all staff time, fees, costs and expenses for the County and third parties retained by the County to monitor, oversee, review, cooperate with and investigate the implementation of the Project and this Agreement (“**Project Implementation**”) ; and to comply with any federal, state or other local laws as to the Project Implementation, including but not limited to (i) Existing Project Approvals; (ii) Subsequent Project Approvals; (iii) Term Extensions; (iv) Annual Reviews; (v) Amendments, Defaults, Assignments and Transfers; and (vi) cooperation with Developer in the acquisition of any approvals, entitlements, and permits from other agencies. This provision shall survive the termination of this Agreement.

3.1.5 Mining. Developer agrees that any material mined at the IMM Project will be subject to the conditions and mitigation measures contained in CUP19-0004, as described in Section 2.6 above. Reclamation of the IMM Project shall be subject to the Reclamation Plan RP xx-xxx, as described in Section 2.6 above.

3.1.6 Cents Per Ton. Developer agrees to pay Cents Per Ton funding (“**Cents Per Ton**”) to the County pursuant to the payment table attached herein as **Exhibit F**. These funds shall be paid for each ton of aggregate (barren rock, sand tailings, engineered fill) and mining concentrate trucked by Developer on Brunswick Road, E. Bennett Road and/or Whispering Pines Lane either between the Brunswick Industrial Site and the Centennial Industrial Site or from the Brunswick Industrial Site and the Centennial Industrial Site to California State Route 20/49 for the term of the Development Agreement.

3.1.6.a Purpose of Cents Per Ton Funding. The purpose of the Cents Per Ton is to provide additional funding over and above mitigation for any project traffic impacts to the County for roadway maintenance costs on Brunswick Road, E. Bennett Road and/or Whispering Pines Lane either between the Brunswick Industrial Site and the Centennial Industrial Site or from the Brunswick Industrial Site and the Centennial Industrial Site and the California State Route 20/49 interchange resulting from the transport of aggregate (barren rock, sand tailings, engineered fill and mining concentrate) produced from the IMM Project pursuant to CUP19-0004.

3.1.6.b Method and Timing of Payment. Payments of Cents Per Ton to the County required under Section 3.1.6 shall be made to the County of Nevada and delivered to the County Executive Office, or such address as County may designate in writing. Payments required by Section 3.1.6 shall be made annually after the close of each calendar year (December 31). Within 30 days of the close of the calendar year, Developer shall provide County with a statement indicating the tons of aggregate (barren rock, sand tailings, engineered fill and mining concentrate) from the IMM Mine Project trucked by Developer on Brunswick Road, E. Bennett Road and/or Whispering Pines Lane either between the Brunswick Industrial Site and the Centennial Industrial Site or from the Brunswick Industrial Site and the Centennial Industrial Site to California State Route 20/49 and a calculation of the cents per ton contribution to be made as a result of said production. Annual payments shall be based upon the tonnage and the rates provided for in **Exhibit F**, as adjusted for inflation in accordance with

Section 3.1.6.d below. Upon receipt of this accounting and calculation of payment due, County shall invoice Developer for payment. Within thirty (30) days of receipt of said invoice, Developer shall make the required Cents Per Ton payment to the County.

3.1.6.c Payment Verification. For the purpose of administering this section, Developer will report and account for all aggregate trucked for which contributions are due. Said procedures shall be consistent with the terms of this Agreement. The County may audit, as often as it determines is necessary, the tonnage of aggregate trucked and the payments to the to verify that the amount of payment correctly reflects actual tonnage trucked. The County hereby agrees to keep any proprietary information it may obtain from Developer confidential to the maximum extent allowed by law. Developer shall clearly mark any proprietary information provided County as confidential.

3.1.6.d Inflation Adjustment. The payment of Cents Per Ton required under Section 2.1.6 and as provided in Exhibit I shall be adjusted annually based on the Engineering News Record (ENR) City Cost Index for California Cities, San Francisco.

3.1.7 Developer's Rights. Developer shall have the right to develop the Project on the Property in accordance with the Existing Project Approvals, and other terms and conditions of development applicable to the Property as are set forth in:

- (a) The General Plan of County on the Effective Date ("Applicable General Plan");
- (b) The Nevada County Land Use and Development Code on the Effective Date ("Applicable Land Use and Development Code");
- (c) Other rules, regulations, ordinances, and policies of the County applicable to development of the Property on the Effective Date (collectively, together with the Applicable General Plan and Applicable Land Use and Development Code, the "Applicable Rules");
- (d) The Project Approvals;
- (e) This Agreement;
- (f) Conditional Use Permit CUP XXX-XXX, as set forth in Exhibit C attached hereto;
- (g) The Cents Per Ton, as set forth in **Exhibit I** attached hereto

The foregoing items (a) through (g) inclusive ("Vested Elements") are hereby vested subject to the provisions of this Development Agreement.

