

EXHIBIT A

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City of Napa
City Hall, 955 School Street, South Wing
Napa, CA 94559
Attention: City Attorney

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Section 27383*

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF NAPA

AND

JAMES F. KELLER

AND

1351 SECOND STREET, LLC

Effective Date: _____

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DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”), dated as of the _____, 2018 (the “**Effective Date**”), is entered into by and between the City of Napa, a California charter city (“**City**”) and 1351 Second Street, LLC, a California limited liability company (“**1351 Second Street LLC**”) and James F. Keller (“**Keller**” and, collectively, with 1351 Second Street, LLC, the “**Developer**”). Developer and City may be referred to individually in this Agreement as a “**Party**” and collectively as the “**Parties**.”

R E C I T A L S

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties. The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Article 1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs and risks of development, the Legislature of the State of California enacted section 65864 *et seq.* of the Government Code (“**Development Agreement Statute**”) which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City Council of the City of Napa enacted Municipal Code section 17.52.150 and has adopted City of Napa Resolution No. 93-267 (which amended City of Napa Resolution No. 83-176) (“**Development Agreement Regulations**”), which authorize the execution of development agreements and set forth the required contents and form of those agreements. The provisions of the Development Agreement Statute and the City’s Development Agreement Regulations are collectively referred to herein as the “**Development Agreement Law**.”

C. 1351 Second Street, LLC is the fee owner of that certain approximately 0.66 acre property that includes the historic Franklin Station Post Office building located at 1351 2nd Street, Napa, California, designated as Assessor’s Parcel No. 003-208-001, as more particularly described and depicted in Exhibit A attached hereto (“**Post Office Parcel**”). Keller is under option agreement to purchase, and therefore has an equitable interest in, (i) that certain approximately 0.45 acre property and the surface parking lot thereon currently owed by the City of Napa located at the southeast corner of Randolph Street and Second Street in Napa, California, designated as Assessor’s Parcel No. 003-212-001, as more particularly described on Exhibit B attached hereto (“**Parking Lot Parcel**”), and (ii) that certain approximately 0.34 acre property and the Zeller Ace Hardware Store building thereon currently owned by Richard C. Clark and Nyrene E. Clark, Co-Trustees of the Richard and Nyrene Clark Family Trust (U/D/T November 14, 2002) (“**Clark**”) located at 819 Randolph Street, Napa, California, designated as Assessor’s Parcel No. 003-208-002, as more particularly described on Exhibit C attached hereto (“**Ace Parcel**”). The Post Office Parcel, the Parking Lot Parcel and the Ace Parcel together

comprise approximately 1.45 acres of land and are referred to herein collectively as the “**Property**”.

D. Recognized as a key element of the City of Napa’s historic downtown, the Franklin Station Post Office building was severely damaged by the South Napa Earthquake on August 24, 2014. In light of the historic and architectural significance of the Franklin Station Post Office building, the United States Postal Service opted, rather than demolishing the damaged building, to sell the Post Office Parcel to a developer who could adaptively reuse the building. Developer acquired the Post Office Parcel and Franklin Station Post Office building from the United States Postal Service on or about March 2017. The Post Office Parcel, including the Franklin Station Post Office building, is listed in the National Register of Historic Places and is the subject of a memorandum of understanding between the United States Postal Service and the California State Historic Preservation Officer.

E. Developer intends to rehabilitate the earthquake damaged Franklin Station Post Office building and construct on the Post Office Parcel and Ace Parcel a five-story, Upper Upscale hotel with a maximum of 163 rooms (of which up to 25% of the rooms may be condo-hotel and up to 25% of the rooms may be accessory whole ownership dwelling units as described in the PD in the Existing Approvals, defined hereinafter), with ancillary retail and related amenities (“**Post Office Redevelopment**”). Developer also desires to develop an automated parking structure not to exceed 60’ in height with ancillary improvements, including up to 7,000 square feet of ground floor retail/restaurant/commercial space (“**Parking Development**”) and, collectively, with the Post Office Redevelopment, the “**Project**”). The Project is more fully described in Exhibit D, Project Description, attached hereto.

F. In connection with the Project, Developer has applied to City for a General Plan Amendment, Specific Plan Amendment, Certificate of Appropriateness and Zoning Amendments to rezone the Post Office Parcel from DP to DMU/PD, the Parking Lot Parcel from DMU to DMU/PD, and the Ace Parcel from DMU to DMU/PD. Concurrently with the zoning amendment applications, Developer submitted to the City a development agreement application for approval of this Agreement.

G. The Project is within the scope of the development program described and evaluated in the Environmental Impact Report for the Downtown Napa Specific Plan (“**EIR**”) prepared pursuant to the California Environmental Quality Act (“**CEQA**”) (Public Resources Code section 21000 *et seq.*) and certified by Resolution No. 2012 54 adopted by the City Council on May 1, 2012, as described in the Franklin Post Office Project Addendum to that EIR dated October 9, 2018 prepared pursuant to CEQA Guidelines Sections 15164 and 15168 and considered by the City Council on November 13, 2018 (“**EIR Addendum**”).

H. Prior to or concurrently with approval of this Agreement, the City has or will take several actions to review and plan for the future development and use of the Project (collectively, the “**Existing Approvals**”). These include:

1. Resolution No. _____ amending the General Plan to re-designate the Post Office Parcel from Downtown Public to Downtown Mixed Use as reviewed and recommended by the Planning Commission;
2. Resolution No. _____ amending the Downtown Specific Plan to re-designate the Post Office Parcel from Downtown Public to Downtown Mixed Use and revise the Historic Resources Design Guidelines in Appendix G of the Specific Plan for the Post Office Parcel as reviewed and recommended by the Planning Commission;
3. Resolution No. _____ approving a Certificate of Appropriateness as reviewed and recommended by the Cultural Heritage Commission;
4. Ordinance No. _____ approving a Planned Development Overlay District establishing use provisions and development standards for the Property (“PD”); and
5. Ordinance No. _____ amending the Zoning District Map in Napa Municipal Code Section 17.04.050 to rezone the Post Office Parcel from Downtown Public to Downtown Mixed Use (“Rezoning”).

I. It is the intent of City and Developer to establish certain conditions and requirements related to review and development of the Project, including, among other matters, the following: (i) permitted use, maximum intensity and density, maximum floor area, and maximum height of development of the Project; (ii) public benefits, including (1) location and general design parameters of public parking (size and massing, ingress/egress and circulation, quantity of parking stalls), (2) maintenance and operation standards for the public parking, (3) requirements for public art and hotel amenities and (4) requirements for timing of construction of the Project; (iii) the amount of retail frontage required by the Downtown Napa Specific Plan Guidelines; (iv) parking requirements sufficient to serve the Project’s hotel and retail/restaurant components; (v) CEQA compliance; and (vi) the scope of City’s reserved discretion with respect to review and consideration of Subsequent Approvals.

J. City finds that this Agreement will promote orderly growth and quality development in accordance with the goals and policies set forth in the General Plan; is compatible with the uses authorized in, and the regulations prescribed for, the district in which the Property is located; will promote the public convenience, general welfare, and good land use practice; will not be detrimental to the health, safety and general welfare; will not adversely affect the orderly development of property or the preservation of property value; and will promote and encourage the development of the Project by providing a greater degree of requisite certainty.

K. City and Developer have reached mutual agreement and desire to voluntarily enter into this Agreement to facilitate development of the Project subject to the conditions and requirements set forth herein.

L. City has given the required notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to Government Code section 65867 and Napa Municipal Code sections 1.12.010 and 17.68.070. The City has reviewed and evaluated this Agreement in accordance with the Development Agreement Law and found that the provisions of this Agreement and its purposes are consistent with the Development Agreement Law and the goals, policies, standards and land use designations specified in the General Plan.

M. On November 13, 2018, the City Council introduced Ordinance No. _____ (“**Enacting Ordinance**”) approving this Agreement and authorizing its execution, and adopted the Enacting Ordinance on _____, 2018. That Ordinance became effective on _____, 2018.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the Parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions.

“**1351 Second Street, LLC**” means 1351 Second Street, LLC, a California limited liability company.

“**Ace Parcel**” is defined in Recital C.

“**Affiliated Party**” is defined in Section 11.1.

“**Agreement**” means this Development Agreement between City and Developer, including all Exhibits hereto.

“**Applicable City Regulations**” is defined in Section 4.2.2.

“**Applicable Law**” means the Applicable City Regulations and all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time.

“**Assignee**” is defined in Section 11.1.

“**Assignment**” is defined in Section 11.1.

“**CEQA**” means the California Environmental Quality Act (California Public Resources Code section 21000, *et seq.*), as amended from time to time.

“**CEQA Guidelines**” means the State CEQA Guidelines (California Code of Regulations, Title 14, section 15000, *et seq.*), as amended from time to time.

“Changes in the Law” is defined in Section 4.7.

“City” means the City of Napa, a California charter city.

“City Council” means the City Council of the City of Napa.

“City Manager” means City’s City Manager or his or her designee.

“City Parties” means and includes City and its elected and appointed officials, officers, employees, attorneys, contractors and representatives.

“Claims” means liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including attorneys’ fees and costs.

“Clark” means Richard C. Clark and Nyrene E. Clark, Co-Trustees of the Richard and Nyrene Clark Family Trust (U/D/T November 14, 2002).

“Community Development Director” means City’s Community Development Director or other designee of either the Community Development Director or City Manager.

“Connection Fees” means those fees charged by City on a citywide basis or by a utility provider to utility users as a cost for connecting water, sanitary sewer, and other applicable utilities, except for any such fee or portion thereof that constitutes an Impact Fee, as defined below.

“Cultural Heritage Commission” means the City of Napa Cultural Heritage Commission.

“Default” is defined in Section 13.1.

“Design Review Permit” is defined in Section 8.1.

“Developer” means, collectively, James F. Keller and 1351 Second Street LLC, and his/its permitted successors and assigns.

“Development Agreement Law” is defined in Recital B.

“Development Agreement Regulations” is defined in Recital B.

“Development Agreement Statute” is defined in Recital A.

