

RECORDING REQUESTED BY  
AND WHEN RECORDED, RETURN TO:

City of Napa  
P.O. Box \_\_\_\_\_  
Napa, CA 94559  
Attention: \_\_\_\_\_

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

APN: 003-133-030

Space above this line for Recorder's use.

**AMENDED AND RESTATED DEVELOPER'S AGREEMENT AND DECLARATION OF  
RESTRICTIVE COVENANTS**

(Apartments at 1356 Calistoga Avenue, Napa, CA)

This Amended and Restated Developer's Agreement and Declaration of Restrictive Covenants (this "Agreement") is entered into effective as of \_\_\_\_\_, 2015 ("Effective Date"), by and between the City of Napa, a municipal corporation ("City"), and \_\_\_\_\_, a (insert corporate-legal identity of Developer)("Developer"), with reference to the following facts.

**RECITALS**

A. Developer owns fee simple title to the real property located in the City of Napa, and described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Under the terms of that certain "Developer's Agreement: Special Residential," archived as City of Napa Agreement No. 6609 and recorded as Instrument No. 1994, 021480 in the Official Records of Napa County, California ("the Developer's Agreement"), as amended by that certain "Addendum No. 1 to Developer's Agreement: Special Residential," archived as Appendix A to City of Napa Agreement No. 6609 and recorded as Instrument No. 1994, 021481 in the Official Records of Napa County, California ("the Addendum")(together, the Developer's Agreement and the Addendum may be referred to as "the Regulatory Agreement"), the Property is currently subject to certain use, rental eligibility and affordability restrictions imposed by contract as implementation of conditions of approval of a Use Permit approved for the Property by City Resolution No. 89-259. The Regulatory Agreement satisfied the requirements of the Special Residential Designation of City's 1982 General Plan, and generally required that units authorized under the Use Permit would be affordable and available exclusively to low and moderate income senior citizens or low or moderate handicapped persons.

C. Developer intends to operate a rental residential development consisting of 14 rental housing units for low income households who are seniors 55 years of age or older and/or disabled persons of any age (as further defined below in Section 1.1(l), the "Development") on the Property. The Development will include 14 dwelling units that are restricted for occupancy by low income households at affordable rents in accordance with the terms and conditions set forth in this Agreement.

D. Developer wishes to amend and restate the Regulatory Agreement to modify the eligibility criteria for tenants living at the units such that the Development would be available to low-income seniors 55 and older or low-income disabled persons of any age, and City is amenable to the modification as it will ensure the continued availability of the City's affordable housing inventory to older citizens of low income while expanding availability of the units to other special needs groups.

E. The Development is not subject to the requirements regarding the setting of initial and subsequent rental rates for residential real property set forth under the Costa-Hawkins Act, California Civil Code Section 1954.50 *et seq*, as the Development was initially constructed prior to February 1<sup>st</sup>, 1995. Moreover, the Developer is bound by a contract with a public entity that was entered into by the previous owner ("the Previous Owner") of the Property in consideration for direct financial contribution. The Previous Owner was the recipient of funding sources including Community Development Block Grants and Federal Housing and Urban Development HOME grants issued and administered by City, and in consideration of the receipt of these direct funding subsidies, the Previous Owner agreed by contract to be bound by the use, rental eligibility and affordability restrictions imposed under the Regulatory Agreement. This Agreement is intended to relax the eligibility restrictions on the Property initially memorialized in the Regulatory Agreement in a manner that will still further and promote the affordable and special needs objectives identified under City's General Plan.

NOW THEREFORE, for good and valuable consideration, the City and the Developer hereby agree as follows.

**ARTICLE 1  
AMENDMENT**

1.1 Amendment. The Regulatory Agreement is hereby amended by repealing the previous language of the Developer's Agreement and the Addendum in its entirety and adopting new language to read as set forth in this Agreement.

**ARTICLE 2  
DEFINITIONS**

2.1 Definitions.

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" is the actual number of persons in the applicable household.

(b) "Affordable Rent" means a monthly Rent that does not exceed the maximum amount under the formula set forth under Section 3.2(a) or, if applicable, Section 3.2(c).

(c) "Agreement" is this Amended and Restated Developer's Agreement and Declaration of Restrictive Covenants.

## ATTACHMENT 2

(d) "Area Median Income" or "AMI" is the area median income for Napa County, California, adjusted for Actual Household Size, as determined by the United States Department of Housing and Urban Development ("HUD") and as published from time to time by the State of California Department of Housing and Community Development ("HCD") in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

(e) "Assumed Household Size" shall have the meaning set forth in Section 3.2(b) below.

(f) "City" is defined in the preamble to this Agreement.

(g) "Developer" is as defined in the preamble to this Agreement.