3.2 County Obligations.

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3.2.1. County hereby agrees to be bound with respect to the Vested Elements, subject to Developer's compliance with the terms and conditions of this Development 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.

3.2.2. Upon submission by Developer of completed applications and processing fees for any Subsequent Approvals, County shall use its best efforts to prioritize and 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 required under the County Code on a timely basis.

3.2.3. Subject to the provisions of Section 3.3 of this Agreement, neither the County nor any County Agency shall enact any initiative, ordinance, policy, resolution, general plan amendment or other measure that relates to 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.

3.3. Changes to Applicable Laws and Regulations.

3.3.1. Notwithstanding anything to the contrary in **Section 3.2** 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 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 the 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 the term 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 3.3.1.(c) above shall apply.

3.3.2. Upon execution of this Agreement, Developer shall prepare two (2) sets of the vested Elements as provided in Section 3.1.7 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.

3.3.3. The provisions of **Section 11.9** 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 4.

DEVELOPMENT OF PROPERTY AND OPERATION OF IDAHO MARYLAND MINE

4.1 Vested Rights. The Property is hereby made subject to the provisions of this Agreement. Developer shall have the vested right to develop the Property and the Project in accordance with and subject to the Existing Project Approvals, the Subsequent Project Approvals, Applicable County Law, and this Agreement, which shall control the permitted uses, density, and intensity of use of the Property and the maximum height and size of buildings on the Property

4.2 Applicable County Law. The Parties acknowledge and agree that County is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to County all of its police power that cannot be so limited. This Agreement shall be construed to reserve to County all such power and authority that cannot be restricted by contract. Notwithstanding the foregoing reservation of County, it is the intent of County and Developer that this Agreement be construed to provide Developer with the maximum rights afforded by law, including but not limited to, the Development Agreement Statute. Therefore, regardless of any future action by

County, whether by ordinance, resolution, initiative or otherwise, the only laws, rules, regulations, official policies, standards and specifications of County applicable to the development of the Property and/or the Project shall be (collectively, “**Applicable County Laws**”):

(a) Those rules, regulations, official policies, standards and specifications of County set forth in the Project Approvals and this Agreement;

(b) With respect to matters not addressed by and not otherwise inconsistent with the Project Approvals and this Agreement, those laws, rules, regulations, official policies, standards and specifications (including County ordinances and resolutions) governing permitted uses, building locations, timing and manner of construction, densities, intensities of uses, design, heights and sizes, requirements for on- and off-site infrastructure and public improvements, fees and exactions; in each case to the extent in full force and effect on the Approval Date;

(c) New County Laws that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure imposed at any time, provided such New County Laws are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties;

(d) New County Laws that revise City’s uniform construction codes, including City’s building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit issuance, provided that such New County Laws are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties;

(e) New County Laws that are necessary to protect physical health and safety of the public provided that such New County Laws are uniformly applied on a city-wide basis to all substantially similar types of development projects and properties;

(f) New County Laws that do not conflict with this Agreement or the Project Approvals, provided that such new County Laws are uniformly applied on a County-wide basis to all substantially similar types of development projects and properties; and

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

4.3 Preparation of Existing Project Approvals and Applicable County Laws.

Promptly following the Approval Date, the Parties, at Developer’s sole cost and expense, shall use their respective good faith efforts to confer and determine the contents of and to prepare two (2) sets of the Existing Project Approvals and Applicable County Laws in full force and effect on the Approval Date, one (1) set for County and one (1) set for Developer, to which the Parties shall endeavor in good faith to add from time to time, subsequent Project Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable

City Law, there will be a common set available to the Parties. Failure to include (or to agree on what to include) in the sets of Project Approvals and Applicable County Law any Subsequent Project Approvals or New City Laws that constitute Applicable County Law shall not affect the applicability of any such Subsequent Project Approvals or New County Laws. The County shall have final authority on the contents of the Existing Project Approvals and Applicable County Laws.