“Development Milestone” is defined in Section 4.3.1.

“Development Milestone Outside Date” is defined in Section 4.3.1.

“Discretionary Action” or ***“Discretionary Approval”*** means an action which requires the exercise of judgment, deliberation or a decision on the part of the City, including any board or commission or any officer or employee of the City, in the process of approving or disapproving a

particular activity, as distinguished from an activity which merely requires the City, including any board, commission or department or any officer or employee of the City, to determine whether there has been compliance with statutes, ordinances or regulations.

“Effective Date” means the date that this Agreement becomes effective as determined under Section 3.1.

“EIR” is defined in Recital G.

“EIR Addendum” is defined in Recital G.

“Enacting Ordinance” refers to the Ordinance identified in Recital M.

“Exactions” means exactions that may be imposed by the City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable Law. For purposes of this Agreement, Exactions do not include Impact Fees.

“Existing Approvals” means and includes those permits and approvals for the Project granted by City to Developer as of the Effective Date as set forth in Recital H.

“Extended Term” is defined in Section 3.2.1.

“Force Majeure Delay” is defined in Section 3.2.4.

“Upper Upscale” means a hotel chain that is equal to or better than the hotels listed in the Upper Upscale category of the STR Chain Scales – North America and Caribbean (<http://hotelnewsnow.com/Media/Default/Images/chainscales.pdf>), as amended from time to time.

“Further Extended Term” is defined in Section 3.2.2.

“General Plan” means the City of Napa’s General Plan, as amended from time to time.

“Keller” means James F. Keller.

“Impact Fees” means the monetary amount charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the development project or development of the public facilities related to the development project, including, any “fee” as that term is defined by Government Code section 66000(b).

“Impact Fee Lock Period” is defined in Section 5.1.

“Initial Term” is defined in Section 3.2.1.

“Litigation Challenge” is defined in Section 10.3.

“Major Amendment” is defined in Section 9.2.

“Minor Amendment” is defined in Section 9.2.

“Mortgage” means any mortgage, deed of trust, security agreement, and other like security instrument encumbering all or any portion of the Property or any of the Developer’s rights under this Agreement

“Mortgagee” means the holder of any Mortgage, and any successor, assignee or transferee of any such Mortgage holder.

“Municipal Code” means and refers to the City of Napa’s Municipal Code, as amended from time to time.

“New City Laws” means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, officer or employee) or its electorate (through their power of initiative or otherwise) after the Effective Date.

“Notice of Breach” is defined in Section 13.1.

“Other Agency Fees” is defined in Section 5.3.

“Other Agency Subsequent Approvals” means Subsequent Approvals to be obtained from entities other than the City.

“Parking Development” is defined in Recital E.

“Parking Lot Parcel” is defined in Recital C.

“Parking Lot Parcel PSA” means the Agreement of Purchase and Sale and Joint Escrow Instructions between Developer’s managing member, James F. Keller, as buyer, and the City of Napa, as seller, dated February 14, 2017.

“PD” is defined in Recital H.

“Planning Commission” means the City of Napa Planning Commission.

“Post Office Parcel” is defined in Recital C.

“Post Office Redevelopment” is defined in Recital E.

“Processing Fees” means all fees for processing development project applications, including any required supplemental or other further environmental review, plan checking and

inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

“Project Approvals” means the Existing Approvals and all Subsequent Approvals.

“Project” is defined in Recital E.

“Property” is defined in Recital C.

“PSA Outside Date” means the “Outside Date” for close of escrow under the Parking Lot Parcel PSA (as defined in paragraph 4(b) of the Parking Lot Parcel PSA), as such Outside Date may be extended by Developer and City each in its sole discretion in accordance with the terms of the Parking Lot Parcel PSA.

“Recordable Agreement for Parking Garage Operation and Maintenance” means the agreement between City and Developer addressing, among other things, the material terms set forth in “Exhibit C” to the Parking Lot Parcel PSA which agreement is to be recorded against the Parking Lot Parcel at close of escrow for City’s sale of the Parking Lot Parcel to Developer.

“Rezoning” is defined in Recital H.

“SHPO” is defined in Section 6.1.1.

“Subsequent Approvals” is defined in Section 8.1.

“Term” means the Initial Term plus the Extended Term and Further Extended Term, if applicable.

ARTICLE 2 GENERAL PROVISIONS

2.1 Ownership of Property. The Parties hereby acknowledge that, as of the Effective Date, Developer has either a fee interest or an equitable interest in all of the parcels comprising the Property by virtue of Developer’s fee ownership of the Post Office Parcel and Developer’s contractual rights to purchase the Parking Lot Parcel pursuant to the Parking Lot PSA, and the Ace Parcel pursuant to a private third-party agreement with Clark. If Developer or a Developer Affiliate does not acquire fee title to the Ace Parcel by the date that is twenty-four (24) months following the Effective Date, or such later date as City and Developer may mutually agree, then the Ace Parcel shall be excluded from the definition of the “Property,” the definition of “Post Office Redevelopment” shall be revised to provide for a five-story, maximum 80 room hotel with ancillary retail and related amenities and, upon request by either Party, City and Developer shall execute, acknowledge and record an amendment to this Agreement memorializing the foregoing changes. Within 90 days following execution of such amendment, Developer shall promptly prepare and submit to City applications to amend the Project Approvals to accommodate a smaller Post Office Redevelopment on the Post Office Parcel only.

2.2 City Representations and Warranties. City represents and warrants to Developer that, as of the Effective Date:

2.2.1. City is a municipal corporation, and a California charter city, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

2.2.2. The execution and delivery of this Agreement and the performance of the obligations of the City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

2.2.3. This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, immediately give written notice of such fact or condition to Developer.

2.3 Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date:

2.3.1. Developer is the sole fee owner of the Post Office Parcel. Developer has a contractual right to purchase the Ace Parcel pursuant to a written option agreement for the purchase and sale with Clark, the fee owner of such parcel, and therefore has an equitable interest in the Ace Parcel. The purchase and sale agreement between Developer and Clark with respect to the Ace Parcel is in full force and effect. Developer is a duly organized and validly existing limited liability company under the laws of its state of incorporation or organization, and is in good standing and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

2.3.2. The execution and delivery of this Agreement and the necessary performance of the obligations of Developer hereunder have been duly authorized by all necessary partnership, company or corporate action and all necessary partner, member or shareholder approvals have been obtained.

2.3.3. This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

2.3.4. Developer has not (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors; (c) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets; (d) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets; or (e) admitted in writing its inability to pay its debts as they come due.

During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.3 not to be true, immediately give written notice of such fact or condition to City.

ARTICLE 3 EFFECTIVE DATE AND TERM

3.1 Effective Date. The Effective Date of this Agreement shall be the later of (a) the date that is thirty (30) days after the date that the Enacting Ordinance is adopted, or (b) the date this Agreement is executed by City. The Effective Date is inserted at the beginning of this Agreement. The Parties acknowledge that section 65868.5 of the Development Agreement Statute requires that this Agreement be recorded with the County Recorder no later than ten (10) days after the City enters into this Agreement, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

3.2 Term of Agreement.

3.2.1. Initial Term. The “**Initial Term**” of this Agreement shall commence on the Effective Date and shall expire on the day immediately following the PSA Outside Date, unless earlier terminated.

3.2.2. Extended Term. Provided City and Developer have closed escrow for sale of the Parking Lot Parcel on or before the PSA Outside Date, the Initial Term shall be automatically extended from the date of expiration of the Initial Term until the date which is three (3) years following the expiration of the Initial Term (“**Extended Term**”). The Term may be further extended from the date of expiration of the Extended Term until the date which is one (1) year following the expiration of the Extended Term (“**Further Extended Term**”) at the sole discretion of the City. Developer must submit a written request to City to further extend the Term no later than 90 days prior to the expiration of the Extended Term. If the condition for the Extended Term is met, and/or if City agrees to approve a Further Extended Term, City and Developer agree to execute, acknowledge and record in the Official Records of Napa County a memorandum evidencing approval of the Extended Term or Further Extended Term, as applicable.

3.2.3. Effect of Termination. Upon the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 13.11 below.

3.2.4. Force Majeure Delay; Extension of Times of Performance. Subject to the limitations set forth below, the Extended Term (but not the Initial Term) and the time within which either Party shall be required to perform any act under this 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, and other labor difficulties; Acts of God; unusually severe weather, but only to the extent that such weather or its effects (including, without limitation, dry out time) result in delays that

cumulatively exceed twenty (20) days for any winter season occurring after commencement of construction of the Project; failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body; any development moratorium or any action of other public agencies that regulate land use, development, or the provision of services that prevents, prohibits, or delays construction of the Project; enemy action; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; and litigation or other administrative or judicial proceeding involving the Project Approvals or this Agreement, including any extension authorized by Government Code Section 66463.5(e) (each a “**Force Majeure Delay**”). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice in accordance with Section 14.2 is sent by the Party claiming such extension to the other Party within sixty (60) days of the commencement of the cause. If notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Developer. Downturns in the economy or Developer’s inability or failure to obtain financing for the Project shall not be deemed to be causes outside the reasonable control of Developer and shall not be the basis for a Force Majeure Delay.

ARTICLE 4 DEVELOPMENT OF THE PROPERTY

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 Approvals, the Subsequent Approvals, Applicable Law and this Agreement, which shall, among other things, control the permitted uses, density and intensity of use of the Property, requirements for on- and off-site infrastructure and public improvements, the applicable Exactions, and the maximum height and maximum size of buildings on the Property.