(h) "Development" is the Property and the approximately fourteen rental housing units to be located on the Property as described in Recital A, as well as any additional improvements, and all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.

(i) "Effective Date" means the date on which this Agreement has been executed by all of the parties.

(j) "Eligible Household" means a household for which gross household income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Section 3.1.

(k) "Housing Authority" means the Housing Authority of the City of Napa.

(k) "Low-Income Household" is a household whose income does not exceed eighty percent (80%) of AMI.

(l) "Market Rate Rent" means a Rent that is consistent with other Rents in the City of Napa for comparable rental properties.

(m) "Person with a disability" shall have the meaning of that term as set forth under the Americans with Disabilities Act, 42 U.S.C 126.

(n) "Property" is defined in Recital A.

(o) "Rent" is the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by the Developer which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV, to be established annually by the Housing Manager of the City of Napa; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Developer, and paid by the Tenant.

(p) "Restricted Unit" means a dwelling unit which is reserved for occupancy at an Affordable Rent by a Low Income Household, as further specified in Section 3.1.

(q) "Section 8 Payment Standard" shall mean the amount, as established by the Housing Authority of the City of Napa as the responsible local public housing agency implementing the Department of Housing and Urban Development's Section 8 housing voucher program, as generally governed under 24 C.F.R. 982 et seq, needed to rent a moderately-priced dwelling unit in the local housing market.

(s) "Tenant" is a household legally occupying a Unit pursuant to a valid lease with Developer.

(t) "Unit" is one of the approximately fourteen (14) rental housing units constructed on the Property.

(u) "Utility Allowance" means the amount that the Housing Authority determines is necessary to cover a tenant's reasonable utility costs, and represents an estimate of the expenses associated with different types of utilities and their uses. The utilities for which allowances may be provided include electricity, natural gas, propane, fuel oil, wood or coal, and water and sewage service, as well as garbage collection. Functions or end-uses covered by an allowance may include space heating, water heating, cooling, refrigeration, lighting, or appliances. The Utility Allowance does not include telephone service.

**ARTICLE 3  
AFFORDABILITY AND OCCUPANCY COVENANTS**

**3.1 Occupancy Requirements.**

(a) Fourteen (14) of the residential units in the Development shall be both Rent-Restricted (as defined below) and occupied (or if vacant, available for occupancy) by Eligible Households who qualify as Low-Income Households. .

(b) Restricted Units. All of the Restricted Units shall be rented to and occupied by or, if vacant, available for occupancy by Low-Income Households.

(c) Eligibility of Tenants. Tenants occupying the Restricted Units shall either be persons 55 years of age or older, or persons with a disability; provided, however, that any tenants living within the Development under a valid and current tenant lease as of the Effective Date shall be exempt from the eligibility requirements of this Section 3.1(c), and shall be entitled to live in the Development under the terms and conditions of their current lease until termination

of their lease. Upon vacation of any Restricted Unit occupied as of the Effective Date by a tenant under a pre-existing lease, Developer shall rent the vacant Restricted Unit to an Eligible Household in accordance with the occupancy requirements of this Section 3.1 and shall comply with the income certification provisions of Article 4 of this Agreement.

**3.2 Allowable Rent.**

(a) Affordable Rent for Restricted Units. Subject to the provisions of Section 2.3 below, the maximum Rent (including utility allowance) charged to Tenants of the Restricted Units shall not exceed the Section 8 Payment standard, minus a Utility Allowance, adjusted for Assumed Household Size.

(b) Assumed Household Size. In calculating the allowable Rent for the Restricted Units, the following Assumed Household Sizes shall be utilized (except that if any federal statutes or regulations require use of alternate household size assumptions in calculating rents, such federally-mandated household size assumptions shall be used instead of the assumptions provided below):

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>
One	2
Two	3
Three	4

(c) In the event that income determinations are no longer published by HUD, are not updated for a period of at least eighteen (18) months, or in the event that the Section 8 voucher program administered by HUD under the authority of the Housing Act of 1937, 42 U.S.C. § 1437f is terminated, the maximum allowable rent shall not exceed one twelfth (1/12) of thirty percent (30%) of seventy percent (70%) of Area Median Income .

**3.3 Section 8 Voucher and Certificate Holders.**

The Developer will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing certificate program or the Housing Choice Voucher Program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective Tenants, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Units which have the effect of precluding occupancy of Units by such prospective Tenants.