4.4 Development Timing. This Agreement contains no requirement that Developer must initiate or complete development of the Project 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.

Notwithstanding the above, the anticipated schedule for the Project includes the following Project phases in the order in which they will occur:

A. 24 months of engineering-level design and state/federal permitting, including a minimum of 12 months of groundwater monitoring prior to mine dewatering.

(j) Eighteen (18) months of above-ground construction and mine dewatering; This construction phase includes the construction of above-ground facilities and the initial dewatering of mineshafts

(k) Eighteen (18) months of initial ramp up; The initial ramp-up phase includes underground construction, employee training, mill commissioning, initial mining, and ramp-up to full production and processing.

(l) Eighty (80) years Project life; Once the above phases are complete, the Project will be in its full operation phase, with commercial production of gold concentrates from mining and processing gold mineralization on-site, which will continue for as long as the mine is active, up to an eighty- (80) year permit period.

(m) Approximately five (5) years; Reclamation and monitoring of the Project site once gold mineralization concludes.

4.6 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term or the term otherwise applicable to such Project Approvals.

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

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by this Agreement, and shall comply with the Project Approvals, Applicable County Law, including, but not limited to those requirements governing Legal Nonconforming Uses and Structures (See L-11 5.19) of the Applicable County Law, and the requirements of CEQA.

4.8 Environmental Mitigation. The Parties understand that the EIR is intended to be used not only in connection with the Existing Project Approvals, but also in connection with the Subsequent Project Approvals needed for the Project. Consistent with the CEQA streamlining policies applicable to specific plans, including but not limited to California Code of Regulations Title 14, Section 15182, County agrees to use the EIR in connection with the processing of any Subsequent Project Approval as allowed by law and consistent with the requirements of CEQA. Further, County may rely on the exemption referenced in CEQA Guideline 15182 to the fullest extent permitted by law. To the extent supplemental or additional environmental review is required in connection with Subsequent Project Approvals, Developer acknowledges that County may require additional mitigation measures and conditions of approval that were not foreseen as of the Approval Date.

4.9 State and Federal Law. As provided in Section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than City, created or operating pursuant to the laws of the State of California (“**Changes in the Law**”). In the event Changes in the Law prevent or preclude, or render substantially more expensive or time consuming, compliance with one (1) or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement may be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Nothing in this Agreement shall preclude City or Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project any such Changes in the Law. If Changes in the Law substantially prevent or preclude, or render substantially more expensive or time consuming, performance of this Agreement in a manner that makes the Project economically infeasible, Developer, in its sole and absolute discretion, may terminate this Agreement by providing written notice thereof to City.

ARTICLE 5.

FEES

5.1 Fees.

(a) Developer shall be subject to all fees currently adopted by the County, including scheduled or periodic increases as provided for in the adopting ordinances or resolutions (“**Current Fee**”). Developer shall pay, without protest or without challenge, the Current Fees in effect at the time of the issuance of requested permit or entitlement.

(b) In addition, Developer agrees to pay any new fees adopted by the County, or the recalculation of existing fees (“**New Fees**”) in effect at the time of the issuance of a

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requested permit or entitlement. Developer shall retain the right to challenge New Fees as permitted by law.

5.2 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 public benefits or if required as a condition of obtaining a Discretionary Approval.

5.3 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 others' 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 the 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.

5.4 Life of Development Approvals and Permits. 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.

ARTICLE 6.

ANNUAL REVIEW

6.1 Annual Review. The annual review required by Government Code section 65865.1 shall be conducted as provided in Section L-II 5.18 (F) of the Nevada County Land Use and Development Code, as of the date of this Agreement. Failure to conduct the annual review, standing alone, is not a breach of the Agreement.

6.2 Relationship to Default Provisions. The above procedures shall supplement and shall not replace that provision in Section 8.1 of this Development Agreement.

ARTICLE 7.

AMENDMENTS

7.1 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 the 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, (vi) 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 an 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 2.6(i) and Section 7.2 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.

7.2 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**”).

(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 8.