4.2 Applicable City Regulations. City and Developer acknowledge and agree that City 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 City all of its police power that cannot be so limited. Notwithstanding the foregoing reservation of City, it is the intent of City and Developer that this Agreement be construed to provide Developer with rights afforded by law, including but not limited to, the Development Agreement Statute. Therefore, the laws, rules, regulations, official policies, standards and specifications of City applicable to the development of the Property and/or the Project shall be the following (collectively, the “**Applicable City Regulations**”):

4.2.1. Those rules, regulations, official policies, standards and specifications of the City set forth in the Project Approvals and this Agreement;

4.2.2. 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 City ordinances and resolutions) in force and effect on the Effective Date, including those governing permitted uses, building locations, timing and manner of

construction, densities, intensities of uses, heights and sizes, subdivisions, and requirements for on- and off-site infrastructure and public improvements;

4.2.3. New City 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 City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

4.2.4. New City 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 City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

4.2.5. New City Laws that are necessary to protect physical health and safety of the public; provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

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

4.2.7. New City Laws mandated by Changes in the Law as provided in Section 0below; and

4.2.8. New City 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 City Laws are accepted in writing by Developer in its sole discretion.

4.3 Development Timing; City Reserved Rights to Parking Lot Parcel.

4.3.1. Development Milestones. The Parking Lot Parcel PSA conditions the close of escrow for City's sale of the Parking Lot Parcel to Developer on, among other things, Developer having obtained a building permit for the Project. The Parking Lot Parcel PSA further provides that escrow for sale of the Parking Lot Parcel must close on or before the PSA Outside Date specified therein. To ensure Developer is proceeding expeditiously to meet the foregoing requirements, Developer shall meet each of the following milestones (each, a "**Development Milestone**"):

a) Submit to City complete applications (with completeness determined by City in its reasonable discretion) for all Subsequent Approvals, including the Design Review Permit, required to develop all components of the Project (including the Post Office Redevelopment and Parking Development) by no later than the date that is twenty-four (24) months following the Effective Date; and

b) Submit to City a signed commitment letter from an Upper Upscale hotel development partner by no later than the date that is twenty-four (24) months following the Effective

Date; and

c) Submit to City a financing plan setting forth the terms under which equity and debt will be structured to fund construction of the Project by no later than the date that is thirty (30) months following the Effective Date; and

d) Reach agreement with City on the form of Recordable Agreement for Parking Garage Operation and Maintenance prior to the issuance of the first building permit for the Post Office Redevelopment or the Parking Development, and in any event prior to close of escrow for Developer's acquisition of the Parking Lot Parcel, provided that such agreement shall be consistent with the parking garage design and operations approved by the City through the major design review process.

Developer may submit a written request, prior to the expiration of such date, for City to extend the outside date(s) (each, a "**Development Milestone Outside Date**") by which one or more of the Development Milestones must be achieved. Developer's extension request shall be accompanied by evidence to support a determination that Developer has used commercially reasonable efforts to satisfy the applicable Development Milestone in a timely manner. Following review of the request, City may agree in writing to extend the applicable Development Milestone Outside Date for a reasonable period of time mutually agreeable to the Developer and City. Developer's failure to meet one or more Development Milestones by the applicable Development Milestone Outside Date(s), including any mutually agreed extension(s) thereof, shall constitute a Default by Developer under this Agreement.

4.3.2. Construction Schedule. To ensure availability of parking to meet the needs of the hotel and other retail/restaurant uses within the Project and the timely replacement of public parking currently available on the Parking Lot Parcel, Developer shall (i) develop the Parking Project prior to the Post Office Redevelopment or develop the entirety of the Project in a single phase; (ii) commence construction of the Project no later than the date that is six (6) months after the commencement of the Extended Term; and, (iii) subject to extension for Force Majeure Delay, substantially complete construction of the Project within thirty-three (33) months after commencement thereof. Further, Developer agrees that no certificate of occupancy shall be issued for the Post Office Redevelopment until such time as construction of the Parking Project has been completed and the Parking Project is ready to be put into operation. Since the California Supreme Court held in *Pardee Construction Co. v. The City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that the Project Approvals and this Agreement set forth the requirements for timing of development of the Project.

4.4 Regulation by Other Public Agencies. City and Developer acknowledge and agree that other governmental or quasi-governmental entities not within the control of City, including the Napa Sanitation District and the Napa County Health Department, possess authority to regulate aspects of the development of the Property and the Project and that this Agreement does not limit the authority of such other public agencies. City shall reasonably cooperate with Developer in

Developer's effort to obtain such permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Property and/or the Project; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement, or to amend any City policy, regulation or ordinance in connection therewith.

4.5 Life of Project Approvals. If, upon expiration of the Term of this Agreement, Developer has redeveloped the entirety of the Property consistent with the Project Approvals, the PD and Project Approvals shall continue to control until such time as the City Council changes the underlying land use designations or entitlements applicable to the Property consistent with all Applicable Law and procedure. If, upon expiration or earlier termination of this Agreement, Developer has not redeveloped the entirety of the Property consistent with this Agreement and the Project Approvals, then the City Council, in its discretion at any time may change the underlying land use designations or entitlements applicable to the parcels comprising such Property consistent with all Applicable Law and procedure.

4.6 Developer's Right to Rebuild. City agrees that Developer may renovate or rebuild portions of the Project at any time within the Term 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 Approval consistent with all prior Project Approvals and Applicable Law. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Agreement, and shall comply with the Project Approvals and Applicable Law, including the requirements of CEQA.

4.7 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 or more provisions of this Agreement, the City and Developer shall meet and confer in good faith in order to determine whether such provisions shall 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 of any such Changes in the Law. If Changes in the Law preclude or 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.

4.8 Compliance with Laws. Developer, at its sole cost and expense, shall comply with the requirements of, and obtain all permits and approvals required by local, State and Federal agencies having jurisdiction over the Property or Project. Furthermore, Developer shall carry out the Project work in conformity with all Applicable Law, including applicable state labor laws and standards; Applicable City Regulations; and all applicable disabled and handicapped access

requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

4.9 Moratoria. In the event an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, or otherwise after the Effective Date, which relates to the rate, timing, or sequencing of the development or construction on all or any part of the Property, including, without limitation, any ordinance, resolution or other measure restricting or precluding the issuance of building permits, the City agrees that the ordinance, resolution or other measure shall not apply to the Property or this Agreement, unless the changes are both (a) found by the City to be necessary to protect the health and safety of the residents of the City, and (b) generally applicable on a Citywide basis.

4.10 Project Approvals and Applicable City Regulations. Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Existing Approvals and Applicable City Regulations, one (1) set for City and one (1) set for Developer, to which shall be added from time to time, Subsequent Approvals and, to the extent permitted by Section 4.2 above, New City Laws, so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable City Regulations, there will be a common set available to the Parties.

ARTICLE 5 FEES AND EXACTIONS

5.1 Impact Fees. For the period commencing on the Effective Date and continuing until the PSA Outside Date (the “**Impact Fee Lock Period**”), Developer shall pay when due all existing Impact Fees applicable to the Project in effect as of the Effective Date at the rates in effect as of the Effective Date, subject to any rate escalators in effect on the Effective Date. During the Impact Fee Lock Period, Developer shall not be required to pay any escalations in such Impact Fees in excess of the fee escalation in effect on the Effective Date or any new Impact Fees enacted or established after the Effective Date. The Impact Fees itemized on Exhibit E represent the Parties’ good faith effort to identify the Impact Fees applicable to the Project during the Impact Fee Lock Period and the rate escalators in effect on the Effective Date. City and Developer agree to amend and restate Exhibit E by operating memoranda, as necessary, in the event one or more Impact Fees have been inadvertently omitted or if any escalation provisions have been inadvertently miscalculated. During the Impact Fee Lock Period Developer shall be allowed to prepay Impact Fees at any time following City approval of the Design Review Permit (as defined in Section 8.1). Following expiration of the Impact Fee Lock Period, City may charge and, subject to Developer’s right to protest and/or pursue a challenge in law or equity to any new or increased Impact Fees, Developer shall pay any and all Impact Fees imposed by City, including new Impact Fees adopted after the Effective Date; provided, however, City shall only require Developer to pay new Impact Fees (including increases in Impact Fees) that are uniformly applied by City to all substantially similar types of development projects and properties. For purposes of this Agreement, any fee imposed on the Project that meets both the definitions of an Impact Fee and an Exaction will be considered to be an Impact Fee.

5.2 Processing Fees. Subject to Developer’s right to protest and/or pursue a challenge in law

or equity to any new or increased Processing Fee, City may charge and Developer agrees to pay any and all Processing Fees which are in effect on a City-wide basis at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

5.3 Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project by another agency having jurisdiction over the Project, which the City is required to collect pursuant to Applicable Law (“**Other Agency Fees**”).

5.4 Connection Fees. Subject to Developer’s right to protest and/or pursue a challenge in law or equity to any new or increased Connection Fee, City may charge and Developer shall pay any Connection Fee that is lawfully adopted at the rates in effect when due.

5.5 Exactions. City may impose and Developer shall comply with those Exactions required by this Agreement and the Existing Approvals. In addition, City may impose Exactions in connection with the Subsequent Approvals (as defined in Section 8.1) that are necessary or appropriate to comply with Applicable Law. Except as otherwise specifically provided in this Section 5.5 and in Sections 4.2.5, 4.2.7 and 9.5 hereof, the City shall not impose any additional Exactions in connection with the development of the Project.

ARTICLE 6 PUBLIC BENEFITS

6.1 Public Benefits Obligations. In consideration of the rights and benefits conferred by City to Developer under this Agreement, Developer shall perform the public benefit obligations and pay to City the contributions set forth in this Article 6 all within the times set forth herein.

6.1.2. Rehabilitation of the Post Office. Developer shall comply with all State of California Historic Preservation Office (“**SHPO**”) requirements, including the preservation requirements set forth in the preservation covenant attached as “Exhibit C” to the Quitclaim Deed from The United States Postal Service dated February 16, 2017, recorded March 6, 2017, in the Official Records of Napa County as Instrument No. 2017-0005609 and all requirements and standards established by the United States Secretary of the Interior in connection with the Post Office Redevelopment, including the interim management and maintenance of the Post Office Parcel and improvements thereon.

