

- D. Owner is responsible for payment of all services provided by City under this Agreement.
- E. On March 18, 2024, the City reviewed the building permit Application and returned comments noting the existing water services are undersized for the proposed Project and the Owner will be required to enter into an Undersized Water Service Agreement in order to receive City water service for the Project.
- F. Pursuant to the Napa County Building Code and California Plumbing Code Chapter 6 “Water Supply and Distribution” Section 610.0, the proposed fixture count and pipe head loss for the Project exceeds the allowable hydraulic losses for the existing public water services to the Property; therefore, the Owner is required to submit to Napa County an analysis showing compliance with, or otherwise having achieved compliance with, the above Building and Plumbing Codes utilizing private onsite improvements.
- G. The Owner has chosen to maintain the existing sizes of the meters and service laterals on the public side of the water services and will make improvements to the private side of the plumbing (on the Property) to ensure domestic water complies with the California Plumbing Code.
- H. The City agrees to provide water service to the Property for the Project via ¾-inch and 1-inch meters in accordance with the terms of this 2024 Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

- 1. The recitals set forth above are true and correct.
- 2. “Water Service” under the terms of this Agreement shall mean a piped connection to the City of Napa’s public water system that serves potable water to a property.
- 3. “Domestic Service” under the terms of this Agreement shall mean a water service granted to the Owner for the purposes of domestic use.
- 4. **Water Service Requirements for Proposed Project.**
 - a. Prior to the County’s issuance of the first building permit for the Project, Owner shall pay the City meter set fees in the amount of \$2,287 (\$1,075 for ¾-inch meter and \$1,212 for 1-inch meter) to pay the City’s cost for the replacement of the existing water meters with ultrasonic meters. Payment shall be delivered to the City’s Water Division office at 1700 Second Street, Suite 100, Napa, California. Following payment of the meter set fees, the City will order the ultrasonic meters, and the City anticipates that it will take approximately six months for the City to acquire the meters. The City will make good faith efforts to install the ultrasonic meters as soon as reasonably practicable following the City’s acquisition of the meters.
 - b. Owner shall, at its own cost, purchase and install an American Water Works Association (AWWA) approved reduced pressure backflow prevention device (per City Standard W-6A) for each of the water service lines (two backflow prevention devices are required, one on the ¾-inch service and one on the 1-inch

- service) and install it in a location that is as close as feasible to each meter, on the private side of each meter. The Owner shall install the backflow devices, have them tested by an AWWA certified tester from a list of testers provided by the City, and submit the written test results to the City of Napa Water Division demonstrating compliance with AWWA standards prior to the first to occur of: (i) construction/installation of any non-potable water pipelines and non-potable or potable tanks and pumps on the Property, or (ii) the County's issuance of a certificate of occupancy.
- c. Owner shall comply with all requirements imposed by the City on customers of City water service as set forth in Napa Municipal Code ("NMC") Title 13, particularly including NMC Chapters 13.04 through 13.10. A violation of those requirements may subject the Owner to penalties, including monetary fines or termination of Water Service under NMC Section 13.08.110.
5. **Conditions of Water Service.** Upon completion of the requirements of Section 4 above to the satisfaction of the City Utilities Director, City agrees to continue to serve water to the Property for the purposes of the Project subject to the following conditions and standards:
- a. Water from the Water Service may be used solely for domestic use on the Property to serve the Project.
- b. The Water Service may not be used to serve outside sources or properties, and City water may not be sold, given, or traded to outside sources or properties.
- c. Owner shall pay the City the full cost of service rate for outside City commercial water service as calculated by the most recent Cost of Service analysis as approved by resolution of the City Council. The Current Rate is \$11.10 per 1,000 gallons as of January 1, 2024.
- d. The City does not guarantee pressure or flow through the water service line. Owner shall be responsible for making any improvements necessary to account for insufficiencies in the pressure or flow to the Property. Improvements made, if any, shall be installed after the backflow device and may not exceed the flow capacities of the Water Service line.
6. **City Access to Property.** Owner hereby grants City the right to access the Property to inspect the Property and public water facilities during normal business hours, and the right to access the Water Service line located on the Property for the purposes of confirming that City Water Service is not being provided to other properties and is not being used for purposes other than those specified in this Agreement. The City shall provide notification to the Owner at least 24 hours prior to accessing the Property under this section 6, and allow the Owner the opportunity to accompany the City representative. Any such access and inspection shall be conducted so as to reasonably minimize disturbance to any guests on the Property.
7. **Testing of Backflow Device.** Owner shall test the backflow device once a year for the life of the Water Service or as required by state regulations.
8. **Indemnification.** To the full extent permitted by law, Owner shall indemnify, hold harmless, release and defend City, its elected and appointed officials, officers, employees and agents from and against any and all actions, claims, demands,

damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity including Owner, in whole or in part, arising out of this Agreement, including the Water Service provided under this Agreement, excepting liabilities due to the admitted or adjudicated willful misconduct of City. Owner's obligation to indemnify the City pursuant to this section shall specifically include, but not be limited to, any claim made or litigation filed against the City or liability imposed against the City. If the adjudicated or admitted willful misconduct of City has contributed to a loss, Owner shall not be obligated to indemnify City for the proportionate share of such loss caused by such willful misconduct.

9. **Agreement to Run with the Land.** This Agreement shall run with the land and shall be binding upon all parties having any right, title, and interest in the real Property, or any part thereof, and their heirs, successors, and assigns. This Agreement shall be recorded against the Property.
10. **Default.** In the event of Owner's default, City reserves to itself all remedies available at law or in equity. Owner agrees that City has full discretion in choosing any remedy or remedies to pursue, and that the waiver of City to take enforcement action shall not be construed as a waiver of that or any subsequent default or breach. In addition to all the remedies available at law and in equity, City may also take such actions as are necessary to terminate Water Service to the Property until such time as the violation has been remedied.
11. **Damages for Breach.** Any material breach of this Agreement not explicitly described in this Agreement will result in a time and materials charge for any staff time incurred to address the breach, at the fully encumbered hourly rate for each City employee, and may result in termination of water service.
12. **Notices.** All notices or requests required or contemplated by this Agreement will be in writing and delivered to the other party's Authorized Representative by personal delivery, U.S. Mail, nationwide overnight delivery service, email, or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, (b) actual receipt at the address identified below, or (c) three business days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A party's contact information, below, may be changed by providing written notice of any change to the other party.

To City: City of Napa, Utilities Department - Water Division
P.O. Box 660
Napa, CA 94559-0660
UtilDevelopmentServices@cityofnapa.org

To Owner: Oak Knoll Resort LLC
5091 Solano Ave.
Napa, CA 94558

greg@panoramicadvisors.com
tharmon@palisadeshospitality.com

13. General Provisions.

- a. Headings. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- b. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- c. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement shall be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Napa.
- d. Assignment and Delegation. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Owners' duties be delegated without the written consent of City; provided, however, that the rights and obligations under this Agreement shall automatically run with the land without consent of City (as set forth in Agreement Section 9). With the exception of rights and obligations that run with the land, any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.
- e. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- f. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- g. Time. Time is of the essence in carrying out the duties hereunder.
- h. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
- i. Each Party's Role in Drafting the Agreement. Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

SIGNATURES.

- j. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Owners and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth above.

CITY OF NAPA:

Philip Brun, Utilities Director

OWNER(S):

By: 

Gregory Pitts, Manager

By: _____
Timothy Harmon, Manager

COUNTERSIGNED:

Erika Leahy, City Auditor

APPROVED AS TO FORM:

Sabrina Wolfson, Interim City Attorney

<p>*Corporation, partnership, limited liability corporation, sole proprietorship, etc. Unless corporate resolution delegates an individual to sign contracts, an agreement with a corporation shall be signed by the President or Vice President and the Secretary or Treasurer of the corporation. A general partner shall sign on behalf of a general partnership. The managing member, if authorized, may sign on behalf of a limited liability corporation.</p>
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SIGNATURE OF OWNER(S) MUST BE NOTARIZED

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*Corporation, partnership, limited liability corporation, sole proprietorship, etc.
 Unless corporate resolution delegates an individual to sign contracts, an agreement with a corporation shall be signed by the President or Vice President **and** the Secretary or Treasurer of the corporation. A general partner shall sign on behalf of a general partnership. The managing member, if authorized, may sign on behalf of a limited liability corporation.