DEFAULT, REMEDIES, TERMINATION

8.1 Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 11.2 hereof regarding permitted delays, any failure by either Party to perform any “**Material Term**” or provision of this Development Agreement (including terms, provisions or conditions of any other Project Approvals) 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, (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, or (iii) Developer files a petition for bankruptcy, reorganization or arrangement under any state statute or makes an assignment for the benefit of creditors, or takes advantage of any insolvency statute; (iv) all or substantially all of the Property is condemned or acquired by eminent domain; or (v) the Property is sold or otherwise transferred by Developer without the prior approval of County, whether voluntarily or involuntarily. Any notice of default given hereunder shall specify in detail the nature of the failures in performance which 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 Development 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 (a) termination of this Development Agreement, or (b) institution of legal proceedings with respect thereto. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

8.2 Remedies and Termination. If after notice and expiration of the cure periods and procedures set forth in Section 8.1, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Sections 8.3 or 8.4 of this Development Agreement and/or terminate this Development Agreement. In the event that this Development Agreement is terminated pursuant to this Section 8.2 and litigation, or mediation is instituted which results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

8.3 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 Development 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

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constitute a waiver or election with respect to any other available remedy. Notwithstanding the foregoing, in no event shall County be liable for loss of profits on any theory of liability.

8.4 Termination.

(a) Expiration of Term. Except as otherwise provided in this Development Agreement, this Development Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Development Agreement as set forth in **Section 2.5**.

(b) Survival of Obligations. Upon the termination of this Development Agreement pursuant to **Section 8.2** or this **Section 8.4**, neither Party shall have any further right or obligation with respect to the Property under this Development Agreement except with respect to any obligation which is specifically set forth as surviving this Development Agreement. The termination of this Development Agreement shall not affect the validity of the Project Approvals (other than this Development Agreement) or Subsequent Approvals.

ARTICLE 9.

COOPERATION AND IMPLEMENTATION

9.1 Further Actions and Instruments. The Parties to this Development 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 Development Agreement, subject to satisfaction of the conditions of this Development 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 Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

9.2 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 Development 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.

9.3 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party challenging the validity of any provision of this Development Agreement, the procedures leading to its adoption, or the issuance of Project Approvals and/or Subsequent Approvals for the Project, the Parties hereby agree to affirmatively cooperate in defending said action. Developer agrees to bear the litigation expenses of defense, 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. County shall be entitled but not obligated to select outside counsel to assist with legal representation.

9.4 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.

9.5 Indemnification Agreement. County and Developer shall enter into a mutually acceptable indemnification agreement in a form substantially similar to **Exhibit J** attached hereto.

ARTICLE 10.

TRANSFERS AND ASSIGNMENTS

10.1 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 approval of the County, not to be unreasonably withheld. County, in reviewing the Developer request to sell, transfer, or assign its rights and interest under this Agreement shall receive from the buyer, transferee or assignee proof to the County's satisfaction, that assignee or transferee has the financial standing and wherewithal to comply with the terms of the Agreement and the Project Approvals. Developer shall provide to the County all financial records and reports to be assured that the assignee or transferee can meet its obligations under this Agreement. In addition, the County shall be assured that the Assignee or Transferee has the financial ability to comply with the mitigation measures of the EIR and Reclamation Plan. If the proposed buyer, transferee or assignee cannot demonstrate requisite financial ability, the County shall deny the request to sell, transfer or assign. The County's decision to give its approval to sell, transfer or assign shall be approved or denied by the Board of Supervisors of Nevada County.

10.2 Release upon Transfer. Upon the sale, transfer or assignment of Developer's rights and interests under this Development Agreement pursuant to Section 10.1, Developer shall be released from its obligations and liabilities under this Development 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 Development 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 Development Agreement with respect to that portion of the Property sold, transferred or assigned.

10.3 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development 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 Development 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 of the State of California. 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 11.

MISCELLANEOUS PROVISIONS

11.1 Project Is a Private Undertaking. It is specifically understood and agreed by the Parties that (a) the development contemplated by this Development 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 the exclusive control of the Property herein described subject only to the limitations and obligations of Developer under this Development Agreement.

11.2 Force Majeure. The Term of this Development Agreement and the time within which Developer shall be required to perform any act under this Development Agreement shall be extended 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 by strikes, lock-outs, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, enemy action, civil disturbances, fire or , unavoidable casualties, which substantially interfere with carrying out the development of the Project. Such extension(s) of time shall not constitute an Event of Default if presented by the Developer to the County for its concurrence and the County's concurrence shall not be unreasonably withheld.

11.3 Notices, Demands and Communications Between the Parties. Formal 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, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of County and Developer as indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons

and addresses as either Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 11.3.