6.1.3. Parking. Concurrently with construction of the Post Office Redevelopment on the Post Office Parcel, Developer, at its expense, shall construct or cause the construction of the Parking Development on the Parking Lot Parcel which development shall include, in addition to all parking required for the hotel use within the Project, no fewer than sixty-five (65) public parking spaces. While the Parties anticipate that the Parking Development may also include a sufficient number of private parking spaces to meet the parking requirements for all retail/restaurant uses within the Project, City and Developer agree that the retail/restaurant use parking requirement (but not the hotel parking or public parking) may be satisfied through payment of the City’s Downtown Parking Impact Fee to the extent some or all of such spaces

cannot be provided within the Parking Development. Before Developer may opt to pay the Downtown Parking Impact Fee as provided above, Developer shall be required to prepare and present to City for approval, not to be unreasonably withheld, conditioned or delayed, a plan for meeting parking demand created by the retail/restaurant uses that City may implement utilizing the Parking Impact Fees paid by Developer. To ensure that the public parking spaces and hotel use parking spaces are made available in a timely manner and in all events prior to opening of the hotel for business, Developer agrees that no certificate of occupancy shall be issued for any building space located on the Post Office Parcel or Ace Parcel until such time as the Parking Development is substantially complete. As used herein the term “substantially complete” means the building core and shell is complete and all Parking Development building systems, including elevators/lifts, automated parking mechanisms, signage, and metering and payment systems are fully operational such that only minor punch list items remain to be completed. The provisions of this Section 6.1.33 shall survive the expiration or termination of this Agreement.

6.1.4. Hotel Amenities. The Post Office Redevelopment shall meet the quality standards for Upper Upscale hotels with an exceptional level of services, amenities, furnishings, finishes and fixtures equal to or better than the Upper Upscale hotels listed in the Upper Upscale category of the STR Chain Scale Rating – North America and Caribbean, as amended from time to time. If STR ceases publishing the Upper Upscale category of the STR Chain Scales Rating, the City shall select a new rating standard that, in the City's reasonable judgment, most closely approximates the Upper Upscale category of the STR Chain Scales Rating in existence as of the Effective Date.

6.1.5. City of Napa Business License. Developer, at its expense, shall obtain and maintain a City of Napa business license at all times during the Term, shall include a provision in all general contractor agreements for the Project requiring each such general contractor to obtain and maintain a City of Napa business license during performance of the work of construction, and shall otherwise comply with all requirements imposed under Title 5 of the City of Napa Municipal Code.

6.1.6. Sales Tax Point of Sale Designation. Developer shall use good faith, diligent efforts to the extent allowed by law and provided that it does not add material costs to the cost of construction to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to (a) obtain a use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars (\$5,000,000) or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Developer shall instruct its general contractor(s) for the Project to, and cause such general contractor(s) to instruct its/their subcontractors to, cooperate with City to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible, provided that it does not add material costs to the cost of construction. To assist City in its efforts to ensure that such local sales/use tax is so allocated to City, Developer shall on an annual basis provide City with such information as shall be reasonably requested by City regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of

all applicable work and the dollar value of such subcontracts. City may use such information to contact each subcontractor who may qualify for local allocation of use taxes to City.

6.1.7. Public Art. Developer shall provide public art or make a 1% public art contribution in connection with the Parking Development. In addition, and notwithstanding the fact that historic rehabilitation projects are exempt from City's public art requirements set forth in Municipal Code Chapter 15.108, Developer, at the time of issuance of a building permit for the Post Office Redevelopment, shall make a \$25,000.00 public art contribution payment to City. Except as provided in the foregoing sentence, Developer shall have no further public art obligations with respect to the Post Office Redevelopment.

6.1.8 Housing. Developer shall further employee and workforce housing opportunities by proposing new housing opportunities, including but not limited to, housing units, land, regulatory efficiencies or similar opportunities that result in workforce and/or affordable housing units ("Workforce Housing Opportunities"). If the City approves any of the proposed Workforce Housing Opportunities, the City shall apply the value of the approved Workforce Housing Opportunity to the Affordable Housing Impact Fee in accordance with the procedures contained in Section 5.1 (Impact Fees) of this Agreement and Applicable City Regulations regarding Affordable Housing Impact Fees including Napa Municipal Code Section 15.94.070.

ARTICLE 7 ANNUAL REVIEW

7.1 Annual Review.

7.1.1. Purpose. As required by California Government Code section 65865.1, Municipal Code section 17.52.150 and Section E of the City's "Procedures and Requirements for Consideration of Development Agreements," as established under City Resolution number 83-176, City and Developer shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement. Specifically, City's annual review shall be conducted for the purposes of determining compliance by Developer with its obligations under this Agreement. Each annual review shall also document: (a) the status of the Project development, and (b) any extension of the Initial Term of this Agreement pursuant to Section 0.

7.1.2. Conduct of Annual Review. The annual review shall be conducted as provided in this Section 7.1.2. By December 1st of each year, Developer shall provide documentation of its good faith compliance with this Agreement during the calendar year, and such other information as may reasonably be requested by the City Manager. Within ninety (90) days after receipt of Developer's documentation of good faith compliance with this Agreement, the City Manager shall make a determination regarding whether or not Developer has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Developer in the manner prescribed in Section 14.2. If the City Manager finds good faith compliance by Developer with the terms of this Agreement, Developer shall be notified in

writing and the review for that period shall be concluded. If the City Manager is not satisfied that Developer is performing in accordance with the terms and conditions of this Agreement, the City Manager shall prepare a written report specifying why the Developer may not be in good faith compliance with this Agreement, refer the matter to the City Council, and notify Developer in writing at least fifteen (15) business days in advance of the time at which the matter will be considered by the City Council. This notice shall include the time and place of the City Council's public hearing to evaluate good faith compliance with this Agreement, a copy of the City Manager's report and recommendations, if any, and any other information reasonably necessary to inform Developer of the nature of the proceeding. The City Council shall conduct a public hearing at which Developer must submit evidence that it has complied in good faith with the terms and conditions of this Agreement. Developer shall be given an opportunity to be heard at the hearing. The findings of the City Council on whether Developer has complied with this Agreement for the period under review shall be based upon substantial evidence in the record. If the City Council determines, based upon substantial evidence, that Developer has complied in good faith with the terms and conditions of this Agreement, the review for that period shall be concluded. If the City Council determines, based upon substantial evidence in the record, that Developer has not complied in good faith with the terms and conditions of this Agreement, or there are significant questions as to whether Developer has complied with the terms and conditions of this Agreement, the City Council, at its option, may continue the hearing and may notify Developer of the City's intent to meet and confer with Developer within thirty (30) days of such determination, prior to taking further action. Following such meeting, the City Council shall resume the hearing in order to further consider the matter and to make a determination regarding Developer's good faith compliance with the terms and conditions of this Agreement. In the event City determines Developer is not in good faith compliance with the terms and conditions of this Agreement, City may give the Developer a written Notice of Breach, in which case the provisions of Article 13, below, shall apply. The City Manager's conduct of the annual review in accordance with the provisions of this Section 7.1.2 shall be in lieu of the Planning Commission review identified in City of Napa Resolution 93-267.

7.1.3. Failure to Conduct Annual Review. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

ARTICLE 8 COOPERATION AND IMPLEMENTATION

8.1 Subsequent Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals, will be necessary or desirable for implementation of the Project ("**Subsequent Approvals**"). The Subsequent Approvals may include, without limitation, the following: amendments of the Existing Approvals, grading permits, building permits, Design Review Permit (defined below), further Certificate(s) of Appropriateness, sewer and water connection permits, certificates of occupancy, lot line adjustments, parcel maps and/or subdivision maps, and any amendments to, or repealing of, any of the foregoing. Developer must apply for and obtain a Design Review Permit ("**Design Review Permit**"), which is a Discretionary Approval, for both the Post Office Redevelopment and the Parking Development

before development of any portion of the Project may proceed. In connection with its review of Developer's Design Review Permit application(s), City shall exercise its discretion in a manner consistent with (a) the design-related criteria, guidelines and standards set forth in the PD, the SHPO preservation covenant, and the guidelines and requirements established by the Secretary of the Interior; and (b) Developer's vested rights under this Agreement and the Existing Approvals with respect to permitted uses of the Property, the number of permitted hotel rooms, the density and intensity of use of the Property and the maximum height of the Post Office Redevelopment and Parking Development buildings. Notwithstanding the foregoing, Developer acknowledges that through proper exercise of City design review related discretion City may require building features such as upper floor setbacks which limit usable interior building space and that in order for Developer to achieve its desired number of hotel rooms (i.e. 163), Developer may need to design and build hotel rooms that are substantially smaller than industry standard. Nothing herein shall prohibit Developer from reducing the number of Post Office Redevelopment hotel rooms below 163 if Developer determines, in its sole discretion, that the size of the hotel rooms required to achieve the 163-room maximum is impracticable or financially infeasible. Any subsequent Discretionary Action or Discretionary Approval initiated by Developer that is not otherwise permitted by or contemplated in the Existing Approvals or which changes the uses, intensity, density, building height or timing of the Project, or decreases the lot area, setbacks, parking or other entitlements permitted on the Property shall be subject to the rules, regulations, ordinances and official policies of the City then in effect and City reserves full and complete discretion with respect to any findings to be made in connection therewith.

8.2 Processing Applications for Subsequent Approvals.

8.2.1. Timely Submittals by Developer. Developer acknowledges that City cannot begin processing applications for the Design Review Permit or other Subsequent Approvals until Developer submits complete applications on a timely basis and pays applicable Processing Fees. Developer shall use diligent good faith efforts to (a) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (b) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals.

8.2.2. Timely Processing by City. Upon submission by Developer of all appropriate applications and Processing Fees for any pending Subsequent Approval, City shall, to the full extent allowed by Applicable Law, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer's currently pending Subsequent Approval applications including: (a) providing at Developer's expense and subject to Developer's request and prior approval, reasonable additional staff and/or staff consultants for concurrent, expedited planning and processing of each pending Subsequent Approval application (Developer shall pay such costs at cost, plus 10% for administrative costs incurred); (b) if legally required, providing notice and holding public hearings; and (c) acting on any such pending Subsequent Approval application.