SIGNATURE OF OWNER(S) MUST BE NOTARIZED

LI ZHAO
 NOTARY PUBLIC - STATE OF COLORADO
 Notary ID #20204022893
 My Commission Expires 7/1/2024

LI ZHAO
 NOTARY PUBLIC - STATE OF COLORADO
 Notary ID #20204022893
 My Commission Expires 7/1/2024

State of Colorado
County of Pitkin

The foregoing instrument was acknowledged before me on this 14th day of June, 2024 by Timothy Harmon who is personally known to me or has produced CO Drivers License as identification

Notary's Signature

EXHIBIT "A"

PROPERTY

PARCEL ONE:

Parcel A, as shown on the Record of Survey Map No. 1693, entitled "Record of Survey Map of the Lands of Louis O. Wurz." filed February 14, 1968 in Book 15 of Surveys at page 93, said Napa County Records.

PARCEL TWO:

Commencing at the existing railroad spike monument at the point marking the intersection of the Northern line of the 76.22 acre tract of land described in the Deed to Louis O. Wurz, et ux, of record in Book 176 at page 143 of Official Records of Napa County, with the Western line of the 0.54 acre tract of land described in the Deed to Lenore Stearns of record in Book 471 at page 196 of Official Records of Napa County; thence along the Western line of said 0.54 acre tract South 22° 17' East 225.00 feet to the existing 3/4 inch iron pipe monument at the Southwest corner thereof; thence parallel to the Northern line of said 76.22 acre tract South 67° 32' 30" West 193.60 feet to a point at which is set a copper pin monument; thence North 22° 17' West 225.00 feet to a 24 inch oak tree on the Northern line of said 76.22 acre tract, from which a set copper pin monument bears South 22° 17' East 46.00 feet distant; thence along the Northern line of said 76.22 acre tract North 67° 32' 30" East 193.60 feet to the point of commencement.

PARCEL THREE:

Commencing at the point formed by the intersection of the Northern line of the 76.22 acre tract of land described in the Deed to Louis O. Wurz, et ux, of record in Book 176 at page 143 of Official Records of Napa County, with the Western line of the 15 foot strip of land described in the Deed to Lenore Stearns of record in Book 394 at page 197 of Official Records of Napa County; running thence along the Western line of said 15 foot strip of land, South 22° 17' East 215.00 feet; thence along the Southern line of said 15 foot strip of land and the Southern line of the 0.50 acre tract of land described in the Deed to Lenore Stearns of record in Book 261 at page 439 of Official Records of Napa County, North 67° 32' 30" East 101.00 feet to the intersection thereof with the Eastern line of the 15 foot strip of land described in the Deed to Louis O. Wurz, et ux, of record in Book 394 at page 195 of Official Records of Napa County; thence along the Eastern line of said 15 foot strip of land conveyed to Louis O. Wurz, South 22° 17' East 10.00 feet; thence South 67° 32' 30" West 201.00 feet; thence North 22° 17' West 225.00 feet to a point on the Northern line of the 76.22 acre tract of land hereinbefore referred to; thence along the Northern line of said 76.22 acre tract North 67° 32' 30" East 100.00 feet to the point of commencement.

EXCEPTING FROM PARCEL THREE:

That portion granted to the State of California by that certain Grant Deed recorded July 1, 1968 in Book 789 at page 822 of Official Records of Napa County.

APN 035-031-009

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 Napa }ss

On 6/6/24, before me, Suzette Rose, Notary Public, personally appeared Gregory Pitts 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 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.