**ARTICLE 4  
INCOME CERTIFICATION AND REPORTING**

**4.1 Income Certification.**

Upon initial occupancy, the Developer will obtain, complete and maintain on file, income certifications for each Tenant renting any of the Restricted Units. Developer shall make a good faith effort to verify that the income statement provided by an applicant or Tenant is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a

minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (b) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (c) obtain the three (3) most current savings and checking account bank statements; (d) obtain an income verification form from the applicant's current employer or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be made available to the City upon request. Tenants with Housing Choice Vouchers shall be presumed to be income eligible, and no additional income certification shall be required.

**4.2 Annual Report to City.**

(a) The Developer shall provide City with annual reports containing any information reasonably requested by the City in connection with the Development. In particular, the Developer shall provide the City with annual reports required by this Section, including but not limited to reports regarding the Development's rent and occupancy levels. Without limitation, the Developer shall provide the City no later than the sixtieth (60<sup>th</sup>) day after the close of each calendar year following the Effective Date, hardcopies and PDF copies of the following documents:

(1) an occupancy report of the Restricted Units including: (i) the initial verified income of each non-Section 8 tenant or household, (ii) the number of tenants in each household; (iii) the current rents charged each tenant or household and whether these rents include utilities, and (iv) the date tenancy commenced for each Unit;

(2) certifications of eligibility for all Tenants of Units at the time of initial occupancy Such certification shall include verified income statements. Developer shall retain in the Tenant's file all verifications of Tenant's income (tax returns, W-2 forms, paycheck stubs, etc.);

(b) Substitution of Monitoring and Compliance Reports Prepared for Other Financing Programs. If similar reports on some or all of the Units are required for regulatory compliance with other financing programs, those reports may be deemed satisfactory for the purpose of this Section by the City, with respect to the portion of the requirements of this Section covered by such reports, provided that copies are provided on an annual basis to the City with an owner certification addressed to the City certifying that the Developer has complied with this Agreement.

**4.3 Additional Information.**

The Developer shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of the Developer which pertain to the Units.

**4.4 Records.**

(a) The Developer shall maintain complete, accurate and current records pertaining to the Units, and shall permit any duly authorized representative of the City to inspect records, including but not limited to records pertaining to income and household size of Tenants

and Rent charged Tenants, upon reasonable prior notice during normal business hours. All Tenant lists, applications and waiting lists relating to the Units shall at all times be kept separate and identifiable from any other business of the Developer and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Developer shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

(b) The City shall notify Developer of any records it deems insufficient. Developer shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Developer shall begin to correct the deficiency within fifteen (15) days and correct the deficiency within thirty (30) days, or as otherwise agreed by City if a longer time period is reasonably required.

4.5 On-site Inspection.

The City shall have the right to perform on-site inspections of the Development, including the Units, as is reasonably required to ensure compliance with this Agreement, but in any case at least once per year. The Developer agrees to cooperate in such inspection(s). If City desires to inspect the interior of the Units, City shall give Developer sufficient notice to allow Developer to give seventy-two (72) hours' notice to Tenants.

**ARTICLE 5  
OPERATION OF THE DEVELOPMENT**

5.1 Residential Use.

The Property and the Units shall be used only for residential purposes, and the Units shall be operated and maintained as residences. No part of the Units shall be operated as transient housing in which the term of occupancy is less than thirty (30) days.

5.2 Taxes and Assessments

Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any line or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

**ARTICLE 6  
PROPERTY MANAGEMENT AND MAINTENANCE**

6.1 Management Responsibilities.

The Developer is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification

of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Development or the Units.

6.2 Property Maintenance.

(a) The Developer agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

(1) Landscaping. The Developer agrees to have landscape maintenance performed every other week, including removal of dead or diseased plants. No improperly maintained landscaping on the Property shall be visible from public streets and/or rights of way.

(2) Yard Area. No yard areas on the Property shall be left unmaintained, including:

(A) broken or discarded furniture, appliances and other, household equipment stored in yard areas for a period exceeding one (1) week;

(B) packing boxes, lumber trash, dirt and other debris in areas visible from public property or neighboring properties; and

(C) vehicles parked or stored in other than approved parking areas.

(3) Building. No buildings located on the Property may be left in an unmaintained condition so that any of the following exist:

(A) violations of state law, uniform codes, or City ordinances;

(B) conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance;

(C) broken windows;

(D) graffiti (must be removed within 72 hours); and

(E) conditions constituting hazards and/or inviting trespassers, or malicious mischief.

(4) Sidewalks. The Developer shall maintain, repair, and replace as necessary all public sidewalks adjacent to the Development.

(b) The City places prime importance on quality maintenance and ensure that all City-approved affordable housing projects within the City are not allowed to deteriorate due

to below-average maintenance. Normal wear and tear of the Units will be acceptable to the City assuming the Developer agrees to provide all necessary improvements to assure the Units are maintained in good condition. The Developer shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

(c) In the event that the Developer breaches any of the covenants contained in this Section and such Default continues for a period of ten (10) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the Default. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, which amount shall be promptly paid by the Developer to the City upon demand.