County: Planning Director
County of Nevada
950 Maidu Avenue
Nevada City, CA 95959

Developer: Rise Grass Valley, Inc.
P.O. Box 15002
Grass Valley, CA 95945
Attn: President, Rise Grass Valley

with copy to: G. Braiden Chadwick
Mitchell Chadwick LLP
3001 Lava Ridge Court
Suite 120
Roseville, CA 95661

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit.

11.4 No Joint Venture or Partnership. Nothing contained in this Development Agreement or in any document executed in connection with this Development Agreement shall be construed as making County and Developer joint venturers or partners.

11.5 Severability. If any terms or provision(s) of this Development Agreement or the application of any term(s) or provision(s) of this Development Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Development Agreement or the application of this Development Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties; provided that, if the invalidation, voiding or enforceability would deprive either County or Developer of material benefits derived from this Development Agreement, or make performance under this Development Agreement unreasonably difficult, then County and Developer shall meet and confer and shall make good faith efforts to amend or modify this Development Agreement in a manner that is mutually acceptable to County and Developer.

11.6 Section Headings. Article and Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Development Agreement.

11.7 Construction of Agreement. This Development 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 Development Agreement.

11.8 Entire Agreement. This Development Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of [written number] ([numeric symbols]) pages including the Recitals, and [written number] ([numeric symbol]) exhibits, attached hereto and incorporated by reference herein, 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	Conditional Approval Letter
Exhibit D	Reclamation Plan
Exhibit E	Ordinance Approving This Agreement
Exhibit F	Cents Per Ton Payment Table
Exhibit G	Defense and Indemnification Agreement

11.9 Estoppel Certificates. Either Party may, at any time during the Term of this Development 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 Development Agreement is in full force and effect and a binding obligation of the parties, (b) this Development 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 Development 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.

11.10 Execution and Recordation. Pursuant to California Government Code section 65868.5, within ten (10) days after the approval of the Enacting Ordinance, the County shall execute this Development Agreement and the Clerk of the Board shall record this Development Agreement with the Nevada County Recorder. Thereafter, if this Development Agreement is

terminated, modified or amended pursuant to Article 6, Article 3 or Article 8 of this Development Agreement, the County Clerk shall record notice of such action with the Nevada County Recorder.

11.11 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon non-compliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

11.12 Time Is of the Essence. Time is of the essence for each provision of this Development Agreement for which time is an element.

11.13 Applicable Law. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. The Parties agree that venue for any legal action brought under this Agreement shall be Nevada County.

11.14 No Third-Party Beneficiaries. County and Developer hereby renounce the existence of any third-party beneficiary to this Development Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

11.15 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 Development Agreement is contained in the instrument by which such person acquired an interest in the Property.

11.16 Authority. The persons signing below represent and warrant that they have the authority to bind their respective Party and that all necessary board of directors', shareholders', partners', County Board of Supervisors', or other approvals have been obtained.

[SIGNATURES ON NEXT PAGE.]

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

LANDOWNER/DEVELOPER:

Rise Grass Valley, Inc.
a Nevada Corporation

By: _____
Name

Title

By: _____
Name

Title

APPROVED AS TO FORM:

By: _____
[G. Braiden Chadwick]
Attorney for Developer

COUNTY:

County of Nevada, a political subdivision of the
State of California

By: _____
Honorable Ed Scofield, Chair
Nevada County Board of Supervisors

ATTESTATION:

By: _____
Julie Patterson-Hunter
Clerk of the Board

APPROVED AS TO FORM:

By: _____
Katherine Elliott
County Counsel

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____,
Date Here insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

DRAFT

EXHIBIT B
MAP OF PROPERTY

DRAFT

EXHIBIT C
CONDITIONAL APPROVAL LETTER

DRAFT

EXHIBIT D
RECLAMATION PLAN

DRAFT

EXHIBIT E
ORDINANCE APPROVING THIS AGREEMENT

DRAFT

EXHIBIT F

CENTS PER TON PAYMENT TABLE

Scenario	Cost Per Ton
First 5 years including transporting between sites	\$ 0.42
Years 6-20 of Development Agreement	\$ 0.41

Annual Adjustments

Cents per ton funding for roadway maintenance subject to an annual adjustment based on the Engineering News Record (ENR) index, San Francisco.

EXHIBIT G

DEFENSE AND INDEMNIFICATION AGREEMENT

DRAFT

EXHIBIT H

DRAFT

EXHIBIT I

CENTS PER TON FUNDING FOR ROADWAY MAINTENANCE

DRAFT