ARTICLE 9

AMENDMENT OF AGREEMENT AND PROJECT APPROVALS

9.1 Amendment by Written Consent. Except as otherwise expressly provided herein (including Section 7.1 relating to City's annual review and Section 13.3 relating to termination or modification in the event of a breach), this Agreement may be terminated, modified or amended only by mutual written consent of the Parties hereto or their successors in interest or assignees and in accordance with the provisions of Government Code sections 65867, 65867.5 and 65868.

9.2 Major Amendments to Agreement. Any amendment to this Agreement which affects or relates to (a) the Term; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent Discretionary Actions; (e) the density or intensity of the use of the Property or the maximum height or size of proposed buildings; (f) public parking obligations or (g) monetary contributions by Developer, shall be deemed a "**Major Amendment**" and shall require giving of notice and a public hearing before the Planning Commission and City Council. Any amendment which is not a Major Amendment shall be deemed a "**Minor Amendment**" and shall not, except to the extent otherwise required by Applicable Law, require notice of public hearing before the Parties may execute an amendment hereto. The City Manager or his or her designee shall have the authority to determine if an amendment is a Major Amendment or a Minor Amendment.

9.3 Minor Amendment. The City Manager or his or her designee shall have the authority to review and approve amendments to this Agreement provided that such amendments are not Major Amendments.

9.4 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of Developer or its successor in interest and City.

9.5 CEQA/Mitigation Measures. The City has prepared and certified the EIR and adopted the EIR Addendum, which evaluates the environmental effects of full development, operation and use of the Project, and has imposed all feasible mitigation measures to reduce the significant environmental effects of the Project. The Parties understand that the EIR is intended to be used not only in connection with the Existing Approvals, but also, to the extent legally permitted, in connection with necessary Subsequent Approvals. However, the Parties acknowledge that certain Subsequent Approvals may legally require additional analysis under CEQA. For example, a change in the Project could require additional analysis under CEQA if the triggering conditions identified in CEQA Guidelines section 15162 are met. In the event supplemental or additional CEQA review is required for a Subsequent Approval, City shall limit such supplemental or additional CEQA review to the scope of analysis mandated by CEQA in light of the scope of City's discretion to be exercised in connection with the Subsequent Approval. Developer acknowledges that, if the City determines based upon supplemental or additional CEQA review that the Project will result in new significant effects or substantially increase the severity of effects that were identified in the EIR, City may require additional feasible mitigation measures necessary to mitigate such impacts, provided however (except as otherwise expressly provided herein) such additional mitigation measures shall not prevent development of the

Project for the uses set forth in the Existing Approvals. Developer shall comply with the mitigation measures in the MMRP, which reflect the mutually agreed-upon timing of specified improvements and Developer's pro rata share of funding, where applicable. In the event further mitigation measures are identified by such additional environmental review, City may require, and Developer shall comply at its expense with, all feasible mitigation measures necessary to substantially lessen new or substantially more severe significant environmental impacts of the Project, which were not foreseen at the time of execution of this Agreement.

ARTICLE 10 INSURANCE, INDEMNITY AND COOPERATION IN THE EVENT OF LEGAL CHALLENGE

10.1 Insurance Requirements. Prior to commencement of construction of the Project, and in any event by no later than the date that is 3 months after the commencement of the Extended Term, Developer shall procure and maintain, or cause its contractor(s) to procure and maintain, until the earlier of (a) the expiration of the Term; or (b) the completion of the Project, a commercial general liability policy in an amount not less than five million (\$5,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of one million (\$1,000,000), combined single limit. Such policy or policies shall be written on an occurrence form, so long as such form of policy is then commonly available in the commercial insurance marketplace and shall be placed with insurers with a current A.M. Best's rating of no less than A-:VII or a rating otherwise approved by the City in its sole discretion. If Developer desires to satisfy the foregoing insurance requirements through its contractor, then Developer shall require in its construction contract with the general contractor that said general contractor comply with all of the requirements of this Section 10.1. Developer or its contractor shall furnish at City's request appropriate certificate(s) of insurance evidencing the insurance coverage required hereunder, and City Parties shall be named as additional insured parties in such policies. The certificate of insurance shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination (ten (10) days advance notice in the case of cancellation for nonpayment of premiums) where the insurance carrier provides such notice to the Developer. Coverage provided hereunder by Developer or its contractor shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City.

10.2 Indemnity and Hold Harmless. To the fullest extent permitted by law, Developer shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City Parties from and against any and all Claims, including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from the development or construction of the Project by or on behalf of Developer, and/or from any other acts, omissions, negligence or willful misconduct of Developer under this Agreement, whether such acts, omissions, negligence or willful misconduct are by Developer or any of Developer's contractors, subcontractors, agents or employees, except to the extent such Claims arise from the sole active negligence or willful misconduct of City or City Parties. Developer's obligations under this Section 10.2 shall survive

the expiration or termination of this Agreement.

10.3 Defense and Cooperation in the Event of a Litigation Challenge. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the Project Approvals (“**Litigation Challenge**”), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. To the extent Developer desires to contest or defend such Litigation Challenge, (a) Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice; (b) City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice in any such action or proceeding with the reasonable costs of such representation to be paid by Developer; (c) Developer shall reimburse City, within ten (10) business days following City’s written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge, including City’s administrative, legal, and court costs and City Attorney oversight expenses; and (d) Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys’ fees or cost awards, including attorneys’ fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation. Any proposed settlement of a Litigation Challenge shall be subject to City’s approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so. Developer’s obligations under this Section 10.3 shall survive the expiration or termination of this Agreement.

ARTICLE 11 ASSIGNMENT AND TRANSFER

11.1 Assignment. Because of the necessity to coordinate development of the entirety of the Property pursuant to plans for the Project, particularly with respect to the provision of replacement public parking, certain restrictions on the right of Developer to assign or transfer its rights and obligations under this Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Project and this Agreement. Developer agrees to and accepts the restrictions set forth in this Section 11.1 as reasonable and as a material inducement to City to enter into this Agreement. Developer shall have the right to sell or transfer its rights and obligations under this Agreement, in whole but not in part, to any person, partnership, joint venture, firm, company, corporation or other entity (any of the foregoing, an “**Assignee**”) subject to the written consent of City; provided that the City shall not unreasonably withhold approval of an assignment to a proposed Assignee who in the reasonable opinion of the City Manager can perform the duties and obligations of Developer hereunder by demonstrating that assignee has (i) a verifiable source of funds/financing for the entirety of the Project, including the Post Office Redevelopment and Parking Development; (ii) experience developing Upper Upscale hotel projects internationally or

in the United States, and (iii) experience operating Upper Upscale hotel brands; further provided that Developer may assign its rights and obligations under this Agreement without the consent of City to any corporation, limited liability company, partnership or other entity acquiring all of Developer's fee interest in the Property which is controlled by James F. Keller, and "control," for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity ("**Affiliated Party**"). Developer shall provide the City with written notice of any proposed transfer or assignment of Developer's rights and obligations hereunder (each, an "**Assignment**") at least thirty (30) days prior to such Assignment. Each such notice of proposed Assignment shall be accompanied by evidence of Assignee's agreement to assume all of Developer's rights and obligations hereunder. Developer shall pay the actual costs borne by City in connection with its review of the proposed Assignment, including the costs incurred by the City Attorney's Office. A written assignment and assumption agreement, in a form approved by the City Attorney, shall be required for any Assignment, including a permitted Assignment to an Affiliated Party, and shall be recorded in the Official Records of Napa County. Any approved Assignee shall succeed to all rights, duties and obligations of Developer accruing after the date of the Assignment.

11.2 Successive Assignment. In the event there is more than one Assignment under the provisions of this Article 11, the provisions of this Article 11 shall apply to each successive Assignment and Assignee.

ARTICLE 12 MORTGAGEE PROTECTION

12.1 Mortgagee Protection. Neither entering into this Agreement nor a breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value. Nothing in this Agreement shall prevent or limit Developer, at its sole discretion, from granting one or more Mortgages encumbering all or a portion of Developer's interest in the Property or portion thereof or improvement thereon as security for one or more loans or other financing, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of Mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Developer shall provide the City with a copy of the deed of trust or mortgage within ten (10) days after its recording in the official records of Napa County; provided, however, that Developer's failure to provide such document shall not affect any Mortgage, including without limitation, the validity, priority or enforceability of such Mortgage.

12.2 Mortgagee Not Obligated. No Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall have any obligation to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the other Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals. Except as otherwise provided in this Section 12.2, all of the terms

and conditions contained in this Agreement and the other Project Approvals shall be binding upon and effective against and shall run to the benefit of any person or entity, including any Mortgagee, who acquires title or possession to the Property, or any portion thereof.

12.3 Notice of Breach to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any Notice of Breach given Developer hereunder and specifying the address for service thereof, then City agrees to use its diligent, good faith efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Breach given to Developer. Each Mortgagee shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth in City's Notice of Breach. If a Mortgagee is required to obtain possession in order to cure any Default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure, but in no event may this period exceed 180 days from the date the City delivers the Notice of Breach to Developer.

12.4 No Supersedure. Nothing in this Article 12 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 12 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 12.3.

ARTICLE 13

DEFAULT; REMEDIES; TERMINATION

13.1 Breach and Default. Subject to Force Majeure Delays or by mutual consent in writing, and except as otherwise provided by this Agreement, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a "**Default.**" In the event of any alleged Default of any term, condition, or obligation of this Agreement, the Party alleging such Default shall give the defaulting Party notice in writing specifying the nature of the alleged Default and the manner in which the Default may be satisfactorily cured ("**Notice of Breach**"). The defaulting Party shall cure the Default within thirty (30) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged Default is non-monetary and such that it cannot reasonably be cured within such thirty (30) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no Default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Agreement.

13.2 Failure to Cure Default Procedure. If after Notice of Breach and expiration of the applicable cure period, the Community Development Director finds and determines that Developer remains in Default and that the City intends to terminate or modify this Agreement, the Director shall make a report to the Planning Commission and then set a public hearing before

the Planning Commission. If, after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer, has not cured the Default pursuant to this Section, and that the City therefore may terminate or modify this Agreement, Developer shall be entitled to appeal that finding and determination to the City Council in accordance with Section 13.10 below.

13.3 Termination or Modification. The City may terminate or modify this Agreement after the final determination of the City Council or, where no appeal is taken, after the expiration of the appeal period described in Section 13.10.

13.4 Specific Performance for Violation of a Condition. If City issues a Project Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

13.5 Legal Actions.

13.5.1. Institution of Legal Actions. In addition to any other rights or remedies and subject to the limitation of damages in Section 13.7, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose of this Agreement. Any such legal action shall be brought in the Superior Court for Napa County, California, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

13.5.2. Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer, or in such other manner as may be provided by law.

13.6 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

13.7 No Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable in damages, including without limitation, actual, consequential or punitive damages, for any Default under this Agreement. It is expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate or modify this Agreement. This limitation on damages shall not preclude actions by a Party to enforce

payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to, obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

13.8 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, a Party shall, at the request of another Party, meet with designated representatives of the requesting Party promptly following its request. The parties to any such meetings shall attempt in good faith to resolve any such dispute. Nothing in this Section 13.8 shall in any way be interpreted as requiring that Developer, City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.

13.9 Remedies upon Transfer or Assignment. Notwithstanding anything to the contrary contained in this Article 13, if Developer has transferred all of its interest in the Property pursuant to Section 11.1 above, then the City may only exercise its remedies under this Article 13 against the defaulting Developer or Assignee and such party's interest in the Property.

13.10 Appeals to City Council. Where an appeal by Developer to the City Council from a finding and/or determination of the Planning Commission is created by this Agreement, that appeal shall be taken, if at all, within twenty (20) days after the mailing of the finding and/or determination to Developer. The City Council shall act upon the finding and/or determination of the Planning Commission within the time period provided in Applicable City Regulations or within such additional period as may be agreed upon by Developer and the City.

13.11 Surviving Provisions. In the event this Agreement is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations of Developer set forth in Sections 6.1.33, 10.2 and 10.3.

ARTICLE 14 GENERAL PROVISIONS

14.1 Covenants Binding on Successors and Assigns and Run with Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

14.2 Notice. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the City and Developer as follows:

If to the City: City Clerk
 City of Napa
 City Hall, 955 School Street
 Napa, CA 94559
 Telephone: (707) 257-9503

with a copy to: City Attorney
 City of Napa
 City Hall, 955 School Street
 Napa, CA 94559
 Telephone: (707) 257-9516

If to Developer: 1351 Second Street, LLC
 Attn: James Keller
 1455 First Street, Suite 217
 Napa, CA 94559
 Telephone: (707) 927-4280

with a copy to: Kevin Teague
 Holman Teague Roche Anglin, LLP
 1455 First Street, Suite 217
 Napa, CA 94559
 Telephone: (707) 927-4280

Notices are deemed effective if delivered by certified mail, return receipt requested, or commercial courier, with delivery to be effective upon verification of receipt. Any Party may change its respective address for notices by providing written notice of such change to the other Party.

14.3 Reserved.

14.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.5 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other

provision. Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

14.6 Construction of Agreement. All Parties have been represented by counsel in the preparation and negotiation of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (d) “or” is not exclusive; (e) “includes” and “including” are not limiting; and (f) “days” means calendar days unless specifically provided otherwise.

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

14.8 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case any Party may terminate this Agreement by providing written notice thereof to the other Party.

14.9 Time is of the Essence. Time is of the essence of this Agreement. All references to time in this Agreement shall refer to the time in effect in the State of California.

14.10 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 Developer and the City.

14.11 Entire Agreement. This Agreement (including all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement.

14.12 Estoppel Certificate. Developer or its lender may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing that: (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) Developer is not in Default of the performance of its obligations, or if in Default, to describe therein the nature and extent of any such Defaults. Developer shall pay, within thirty (30) days following receipt of City’s invoice, the actual costs borne by City in connection with its review of the proposed

estoppel certificate, including the costs expended by the City Attorney's office in connection therewith. The Community Development Director shall be authorized to execute any certificate requested by Developer hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the City Attorney. The Community Development Director shall execute and return such certificate within thirty (30) days following Developer's request therefor. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, and Mortgagees. The request shall clearly indicate that failure of the City to respond within the thirty-day period will lead to a second and final request. Failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate.

14.13 Recordation of Termination. Upon completion of performance of the Parties or termination of this Agreement, a written statement acknowledging such completion or termination shall be recorded by City in the Official Records of Napa County.

14.14 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

14.15 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party to this Agreement is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

14.16 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns, including Mortgagees. No other person shall have any right of action based upon any provision in this Agreement.

14.17 Joint and Several. If Developer is comprised of more than one person or entity, the obligations hereunder imposed upon Developer shall be joint and several.

14.18 Governing State Law. This Agreement shall be construed in accordance with the laws of the State of California, without reference to its choice of law provisions.

14.19 Recordation. As provided in Government Code Section 65868.5, the City Clerk of the City of Napa shall record a copy of this Agreement with the Registrar-Recorder of the County of Napa within ten (10) days following its execution by both Parties. Developer shall provide the City Clerk with the fees for recording prior to or at the time of recording.'

14.20 Exhibits. The following exhibits are attached to this Agreement and are hereby

incorporated herein by this reference for all purposes as if set forth herein in full.

Exhibit A: Post Office Parcel Legal Description

Exhibit B: Parking Lot Parcel Legal Description

Exhibit C: Ace Parcel Legal Description

Exhibit D: Project Description

Exhibit E: Existing Impact Fees

[Remainder of Page Intentionally Left Blank]

[Signatures on Next Page]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the Effective Date.

CITY:

CITY OF NAPA, a California charter city

By: _____

Steve Potter, City Manager

[Signature must be notarized]

ATTEST:

By: _____

Dorothy Roberts, City Clerk

COUNTERSIGNED:

By: _____

Desiree Brun, City Auditor

APPROVED AS TO FORM:

By: _____

Michael Barrett, City Attorney

DEVELOPER:

1351 SECOND STREET, LLC, a California
limited liability company

By: _____

James F. Keller

[Signature must be notarized]

Its: _____

Managing Member

NOTARY ACKNOWLEDGEMENTS TO BE ATTACHED

Acknowledgment

EXHIBIT A

POST OFFICE PARCEL LEGAL DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION

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

Lots Numbers One (1) and Three (3) in Block Number Twenty-seven (27), as the same are laid down and delineated upon a certain map entitled "Plan of Napa City", recorded November 28, 1853 in Volume B of Deeds, at page 433, in the Recorder's Office of said Napa County.

APN: 003-208-001

Exhibit A

EXHIBIT B

PARKING LOT PARCEL LEGAL DESCRIPTION

EXHIBIT B

LEGAL DESCRIPTION

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

All of Lot 3 and a portion of Lot 4 in Block 23, as shown on the map entitled, "Plan of Napa City", recorded November 28, 1853 in Book B of Deeds, page 433, said Napa County Records, described as follows:

Commencing at the point of intersection of the southeastern line of Second Street and the northeastern line of Randolph Street, said point being also the most western corner of said Lot 3; thence southeasterly along the northeastern line of Randolph Street 169.20 feet; thence northeasterly at right angles 107.50 feet, more or less, to a point on the southwestern line of the tract of land described in the deed to Elaine Berglund of record in Book 470 of Official Records, page 467, said Napa County Records; thence northwesterly at right angles along said southwestern line 49.2 feet, more or less to a point on the southeastern line of said Lot 3; thence northeasterly along said line 12.5 feet, more or less, to the most southern corner of Lot 1 in said Block 23; thence northwesterly at right angles along the southwestern line of said Lot 1 a distance of 120 feet, more or less, to a point on the southeastern line of Second Street; thence southwesterly along said southeastern line 120 feet, more or less to the point of commencement.

Excepting Therefrom that portion thereof lying within the boundaries of the land upon which the party wall referred to in the deed from W. H. Young, et ux to Edith Mildred Thibaut, dated May 17, 1920 and recorded May 18, 1920 in Book 129 of Deeds, page 58, said Napa County Records is situated.

APN: 003-212-001

Exhibit B

EXHIBIT C

ACE PARCEL LEGAL DESCRIPTION

EXHIBIT C

LEGAL DESCRIPTION

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

Beginning at a point formed by the intersection of the northern line of Third Street with the western line of Randolph Street; thence westerly along said northern line of Third Street 120 feet; thence at a right angle northerly 60 feet; thence at a right angle westerly 6 feet; thence at a right angle northerly 60 feet; thence at a right angle easterly 126 feet to the aforesaid western line of Randolph Street, thence southerly along said last mentioned line, 120 feet to the point of beginning.

Being Lot 2 and a portion of No. 4 in Block 27, as shown on the map entitled "Plan of Napa City", recorded November 28, 1853 in Book B of Deeds, at page 433, in the Recorder's Office of said Napa County.

APN: 003-208-002

Exhibit C

EXHIBIT D

PROJECT DESCRIPTION

FRANKLIN STATION HOTEL PROJECT

PROJECT DESCRIPTION

Project Summary and Background

On August 24, 2014 at 3:20 in the morning, the strongest earthquake in 25 years in the Bay Area shook Napa. At 6.0, the event was the largest earthquake since the 1989 Loma Prieta earthquake. The 2014 South Napa Quake damaged residences and commercial buildings, and it did significant damage to Napa's historic buildings. According to City reports, 156 commercial and residential structures were red-tagged and 1398 were yellow-tagged. The estimate for damage to the City's infrastructure reached \$57.9 million. The Franklin Station Post Office experienced such significant damage as a result of the South Napa Earthquake that the Federal Government determined that the building could not be put back to use as a post office.

Applicant Jim Keller acquired the earthquake damaged historic Franklin Station United States Post Office. He intends to rehabilitate and reuse the National Register designated historic structure by developing a downtown hotel, integrating the historic building into the project. Because the earthquake damage was so extensive, the economic viability of the project requires the integration of the Zeller Ace Hardware site and the surface parking lot on Second and Randolph into the project to create a sufficiently sized hotel and ability to park. The hotel structure would be constructed on both the Post Office site at 1351 2nd Street and Zeller's Ace Hardware site located at 819 Randolph Street.

The project would have a maximum of 163 hotel rooms and hotel amenities. The Post Office structure would be reused for hotel lobby and amenities as well as the hotel's entrance. Parking would be located within structured parking built on the surface parking lot located at Randolph and Second Street, across the street from the Hotel. The structured parking also would contain 65 parking spaces available to the public.

The Project would include the removal of approximately 4/5ths of the Post Office structure from the site, leaving the identified historic features of the building front to a depth equal to and inclusive of the depth of the existing interior lobby. The Franklin Station Project also would involve new construction. The new construction would include adaptive reuse and rehabilitation to the remaining Post Office structure that would include an addition to the retained portion of the building located behind the structure. The addition would be allowed to be taller than and wider than the resource, up to the City Height limits and property setbacks. The new construction would also include the parking structure.

Project Approvals Overview

To facilitate the rehabilitation, the Project request a rezone and Development Agreement to allow the hotel use with proper careful planning for the design and operation of the Project. Following the rezone and development agreement, the project would commence design

Exhibit D-1

work and the Design Review process as required by the Development Agreement and Planned Development regulations and guidelines.

The current Project approvals required from the City of Napa include a General Plan Amendment, Specific Plan Amendment, Certificate of Appropriateness, a Development Agreement, and Zoning Amendments to rezone the Post Office Parcel from DP to DMU/PD (Planned Development Overlay), the Parking Lot Parcel from DMU to DMU/PD, and the Ace Parcel from DMU to DMU/PD. Subsequent project approvals would include Major Design Review and a Tentative Parcel Map. Following the rezoning and Planned Development Overlay, the Project would be located entirely within the Downtown Mixed Use District of the DNSP.

Under current DMU zoning regulations, retail uses and food service are permitted and hotels are conditionally permitted. The Project approvals would allow through the PD up to a 163 key hotel (with up to 25% of the development as condo-hotel¹ and 25% as accessory whole ownership dwelling units²) as a use permitted outright with Design Review, along with off-site principal use parking to serve the hotel with 65 public spaces. A Tentative Map would be required if condo-hotel and accessory whole ownership dwelling units are part of the ultimate project. The hotel will be an "upper upscale" or luxury boutique hotel. Standards for development are detailed in the DNSP and have been incorporated into the Project, along with additional standards in the proposed PD and guidelines that would be applied during the future Design Review phase.

In addition, the Project is located within the City's Parking Exempt District; thus, no on-site parking is required for non-hotel commercial uses. The project would construct an automated parking structure on the Parking Lot Parcel that includes parking for the hotel use within the Project and no fewer than sixty-five (65) public parking spaces to replace the 55 public parking spaces currently on the Parking Lot Parcel. The Development Agreement requires that final parking counts and requirements be determined in coordination with the City at the time of Design Review.

¹ Condo-Hotel is defined by City of Napa Municipal Code as a facility meeting the definition of a hotel with ownership structured as a condominium, cooperative or other ownership/financing arrangement found by the Community Development Director to be similar in function and/or operation, but shall not include timeshares in or interval or fractional ownership of a hotel. The City of Napa regulates Condo-Hotels under the City of Napa Municipal Code Section 17.52.095.

² Whole ownership dwelling units are units accessory to the hotel that could be used for full or part-time residential occupancy in addition to transient occupancy. Whole ownership dwelling units are accessory uses to an approved hotel use. Such units are owned by third parties and can be used for residential occupancy or rented as hotel rooms at the election of the owner through a contractual relationship between the hotel operator and the owner. Under this contract, if they are rented as hotel rooms, the hotel operator would manage the rental as it would any of its other hotel rooms, and if they are used by the owner for residential occupancy, they would be occupied by the owner with services and amenities provided by the hotel. Such units are known in the hotel industry as "branded residential" units. By example, accessory whole ownership dwelling units are allowed by the Napa Municipal Code at the Stanly Ranch Resort by the Stanly Ranch Resort Master Plan under Chapter 17.30 of the Napa Municipal Code (see Section 17.30.040.B.3).

Exhibit D-2

Project Sites and Current Zoning

For over 80 years prior to the earthquake, the U.S. Post Office Franklin Station was the main post office serving Napa. The Post Office was built in 1933 with funding from the Public Works Administration. Architect William H. Corlett designed the Art Deco building. The post office was added to the National Register of Historic Places on January 11, 1985.

The Post Office Parcel was developed with 7,553 square feet of ground floor area, 8,012 square feet of existing basement area, 906 square feet of mezzanine and 1,543 square feet of second floor area. Following the earthquake, the Postal Service planned to demolish the building. The Postal Service said that it would cost \$8 million to repair quake damage, while it would cost only \$500,000 for demolition.

The Franklin Station parcel current zoning designations are:

Franklin Station Parcel	
Location	1351 2 nd Street, Napa, CA 94559
Lot Size	28,819 s.f.
General Plan	Downtown Specific Plan
Zoning	Downtown Public
Zone	Downtown II
FAR:	4.0
Height	60 feet

The Ace Parcel is developed with 7,150 square feet of ground floor area as a hardware store. Although the owner of Zeller's Ace Hardware has owned the property for 24 years and served the community with a local hardware store, changes in the retail markets had them considering relocating, closing or selling. Current retail hardware needs and demands require a much smaller building, at less expense. Because of this, in February 2017, the owner of the Zeller's Ace Hardware site announced that they had come to a written agreement with Keller to incorporate the site into the hotel project.

Exhibit D-3

The Ace parcel current zoning designations are:

Ace Parcel	
Location	819 Randolph Street, Napa, CA 94559
Lot Size	14,780 s.f.
General Plan	Downtown Specific Plan
Zoning	Downtown Mixed-Use
Zone	Downtown II
FAR:	4.0
Height	60 feet

The Parking Lot Parcel is developed with 55 surface parking stalls. In February 2017, Keller and the City of Napa entered into a Purchase and Sale agreement for the parking lot consisting of approximately 0.5 acres located at the southeast corner of Randolph Street and Second Street. As part of that agreement, Keller agreed to develop an automated parking structure for the hotel parking and provide 65 public parking spaces at no charge to the City.

The Parking Lot parcel current zoning designations are:

Parking Lot Parcel	
Location	SE corner of Randolph and Second Streets, Napa, CA 94559
Lot Size	19,687 s.f.
General Plan	Downtown Specific Plan
Zoning	Downtown Mixed-Use
Zone	Downtown II
FAR:	4.0
Height	60 feet

Exhibit D-4

Proposed General Plan Amendment, Specific Plan Amendment and Rezone

The Amendments and PD, in conjunction with the Development Agreement, would provide modify the existing zoning and development parameters and establish the right to develop, subject to approval of final design in the Major Design Review, the following in conjunction with the hotel use. In addition, the proposed historic guidelines, discussed below, would be included in the Specific Plan Amendment to replace the existing pre-earthquake Appendix G guidelines (pages 116 and 117) with the updated Franklin Station Historic Guidelines.

Zoning	Downtown Mixed-Use/Planned Development
Zone	Downtown II
FAR:	4.0
Maximum Height:	60 feet
Maximum FAR:	4.0
Units/Keys:	163
Total Development Area:	174,396 s.f. (not including parking site) Plus 78,748 s.f. parking/retail structure
Parking:	A minimum of 228 (including 65 public stalls) Automated system
Condo Hotel Units:	Up of 25% of the units
Whole Ownership Dwelling Units:	Up to 25 % of the units

The three sites comprising the proposed development are located within the Downtown II Building Form Zone, which allows medium to high density development. The three subject parcels currently have a development potential of 4.0 Floor Area Ratio (FAR) within the DNSP. The proposed General Plan Amendment and DNSP Zoning Amendment associated with the proposed development would have no bearing on the development potential of the properties as the 4.0 FAR will remain as the maximum development potential and general height limits and setbacks would remain as currently designated for the site.

As such, the Project's proposed General Plan Amendment, Specific Plan Amendment, Zoning Amendments and Planned Development Overlay do not propose a substantial departure from the existing zoning controls in the DNSP. The changes proposed by the Project would still be within the levels of development already contemplated by the DNSP for the DMU and DP Districts within Downtown II Building Form Zone applicable to the site and evaluated in the DNSP EIR, which would include aspects of the DNSP intended to mitigate environmental effects. The Post Office Portion of the Project site was not zoned

Exhibit D-5

DMU at the time of the DNSP adoption because it was a government use not expected to change.

Following the 2014 earthquake, the federal government decided to discontinue the governmental use and relocate the Post Office services, providing an opportunity for adaptive reuse of the Post Office property. As such, the future development proposed by the Project is planned to result in a more cohesive Downtown core commercial area within the Downtown Planning Area.

Planned Development Guidelines

The DNSP contains standards and design guidelines applicable to development projects located within the Planning Area. The Project includes site-specific Design Guidelines for the hotel and parking structure and Historic Guidelines specific to the rehabilitation of the post office structure. The Design and Historic Guidelines for the Franklin Station Project have been created to be in conformance with the DNSP and impose specific requirements for the future Design Review phase of the project. These design guidelines are intended to modify and be additive to the guidelines contained in the Downtown Napa Specific Plan, including the Historic Design Guidelines in Appendix G.

Because the PD and the Design and Historic Guidelines are more detailed and created specifically for the Franklin Station Project, they will control over the DNSP Regulations and Guidelines in the event of a conflict.

Hotel Design Guidelines include:

- The hotel building should relate to the street and surrounding neighborhood with design elements that activate the street and provide a pleasant pedestrian experience.
- Select building materials, architectural details and finishes should convey a sense of permanence. Quality materials should be used to withstand the test of time regardless of architectural style. Approach character-defining details in a manner that is true to a style of architecture or common theme.
- Activate upper-story step back areas of the hotel building with balconies, roof gardens or similar features.
- Non-historic elevations of the hotel building shall provide high quality, durable materials and attention to detail. Buildings shall provide a human scale and facilitate pedestrian activity. Pedestrian oriented features, such as outdoor seating, are encouraged to enliven the public realm.
- Entries should be substantial and well-detailed. Doors should match the high-quality materials and character of the window design.

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Exhibit D-6

- The hotel building shall be enhanced with architectural elements such as porches, stoops, bay windows, balconies, eaves, brise-soleil, or massing articulation at the non-historic building corners. Façade materials shall turn the corner to employ the same vocabulary of materials.
- Corner buildings shall have consistent material treatments on front and exposed side facades.
- Frame south-facing and southwest-facing windows with protruding vertical or horizontal shading devices such as lintels, sills and awnings to provide adequate protection from glare. Windows and doors with real mullions are required to create shade and shadow (i.e., no inserts or mullions set inside the glass).
- Break up the mass of the hotel building with articulation in form, architectural details, and changes in materials and colors.
- Incorporate architectural elements and details, such as adding notches, grouping windows, adding loggias and dormers, varying cornices and rooflines.
- Vary materials and colors to enhance key components of a building's façade, such as with window trim, entries and projecting elements.
- Use articulation in form including changes in wall planes, upper-story building step backs and/or projecting or recessed elements.
- The Third Street elevation should emphasize and feature a welcoming main entrance and be designed according to simple and harmonious proportions in relationship to the overall size and scale of the building. Ensure that the pedestrian entry provides shelter year-round.
- The hotel building shall provide entrances and entry approaches from Second and Third streets that can accommodate persons of all mobility levels.
- Service and maintenance areas should be accessed from interior drives or corridors, but where necessary fronting on a public street they shall be set back and screened from public view to provide a quality pedestrian experience.
- Balconies and decks should be well detailed with high quality, durable materials and attention to the method of joinery.

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Exhibit D-7

- Special attention should be paid to the first three floors of the hotel building to maximize opportunities to engage the pedestrian and enable an active and vibrant street front.
- Hotel balconies up to six feet in depth are encouraged and can be either recessed or protruding. Where Juliet balconies are proposed, the windows behind the balcony shall be full length to convey appearance of doors.
- The hotel building should be designed without large uninterrupted expanses of wall surface. Where 15 feet or more of windowless wall is found to be unavoidable, eye-level displays, a contrast in wall treatment, outdoor seating, and/or planting shall be used to enhance visual interest and pedestrian area vitality.
- Awnings are recommended along street frontages, particularly where there are doorways.
- The hotel building shall utilize architectural elements such as cornices, lintels, sills, balconies and awnings to enhance building façades.
- The shape, size, color, and material of projections for shade protection should be consistent with the architectural style/character of the building. The minimum dimensions of awnings should be consistent with the width of the glazing.

The parking structure design guidelines include:

- The parking structure facades should complement nearby buildings by incorporating architectural elements (e.g., window and door design, varied building materials, decorative treatments, etc.) to provide visual interest and a strong urban form.
- Retail space in the parking structure shall incorporate recessed entries. The depth of recessed entries shall be proportional to the size of the entrance.
- Retail space in the parking structure shall incorporate recessed entries. The depth of recessed entries shall be proportional to the size of the entrance.
- The parking structure should vary and articulate the building façade to add scale and avoid large monotonous walls.
- The exterior walls of the parking structure provide an opportunity for public art, murals, or other creative way to enhance the City's sense of place.

Exhibit D-8

- Create safe walkways and visual connections to the parking structure. Provide ample lighting in and around the parking structure to enhance safety.
- Access points to the parking structure should be as unobtrusive as possible and should not detract from the pedestrian orientation of Downtown.

The historic guidelines include:

- Allowing for adaptive reuse as a hotel with rooftop, side and rear additions, as appropriate in order to rehabilitate the earthquake damaged historic resource.
- Retaining those Significant Historic Features of the exterior and interior of the building as defined in the Preservation Covenant³ and incorporating the Secretary of the Interior Standards for Rehabilitation for the rehabilitation of the Significant Historic Features,⁴ such as:

The Significant Historic Features of the exterior of the Building:

- Projected central area flanked by two recessed wings
- Simple geometry of the building's massing
- Seven piers topped by a terracotta "capital" in a stylized floral motif
- Cornice extending from the roofline formed of terracotta rams and cows heads
- Ornament that consists of decorative brickwork and terracotta panels in a geometric motif
- Bronze and milk glass urn-shaped light fixtures adjacent to the entryways
- Large terracotta panel containing an Art Deco eagle above each door
- Monolithic windows on the main façade

³The Napa County Landmarks, Inc. and the United States Postal Service, with consultation with the California State Historic Preservation Officer, developed a Preservation Covenant. That document was completed and the Preservation Covenant recorded with the quitclaim deed on March 6, 2017. In addition to providing guidance, process and restrictions on the building's rehabilitation, the Preservation Covenant is intended to mitigate impacts to the identified Significant Historic Features of the Historic Building, as it exists after the earthquake and removal of the post office use.

⁴The 2015 NRHP amendment determined that the 2014 earthquake damage affected the property's interior historic integrity with regard to the aspect of architectural materials. The materials of the interior at the east and west side lobbies have been severely compromised. Materials such as terracotta, marble, and brick were damaged, broken, and dislodged at the interior ends of the building. The central areas of the lobby's interior have less damage to the historic character defining features than the east and west sides of the building. The identified loss of interior material integrity is insufficient to result in the overall loss of historic integrity. Thus, this amendment determined that the 2014 earthquake damage did not significantly affect the property's exterior architectural integrity of design, workmanship, materials, and location. Consequently, the resource continues to meet NRHP Criterion C because the primary exterior characteristics and qualities which caused it to be originally listed and with which its identified significance is conveyed are still present.

Exhibit D-9

The Significant Historic Features of the interior of the Building:

- Original cast bronze drop lights and raised-plaster ceiling
- Decorative terrazzo floor
- Marble wainscoting
- Raised bas relief gilt and painted plaster walls and ceiling
- Terracotta panel with geometricized floral pattern at each end of the central frieze
- Carved Art Deco wood ornaments over the service counter
- Original hanging lobby lamps
- Original brass-framed bulletin boards

The Franklin Station Historic Guidelines are intended to meet the intent and goals of the City of Napa Downtown Historic Design Guidelines, but apply specific requirements related to protection of the building's Significant Historic (i.e., character defining) Features and related to the additions and alterations for the adaptive reuse. The proposed PD Historic Standards would replace the recommendations in the Guidelines, which did not contemplate the rehabilitation that is now required to preserve the building after the 2014 earthquake. These proposed PD Historic Standards along with the Project actions would allow new additions and related construction on the overall site of the historic building subject to Design Review and a Certificate of Appropriateness.

Directly related to the historic post office structure, the Guidelines would allow removal of a majority of the damaged shell of the building (of approximately 4/5ths of the structure), retain and rehabilitate its historic front (north) and partial east and west side facades. The Guidelines would allow additions above and behind, along with related new construction at the west side of the historic structure that wraps around the rear of the overall site to the east side of the block. With a future Certificate of Appropriateness and subject to detailed compliance with the Secretary of the Interior's Standards for Rehabilitation, the Guidelines require rehabilitating the identified historic features of the building's front and interior to a depth equal to and inclusive of the depth of the existing interior lobby. The adaptive reuse and rehabilitation would include an addition to the retained portion of the building located behind the structure. The addition would be allowed to be taller than and wider than the resource, up to the City Height limits and property setbacks. The required removal of a significant portion of the structure was not contemplated in the pre-earthquake Guidelines.

Development Agreement

Development Agreements are authorized by NMC 17.52.150. State law, Government Code Sections 65864 et seq., authorizes cities to enter into development agreements to help to provide such certainty, reduce processing time and apply contract law principles to development projects. Development agreements allow land uses and other terms and conditions of approval to be negotiated between the parties, subject to consistency with the local planning policies and approval by the legislative body. In this case, the development

Exhibit D-10

agreement will provide for certainty on the rehabilitation of the Post Office structure through the proposed hotel project and provide the City with public benefit and certainty on the obligations of the parties.

In the purchase agreement for the parking lot, the City and Keller outlined the requirements for a Development Agreement, which requires that the Development Agreement would address specific items in addition to Development Agreement legal requirements. These items include use, intensity and density, maximum floor area, and maximum height of development; public benefits; design guidelines; parking quantities sufficient to serve the Hotel Project and public parking replacement; and CEQA compliance.

Future Approvals

Subsequent approvals in future phases likely will include:

- Design review permits (including Major Design Review)
- Tentative and Final Subdivision Maps (for retail space/condo or residential)
- Any Amendments of these approvals,
- Final Certificates of appropriateness,
- Improvement plans (grading permits, site development permits, utilities)
- Building permits,
- Lot line adjustments, and
- Certificates of occupancy.

Exhibit D-11

EXHIBIT E

EXISTING IMPACT FEES

A. Applicable Impact Fees

The Impact Fee rates in effect on the Effective Date of the Development Agreement are summarized on Exhibit E-1, attached hereto and incorporated herein by reference:

- Street Improvement Fee (NMC Chapter 15.84)
- Park Dedication Fee (NMC Section 16.32.040)
- Park Development Fee (NMC Chapter 15.68)
- Affordable Housing Impact Fee (NMC Chapter 15.94)
- Fire and Paramedic Fee (NMC Chapter 15.78)
- Parking Impact Fee (NMC Chapter 15.104)

B. Impact Fees for Accessory Whole Ownership Residential Dwelling Units. For purposes of calculating Impact Fees for the accessory whole ownership residential dwelling units authorized by the PD ("Ownership Units"), the Ownership Units shall be categorized as follows:

- For the Street Improvement Fee, the Ownership Units shall be categorized as "Lodging – Hotel".
- For the Park Dedication Fee, the Ownership Units shall be categorized as "Multi Family."
- For the Park Development Fee, the Ownership Units shall be categorized as "Multifamily."
- For the Affordable Housing Impact Fee, the Ownership Units shall be categorized as "Hotel."
- For the Fire and Paramedic Fee, the Ownership Units shall be categorized as "Commercial."

Exhibit E-1