**ARTICLE 7  
NONDISCRIMINATION; FAIR HOUSING; LOCAL PREFERENCES**

7.1 Nondiscrimination.

(a) Developer herein covenants by and for itself, its subcontractors, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, nor denial of the benefits of this Agreement to, any person or group of persons, on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS) or political affiliation or belief, nor any unlawful discrimination against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. Developer shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, Developer shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to Developer services or works required of City by the State of California pursuant to agreement between City and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and Developer and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith.

(c) Notwithstanding paragraph (b), with respect to familial status, paragraph (b) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (b) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph b.

(d) The Developer shall include the provisions contained in this Section in all contracts and subcontracts related to the Development.

6.2 Fair Housing. Developer shall comply with state and federal fair housing laws in the marketing and rental of the units in the Development. Developer shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

Article 7  
**COVENANTS BINDING ON SUCCESSORS**

7.1 Covenants to Run With the Land.

The City and the Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

**ARTICLE 8  
INDEMNIFICATION; DEFAULT AND REMEDIES**

**8.1 Indemnification**

(b) To the full extent permitted by law, the Developer shall indemnify, defend, and hold the City and its elected officials, officers, employees and agents (collectively "Indemnitees") harmless from and against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including without limitation, reasonable attorneys' fees) which arise out of or in connection with the purchase of the Property, the development, construction, marketing and operation of the Development, and any failure to perform any obligation as and when required by this Agreement, except to the extent such claim arises from the grossly negligent or willful misconduct of the Indemnitees. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, provided that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege or attorney work product privilege.

**8.2 Default and Remedies; Remedies Cumulative.**

An Event of Default shall arise hereunder if Developer fails to perform any obligation under this Agreement, and fails to cure such default within thirty (30) days after the City has notified the Developer in writing of the default or, if the default cannot be cured within thirty (30) days, has failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, or such longer period as approved by the City in writing, City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law.

(a) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the Developer's performance of its obligations under this Agreement, and/or for damages.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

8.3 Limited Partners' Right to Cure.

Developer's limited partners shall have the right to cure any default of Developer hereunder upon the same terms and conditions afforded to Developer. Provided that City has been given written notice of the address for delivery of notices to the limited partners, City shall provide any notice of default hereunder to such parties concurrently with the provision of such notice to Developer.

**ARTICLE 9  
MISCELLANEOUS**

9.1 Attorneys' Fees and Costs.

In any action brought to enforce or interpret this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

9.2 Recording and Filing.

The City and the Developer shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Napa.

9.3 Governing Law and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflict of laws. The parties agree that any controversy arising under or in relation to this Agreement shall be litigated exclusively in state or federal courts with jurisdiction in the County of Napa.

9.4 Headings; Construction.

The titles of the sections and subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting the provisions of this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against either party.

9.5 No Implied Waiver.

No waiver of the requirements of this Agreement shall occur unless expressly waived by the City in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or Default of Developer or to pursue any remedy permitted under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Developer shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

9.6 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Napa.

9.7 Entire Agreement.

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the parties with respect thereto.

9.8 Notices.

Except for any notice, demand or communication required under applicable law to be given in another matter, all notices, demands and communications to be sent pursuant to this Deed of Trust shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other parties in accordance with this Section. All notices demands or communications shall be shall be sent by person delivery, by reputable overnight delivery service (which provides a delivery receipt) or by certified or registered mail, return receipt requested, postage prepaid.

**City:**

City of Napa  
1115 Seminary Street  
Napa, CA 94559  
Attention: Housing Manager

**Developer:**

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to City or Developer as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

9.9 Severability.

## ATTACHMENT 2

If any provision of this Agreement is held by court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

### 9.10 Action by City.

Except as may be otherwise specifically provided herein, whenever any approval, notice, direction or consent by City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, or made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council, unless the City Manager determines in his or her discretion that such approval is required.

### 9.11 Counterparts.

This Agreement may be executed in multiple counterparts, each of which is deemed to be an original, and all of which taken together shall constitute one and the same instrument.

**[Signatures on following page.]**

**[Remainder of page intentionally blank.]**

**ATTACHMENT 2**

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first written above.

**CITY:**

City of Napa, a municipal corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

:

**DEVELOPER:**

By: ,

By:

By: \_\_\_\_\_  
President

By:

By:

By: \_\_\_\_\_  
\_\_\_\_\_



**EXHIBIT "A"  
LEGAL DESCRIPTION**

The land is situated in the State of California, County of Napa, City of Napa, and is described as follows:

