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**SECOND AMENDMENT TO AND FIRST RESTATEMENT OF
DEVELOPMENT AGREEMENT
BY AND BETWEEN**

CITY OF NAPA

AND

NAPA REDEVELOPMENT PARTNERS, LLC

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| Exhibit K | Landowner Indemnification |
| Exhibit L | Assignment and Assumption Agreement |

**SECOND AMENDMENT TO AND FIRST RESTATEMENT OF
DEVELOPMENT AGREEMENT
NAPA PIPE**

This Second Amendment to and First Restatement of Development Agreement (the “**Agreement**” or “**Second Amendment**”) is entered into as of this ____ day of _____, 2020, by and between City of Napa, a California charter city and municipal corporation (“**City**”), and **Napa Redevelopment Partners, LLC**, a Delaware limited liability company (“**Landowner**”). This Second Amendment amends and restates the Development Agreement by and between Napa County, a political subdivision of the State of California (“**County**”), and Landowner, dated January 13, 2015 and recorded in the Official Records of Napa County on January 26, 2015 as Document No. 2015-0002281 (the “**Development Agreement**”) as amended by the First Amendment to the Development Agreement dated September 22, 2015 and recorded in the Official Records of Napa County on September 23, 2015 as Document No. 2015-0024296 (the “**First Amendment**”). With the annexation of the entire Property (as defined herein) to the City, the City succeeded to all of the rights and obligations of the County under the Development Agreement, the County’s status as a party to the Development Agreement was extinguished, and the City and Landowner became the only parties thereto. City and Landowner and their respective successors and Transferees are hereinafter collectively referred to as the “**Parties**” and singularly as “**Party**.”

RECITALS

A. **Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the legislature of the State of California adopted Government Code Sections 65864, et seq. (the “**Development Agreement Statute**”), which authorizes each city and county and any person having a legal or equitable interest in the real property to enter into a development agreement, establishing certain development rights in the property which is the subject of the development project application. The purpose of the Development Agreement Statute is to authorize cities and counties, in their discretion, to establish certain development rights for a period of years regardless of intervening changes in land use regulations.

B. **Landowner.** Landowner is a limited liability company organized under the laws of the State of Delaware and is in good standing thereunder and is qualified to do business in the State of California.

C. **Property.** Landowner holds legal or equitable interests in four (4) parcels of real property in Napa County located at 1025 Kaiser Road and designated by Assessor’s Parcel Numbers (APNs) 046-412-006, 046-412-007, 046-400-054 and 046-400-055, which parcels comprise a total of approximately 154 acres, and are more particularly described in the legal description attached hereto as Exhibit A-1 (the “**Property**”). The parcels are separated by Union Pacific Railroad (“**UPRR**”) tracks and right-of-way, which run roughly north-south through the Property, as indicated below and illustrated on Exhibit A-2 hereto. For purposes of this Agreement, the approximately 63-acre portion of the Property to the west of the UPRR tracks

and right-of-way may be referred to as the “**Western Parcel**,” and the approximately 91-acre portion of the Property to the east of the UPRR tracks and right-of-way may be referred to as the “**Eastern Parcel**.”

D. Background.

D.1. Initial Project Review. In March 2007, the County and the County Board of Supervisors (the “**Board**”) received an initial application from Landowner for a General Plan amendment related to development of the Property. Following a series of City-County “study group” meetings in 2007-2008 to analyze water supply, traffic, and fiscal impacts, Landowner amended its application and the County initiated the preparation of a Draft Environmental Impact Report (the “**Draft EIR**”) in January 2009.

D.2. County Housing Element. On June 23, 2009 (Resolution No. 09-88), the Board certified the County’s Housing Element Environmental Impact Report and adopted a General Plan amendment updating the Housing Element which identified the Property as a location for multifamily housing and contained the program to, among other things, rezone 20 acres of the Property to allow housing development at a minimum density of 20 dwelling units per acre (Housing Element Program H-4e). The Housing Element identified Program H-4e as the likely first phase of a larger development and required the County to rezone at least 20 acres of the Napa Pipe property, allowing at least 304 units (202 of them by right) at a minimum density of 20 units per acre to fulfill its Housing Element commitment. The Housing Element provided that the balance would be allowed subject to approval of a development plan at densities up to 20 dwelling units per acre, resulting in a total unit count as high as 945 units if density bonus applies.

D.3. Environmental Review and Revised Proposal. On October 23, 2009, the County published a Draft EIR for the then-proposed Napa Pipe project. In response to comments on the Draft EIR, Landowner modified its proposal to eliminate the possibility for on-site disposal of wastewater to the Napa River, and to include a possible school site across Kaiser Road and the possible use of surface water from Mill Creek, a tributary of the Sacramento River in Tehama County. These project changes were analyzed in a Supplement to the Draft EIR published February 14, 2011 (“**Supplement**”). The Supplement also included additional information on site remediation and air quality. On February 3, 2012, the County published the Final Environmental Impact Report which consists of the Draft EIR, the Supplement, comments on the Draft EIR and responses to such comments, as well as a list of text changes to the Draft EIR and the Supplement (collectively, the “**Final EIR**”). On May 2, 2012, the County Planning Commission recommended that the Board certify the Final EIR and adopt CEQA findings, a Water Supply Assessment, a General Plan amendment and zoning ordinance.

D.4. Second Revised Project Proposal. Subsequently, on or about June, 2012, Landowner submitted a revised project proposal contemplating 700 to 945 housing units, a continuing care retirement community of up to 150 suites with up to 225 beds, a 150-room hotel, an approximately 154,000 square foot Membership Warehouse Store and associated gas station and related facilities, and a wide variety of other uses including approximately 40,000 square feet of neighborhood-serving retail and restaurants, community facilities, research and development (“**R&D**”), light industrial, warehousing and office space, and parks, public open space and other

public amenities. The revised project proposal was analyzed in a Supplemental Environmental Analysis (“**SEA**”) to the Final EIR dated September 19, 2012. The SEA described the revised project proposal and how its impacts would be mitigated. On October 3, 2012, the County Planning Commission recommended the Board take the necessary actions to approve Landowner’s revised project proposal.

D.5. **Project EIR Certified.** On January 14, 2013, the Board certified the Final EIR, as supplemented by the SEA (collectively, the “**Project EIR**”) as adequate and complete for Landowner’s revised project proposal.

D.6 **General Plan Amendment and Zoning Ordinance, Development Plan and Design Guidelines.** On June 4, 2013, by Resolution 2013-60, the Board adopted CEQA findings, including a Statement of Overriding Considerations, mitigation measures, a Water Supply Assessment that included an evaluation of the feasibility of using City water supplies to serve the Project (as described in Recital J), and a General Plan amendment, and by Ordinance No. 1382 adopted a zoning ordinance to add Chapter 18.66 to the Napa County Zoning Code to create the **Napa Pipe Zoning District**, covering approximately 80 acres of the Property. Subsequently, the Board adopted a development plan and design guidelines applicable to development on the Property.

E. **MOU.** On September 17, 2013, the City Council of the City of Napa (“**City Council**”) approved, and on October 8, 2013, the Board approved, a Memorandum of Understanding (the “**MOU**”) between the City and County that outlined a process for collaboration between them related to the proposed Project. The MOU set forth principles and understandings under which the City and County agreed to work together on future entitlements, annexations, provision of municipal services to the Property (emergency fire and medical services and law enforcement services), affordable housing and Regional Housing Needs Allocations (“**RHNA**”) transfers, revenue sharing and transportation, planning and design issues as they relate to the proposed Project on the Property, and established conditions that must be satisfied before the City would provide potable water service to the Property. The County anticipated that, if the County and City reached agreement on annexation proceedings, the basic terms described in the MOU would be incorporated into a series of City/County Agreements generally consistent with those described in Recital I below.

F. **Term Sheet.** On November 12, 2013, the Board approved a term sheet between the County and Developer, setting forth material terms upon which the County and Developer would negotiate and enter into this Agreement.

G. **Potential Annexation to City of Napa.** The City, County, and Landowner anticipated that (i) the commercial portions of the Property zoned NP-IBP-W:AC and NP-IBP:AC would annex to the City as soon as was practical following City voter approval of modifications to the City’s Rural Urban Limit (“**RUL**”) Line and approval by the Napa County Local Agency Formation Commission (“**LAFCO**”) of an amendment to the City’s Sphere of Influence; and (ii) the residential portions of the Property would annex to the City generally in phases, such that the entire Property would be annexed to the City by December 31, 2022. On November 4, 2014, the City’s voters approved the modification of the City’s RUL Line. Then,

to facilitate the annexation of the Property to City jurisdiction, the City took the following actions:

G.1. Submitted an application to LAFCO to (a) amend the City's Sphere of Influence boundary to include the Property; and (b) agreed to provide water service to the Property in accordance with the Water Service Agreement (defined in Recital J below);

G.2. Adopted pre-zoning controls for the Property and such other actions as necessary to conform with the proposed Project;

H. **City Actions in Anticipation of Annexation of Property.** City prepared an Initial Study/Addendum to the Project EIR dated July 2, 2014 (the "**2014 Addendum**"). On July 21, 2015, the City Council determined, based on the 2014 Addendum, that its annexation of the Property and all actions associated therewith would not have any environmental effects that were not adequately addressed in the Project EIR, and took the following actions in anticipation of its annexation of the Property:

H.1. Adopted Resolution R2015-99 amending the City of Napa General Plan to establish land use designations for the Property;

H.2. Conducted the first reading of Ordinance O2015-9 to amend the City's Zoning Ordinance and Zoning Map to establish the Napa Pipe Master Plan District zoning (the second reading was conducted and the Ordinance O2015-9 was approved on August 4, 2015);

H.3. Adopted Resolution R2015-100 authorizing the City Manager to execute certain agreements with the County of Napa and with Napa Redevelopment Partners (described in Recitals I and J) to facilitate the future annexation of the Property to the City.

I. **City/County Agreements in Anticipation of Annexation of Property.** On August 25, 2015, as authorized by City Resolution R2015-100 and County Resolution R-2015-112, the City and the County entered into the following agreements in anticipation of the City's annexation of the Property:

I.1. A Memorandum of Agreement Between the City of Napa and Napa County Regarding the Allocation of Property Tax, Sales Tax, and Transient Occupancy Tax Revenues Generated by the Napa Pipe Site Consisting of Assessor's Parcels 046-400-030 and 046-412-005 and the Allocation of Property Tax Generated by Other Properties Within the City's Sphere of Influence, to allocate property tax and other tax revenues generated by the Property;

I.2. A Memorandum of Agreement Between the City of Napa and Napa County Regarding the Provision of Municipal Services for the Napa Pipe Development Project, to allocate the provision of municipal services for the proposed Project;

I.3. A Memorandum of Agreement Between the City of Napa and Napa County Regarding Regional Housing Needs Allocations for Future Housing Element Planning Periods, relating to affordable housing and RHNA compliance for future housing element planning periods (the "**RHNA Agreement**"); and

I.4. A Memorandum of Agreement Between the City of Napa and Napa County Regarding the City of Napa's Sphere of Influence and the Napa Pipe Property, regarding the City's Sphere of Influence and the Property.

J. **City-Landowner Annexation Consent and Water Service Agreement.** On September 1, 2015, as authorized by City Resolution R2015-100, the City and Landowner entered into an Annexation Consent, Protest Waiver and Water Service Agreement (the "**Water Service Agreement**") with Landowner, setting forth, among other things, the terms and conditions under which the City would provide water service and take certain actions related to annexation of the Property. The Water Service Agreement was recorded in the Napa County Recorder's Office on September 4, 2015 as Document No. 2015-002852.

K. **Original Project and County Project Approvals.** Over time, and based on the Project EIR and the 2014 Addendum, the County adopted the following land use approvals (together, the "**County Project Approvals**") for a mixed use project known as Napa Pipe located on the Property, which included the following:

K.1. Resolution No. 2013-60, approved by the Board on June 4, 2013, adopted (1) CEQA findings, a statement of overriding considerations and a Mitigation Monitoring and Reporting Program ("**MMRP**"); (2) a Water Supply Assessment pursuant to Water Code Section 10911; and (3) conforming amendments to the Napa County General Plan;

K.2. Ordinance No. 1382, approved by the Board on June 4, 2013, added chapter 18.66 to the Napa County Code to create the Napa Pipe Zoning District and specified conditions of approval for future development therein;

K.3. Resolution No. 2014-139, approved by the Board on November 25, 2014, approved a master tentative map for the Project (the "**Master Map**");

K.4. Ordinance No. 1393, approved by the Board on December 16, 2014, approved a Development Plan for the Napa Pipe Zoning District portion of the Property (the "**Development Plan**");

K.5. Ordinance No. 1394, approved by the Board on December 16, 2014, approved the Development Agreement (the "**Enacting Ordinance**").

K.6. Ordinance No. 1397, approved by the Board on February 10, 2015, approved the Napa Pipe Design Guidelines (the "**Design Guidelines**").

L. **First Amendment to the Development Agreement.** The County and Landowner executed the First Amendment to the Development Agreement dated September 22, 2015, pursuant to Ordinance No. 1405, adopted on September 22, 2015.

M. **First Phase of Annexation.** On September 22, 2015, LAFCO approved the annexation to the City of approximately 109.1 acres of the Property, consisting of the entire 91-acre Eastern Parcel and approximately 18.1 acres in the southernmost portion of the Western Parcel. The annexation became effective on September 21, 2016.

N. **Redesign of Project and Accelerated Second Phase of Annexation.** In early 2018, Landowner notified the City and the County that Landowner intended to redesign the Project to move a portion of the approved residential uses from the Western Parcel to the Eastern Parcel and make other corresponding amendments to the County Project Approvals. The general location of the Membership Warehouse Store would remain on the Eastern Parcel and light industrial uses would be located on the southern portion of the Eastern Parcel. The changes were intended to expedite development of the project, including residential development in the first phase of the development to address a local housing shortage. To facilitate the changes and avoid seeking amendments to the project in two jurisdictions, City and Landowner applied to annex the remainder of the Western Parcel, thereby allowing City to process all amendments to the County Project Approvals and any necessary Subsequent Approvals.

O. **SB 235 Legislation.** To ensure the County would fulfill the obligations contained in the County's Housing Element, the City and County sought and obtained state legislation allowing the County to report approval and construction of affordable housing constructed on the Property on its annual housing production report to the Department of Housing and Community Development ("HCD"), required by Government Code Section 65400(a)(2) ("**Annual Report**") to demonstrate satisfaction of its RHNA requirements, even if such housing was approved or constructed after the City's annexation of the entire Property. The state legislature approved this legislation, referred to as Senate Bill (SB) 235, which the governor signed into law on October 12, 2019 (Chapter 844, Statutes of 2019) and which took effect on January 1, 2020.

P. **City-County SB 235 Agreement.** The City and the County entered into an agreement, pursuant to SB 235, entitled Agreement Between the City and County Regarding Annual Reporting of Affordable Housing Production, dated December 17, 2019, as approved by the City Council and the Board on December 17, 2019 (the "**SB 235 Agreement**"). The SB 235 Agreement allows the County to report approval and construction of the housing affordable to Low Income and Very Low Income Households on its Annual Report. In conjunction with their execution of the SB 235 Agreement, the City and County amended their RHNA Agreement described in Recital I.3 above by executing a First Amended and Restated Memorandum of Agreement Between the City of Napa and Napa County Regarding Regional Housing Needs Allocations for Future Housing Element Planning Periods dated December 17, 2019 (the "**Amended and Restated RHNA Agreement**") to update the RHNA Agreement and ensure consistency with the SB 235 Agreement.

Q. **Second Phase of Annexation.** On November 18, 2019, LAFCO approved the annexation to the City of the remainder of the Western Parcel, totaling 45.9 acres, subject to certain conditions, including approval of the SB 235 Agreement and an amendment to the RHNA Agreement by the City and the County, and the approval of a Memorandum of Understanding between the City, the County, and the Landowner requiring certain amendments to this Agreement and the Affordable Housing Plan to the satisfaction of the City and the County. After satisfaction of these conditions, the entire Property is now within the City boundaries and the annexation became effective upon recording of a Certificate of Completion on December 23, 2019.

R. **City Planning Commission Hearing on Amendments to Project Approvals.** On December 5, 2019, at a duly noticed public hearing, the City Planning Commission

considered the Project EIR, the Addendum to the Napa Pipe EIR for the Napa Pipe Project dated November 2019 (hereinafter the "**2019 Addendum**"), this Second Amendment, Landowner's requested amendments to the City's General Plan and Zoning Ordinance, and conforming amendments to the County Project Approvals. The Planning Commission determined and recommended that the City Council find that the Project EIR, including the 2014 Addendum and with the 2019 Addendum adequately supports the proposed actions and that additional environmental review is not required and further recommended approval of this Second Amendment and all other requested amendments to the County Project Approvals. In addition, consistent with Napa Municipal Code Section 17.34.070.A, the Planning Commission referred the Zoning Ordinance amendments to the Napa County Airport Land Use Commission ("**ALUC**") to determine whether the proposed amendments were consistent with the Napa County Airport Land Use Compatibility Plan ("**ALUCP**"). On December 18, 2019, the ALUC determined that the proposed amendments were consistent with the ALUCP.

S. City Council Hearing on and Approval of Amendments to Project Approvals. On January 21, 2020, at a duly noticed public hearing, the City Council considered the Project EIR, including the 2014 Addendum and with the 2019 Addendum (the Project EIR together with the 2014 Addendum and the 2019 Addendum is hereinafter referred to as the "**EIR**"), and determined that the proposed actions would not have any environmental effects that were not identified and addressed in the Project EIR, that none of the conditions described in CEQA Guidelines Section 15162 for preparation of a subsequent environmental impact report would occur as a result of the proposed amendments to the County Project Approvals, and that no additional environmental review or document is required. The City Council further considered this Second Amendment, and amendments to the City's general plan and zoning ordinance and the County Project Approvals, and took the following actions (the County Project Approvals, as amended by the City as described in Recitals S.1 through S.4, are hereafter referred to, individually and collectively, as the "**Project Approvals**"):

S.1. Adopted Resolution No. [REDACTED], approving a General Plan amendment ("**GPA**");

S.2. Approved the first reading and introduction of Ordinance No. [REDACTED] to amend Title 17 of the Napa Municipal Code (the "**Zoning Ordinance**") (the second reading was approved and Ordinance No. _____ was adopted on [February 4, 2020]);

S.3. Adopted Resolution No. [REDACTED], approving an amendment to the Development Plan (hereafter referred to as the "**Development Plan**"), an amendment to the Design Guidelines (hereafter referred to as the "**Design Guidelines**"), and an amendment to the Master Map (hereafter referred to as the "**Master Map**");

S.4. Approved the first reading and introduction of Ordinance No. [REDACTED] to approve this Second Amendment (the "**Second Amendment Enacting Ordinance**") (the second reading was approved and the Ordinance No. _____ was adopted on [February 4, 2020]).

The project approved by the County Project Approvals and as amended by the Project Approvals is hereafter referred to as the "**Project**."

T. **Project Approvals Consistent with the General Plan.** The Project Approvals are consistent with and implement the goals and policies of the City's General Plan, and satisfy the necessary requirements and goals of all other applicable laws of the City. In particular, the GPA, Zoning Ordinance, Master Map, and the Development Plan provide balanced and diversified land uses in order to maintain the overall quality of life and the environment within the City, to impose appropriate requirements with respect to land development and usage, and to provide substantial amounts of open space for the public's use and enjoyment. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City found that this Agreement satisfies the Government Code Section 65867.5 requirement of general plan consistency.

U. **Costs of Project Infrastructure and Services.** Landowner agrees to pay the costs of Project Infrastructure as necessary to serve the Project and to mitigate impacts on the community of the development of the Property, and Landowner may proceed with and complete development of the Property, as described in the Development Plan, the Master Map, the Napa Pipe Intersection Improvement Plan ("NPIIP") and the MMRP, and in accordance with the terms of this Agreement and the other Project Approvals. City and Landowner recognize and agree that, but for Landowner's contributions set forth herein, including but not limited to mitigating the impacts arising as a result of Subsequent Approvals granted pursuant to this Agreement, City could not and would not approve the development of the Property as provided by this Agreement. City's vesting of the right to develop the Property as provided herein is in reliance upon and in consideration of Landowner's (and when applicable an assignee or Transferee as provided for in Section 19) agreement to, among other things, pay the costs of and construct Project Infrastructure.

V. **Appropriateness of Development Agreement.** City has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the City's land use planning process and secure orderly development of the Project consistent with the Project Approvals, assure progressive and timely installation of necessary improvements and mitigation appropriate to each stage of development of the Project, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. The Project is highly capital intensive, especially in its initial phases, which, in order to make the Project economically and fiscally feasible, requires major commitment to and investment in public facilities and on-site and off-site improvements prior to the construction and sale or leasing of the residential, retail and commercial units. The Project required environmental remediation of the Property and grading to raise the elevation of the Western Parcel and a portion of the Eastern Parcel out of the flood plain. The Landowner has already expended over \$15,000,000 to complete the environmental remediation of the Property, which has been approved by those federal and state agencies with jurisdiction. In order to enable the Landowner to further expend the necessary sums to prepare the plans referred to in this Agreement and to pursue other various pre-development work associated with the development of the Project, the City desires to provide certainty through this Agreement with respect to specific development criteria to be applicable to the Property in order to provide for appropriate utilization of the Property in accordance with sound planning principles.

W. **Public Benefits Provided Pursuant to the Agreement.** The Project will afford the City (including its residents, property owners, business owners, and visitors) and the

surrounding region with the following primary benefits (all as further set forth in Section 15 of this Agreement), which include both public benefits provided by the Project in accordance with the Project Approvals and public benefits in excess of those which could be expected from the Project in absence of this Agreement (collectively, the “**Public Benefits**”):

W.1. Park and open space improvements that exceed the cost mandated by existing laws, as well as park maintenance at no cost to the public.

W.2. Payment to the City in the total amount of One Million Dollars (\$1,000,000) to be used as provided in the Affordable Housing Plan, including to support the purchase by residents of Napa County of Moderate Income Units on the Property. Five Hundred Thousand Dollars (\$500,000) of this amount will be paid prior to the issuance of the first building permit for any Residential Project in Phase One. Two Hundred Fifty Thousand Dollars (\$250,000) will be paid prior to issuance of the first building permit for any Residential Project in Phase Two, and Two Hundred Fifty Thousand Dollars (\$250,000) will be paid prior to issuance of the first building permit for any Residential Project in Phase Three.

W.3. Land dedications in Phases One and Two that could accommodate 140 residential units affordable to Low and Very Low Income Households, and the development of 44 or 6.6% of the market rate units (whichever is greater) as Moderate Income Units for Moderate Income Households.

W.4. Construction in Phase One of the Project of an approximately (but not to exceed) 154,000 square foot Membership Warehouse Store, such as a Costco, or, if Membership Warehouse Store is not constructed pursuant to certain milestones, Landowner will make certain payments to the City (as more particularly described in the Phasing Plan attached hereto as Exhibit D).

W.5. Reservation and dedication of an approximately 10-acre school site outside of the Property to the Napa Valley Unified School District pursuant to a separate agreement between Landowner and Napa Valley Unified School District.

W.6. Construction of approximately 15,600 square feet of various community facilities at Landowner’s sole cost and expense, which could include the following:

(i) Refurbishment of existing overhead cranes that will be integrated into the street-scape;

(ii) Construction in the dry-dock area of small boat harbors, a boathouse, a swimming pool and a sunken outdoor event space;

(iii) Refurbishment of an existing gantry crane as an outdoor movie screen adjacent to the sunken event space;

(iv) If demand requires, construction of a neighborhood-serving day care facility of approximately 3,600 gsf of indoor space and 4,500 gsf of outdoor space integrated into the center of the neighborhood;

(v) Construction of a transit center kiosk that provides information regarding available transit, ticket sales, and a sheltered seating area;

(vi) Construction of a large, open plaza in the vicinity of the boathouse and dry docks that will serve as a public gathering place;

(vii) Construction of an approximately 1,000 gsf community facilities space;

W.7. Implementation of an outreach and marketing program applicable to all market rate and moderate-income units that provides persons who live or work in the County with preferential access to units for sale;

W.8. Creation of a wide variety of homeownership opportunities in a wide range of price points;

W.9. Creation of substantial property tax revenue;

W.10. Construction of, and payments towards, traffic and transportation improvements identified in the NPIIP (also referred to as the Napa Pipe Traffic Mitigation Fee Program in the MMRP) attached hereto as Exhibit C;

W.11. Creation of right-of-way improvements, streets and roads within the property, public utilities infrastructure, pedestrian and bicycle paths, fair share Mitigation Measures and other infrastructure improvements and facilities required by the MMRP;

W.12. Creation of sustainable storm water treatment system and features designed to naturally reduce or avoid water quality and hydrologic impacts, such as green roofs, bio-retention areas, vegetated swales, cisterns, pervious pavements and flow-through planters;

W.13. Creation of provisions in the Zoning Code and Development Plan which would permit future development of a hotel on the Property when the market demand exists for a new hotel;

W.14. Restoration of riparian habitat along Bedford Slough, including construction of a wetland at the mouth of the slough;

W.15. Kaiser Road Landscaped Median Improvements; and

W.16. Development of multifamily housing on Property that is annexed to the City that will satisfy the County's RHNA requirements under State law.

X. Reasons for this Agreement.

X.1. **Extraordinary Benefits/County Housing Element Consistency.** The City is entering into this Agreement in consideration of the Public Benefits described above, as well as to enable the County to achieve consistency with the County's Housing Element on Property that is annexed to the City. This Agreement provides that approximately 20% of the

units must be deed-restricted to be affordable to low-, very low- and moderate-income households, and entitles Landowner to a density bonus by providing more affordable units and/or greater levels of affordability than required. Landowner has agreed, in accordance with the Affordable Housing Plan, to dedicate land that could accommodate 140 residential units affordable to Low and Very Low Income Households, to develop 44 or 6.6% of the market rate units (whichever is greater) as Moderate Income Units for Moderate Income Households and to institute an outreach and marketing program to promote the availability of housing to members of the local workforce, which commitments are documented in this Agreement. With the changes to the Project pursuant to the Project Approvals, the creation of these affordable units will be expedited to address a local housing shortage. The Project will also provide other environmental benefits, including an increase of approximately 4 acres of open space over what the County originally approved under the Project and a reduction in the number of crossings of the wetlands area from three to one under an improved circulation plan. Moreover, the Landowner has completed an extensive soil remediation program to clean-up toxics on the Property, which has the approval of the environmental regulatory agencies with jurisdiction.

X.2. Landowner Benefits. In exchange for the Public Benefits of the Project that exceed those required by law, Landowner desires to receive assurances that City will grant permits and approvals required for the development of the Project, over the Project's estimated long term development horizon, in accordance with procedures provided by law and in this Agreement, and that Landowner may proceed with the Project in accordance with the Existing City Land Use Regulations, subject to the further terms and conditions of this Agreement. In order to effectuate these purposes, the Parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, the Parties agree as follows:

AGREEMENT

1. Incorporation of Exhibits and Recitals. The Preamble, Recitals, Exhibits and all defined terms set forth therein are hereby incorporated into this Agreement as if set forth herein in full.

2. Definitions.

Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

2.1 2014 Addendum. Defined in Recital H.

2.2 2019 Addendum. Defined in Recital R

2.3 Adjacent Infrastructure. Defined in Section 2 of Exhibit D (Phasing Plan).

2.4 Adoption Date. December 16, 2014, the date the Board adopted the Enacting Ordinance.

2.5 Agencies. Defined in Section 26.

2.6 Amended and Restated RHNA Agreement. Defined in Recital P.

2.7 Annual Review Date. Defined in Section 22.1.

2.8 Applicable City Exactions. Defined in Section 8.2.

2.9 Board. Defined in Recital D.1.

2.10 CC&Rs. Covenants, conditions and restrictions recorded in the Official Records of Napa County on all or any portion of the Property, imposing covenants running with the land, equitable servitudes and/or easements governing the design, maintenance, operation, access and other matters in connection with the real property affected by the CC&Rs.

2.11 CCRC. A continuing care retirement community project.

2.12 CEQA. The California Environmental Quality Act (Public Resources Code §§ 21000, et seq.) and the Guidelines thereunder (Title 14, Cal. Code Regs. §§ 15000, et seq.).

2.13 City. The City of Napa, a California charter city and a municipal corporation.

2.14 City Costs. Defined in Section 18.2.1.

2.15 City Council. Defined in Recital E.

2.16 City/County Agreements. The four (4) agreements between the City and the County described in Recital I.

2.17 City Land Use Regulations. The ordinances, resolutions, codes, rules, regulations and official policies of the City governing the permitted uses of land, density, design, improvement and construction standards and specifications to the extent applicable to the Property (or portion thereof) and property where off-site Project Infrastructure will be constructed in City jurisdiction, as any of the foregoing may be amended by the Project Approvals. Specifically, but without limiting the generality of the foregoing, City Land Use Regulations shall include (i) the City of Napa General Plan, (ii) Title 17 (Zoning) of the City's Municipal Code, (iii) Title 16 (Subdivisions) of the Napa Municipal Code, (iv) this Agreement, and (v) all other ordinances, resolutions, regulations, and official policies of the City governing land use development and building construction, as any of the foregoing or their application may have been amended by the Project Approvals or this Agreement.

2.18 City-wide. All (a) privately owned property in the territorial limits of the City, and (b) privately owned property within a designated use district or classification of the City, so long as (i) any such use district or use classification includes a substantial amount of affected private property other than the affected portion of the Property, and (ii) the use district or use classification includes substantially all private property within the use district or use

classification that receives the general or special benefits of, or cause the burdens that occasion the need for the new or increased Development Fees or Exactions.

2.19 Claims. Defined in Section 23.

2.20 Community Facilities Space. Defined in Section 15.2.5.

2.21 Complaining Party. Defined in Section 27.

2.22 Consent. Defined in Section 42.

2.23 County. The County of Napa, a political subdivision of the State of California.

2.24 County Project Approvals. Defined in Recital K.

2.25 Default. Defined in Section 25.

2.26 Design and Construction Standards. Defined in Section 8.4.

2.27 Design Guidelines. Defined in Recital S.3.

2.28 Development Fees and Exactions. All monetary or other exactions including in-kind contributions, other than taxes, special assessments or administrative fees, which are charged by the City in connection with any permit, approval, agreement or entitlement for development of Project Infrastructure or other improvements on the Property, or any requirement for the provision of land for construction of public facilities or Project Infrastructure, or any requirement to provide or contribute to any public amenity or services. Development Fees and Exactions do not include Processing Fees.

2.29 Development Plan. Defined in Recital S.3.

2.30 Development Agreement. Defined in the Preamble.

2.31 Development Agreement Statute. Defined in Recital A.

2.32 DRE. Defined in Section 16.3.1.

2.33 Eastern Parcel. The 91-acre portion of the Property lying to the east of the UPRR tracks as described in Recital C and shown on Exhibit A-2.

2.34 Effective Date. Defined in Section 7.2.

2.35 EIR. Defined in Recital S.

2.36 Enacting Ordinance. Defined in Recital K.5 above.

2.37 Existing City Land Use Regulations. As to any annexed Property collectively, the City Land Use Regulations in effect as of the Adoption Date, as may be subsequently amended by this Agreement and the Project Approvals.

2.38 Final Map. Any final map applicable to the Property approved and recorded in the Official Records of the County pursuant to and in accordance with the California Subdivision Map Act (Government Code Sections 66410 et seq.).

2.39 Finally Granted. The date that (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Project Approvals, this Agreement or the EIR shall have expired and no such appeal shall have been filed, or (ii) unless specifically waived by Landowner provided notice, if such an administrative or judicial appeal is filed, the Project Approvals, this Agreement or the EIR, as applicable, shall have been upheld by a final decision in each such appeal, and (iii) if a referendum petition relating to this Agreement or any Project Approvals is timely and duly circulated and filed, certified as valid and an election is held, the date the election results on the ballot measure are certified by the Board in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

2.40 First Amendment. Defined in the Preamble.

2.41 First Phase. The First Phase of Development as shown as Phase One on Exhibit D (Phasing Plan).

2.42 Flood District. The Napa County Flood Control and Water Conservation District.

2.43 General Plan. The General Plan for the City in effect as of the Adoption Date as amended by the Project Approvals. The term “**General Plan**” as used herein includes the GPA.

2.44 Governing Documents. Defined in Section 16.3.1.

2.45 GPA. Defined in Recital S.1.

2.46 gsf. Gross square feet.

2.47 Individual Map. Defined in Section 2.54.

2.48 Industrial Zoning District. Described in Exhibit A-2 and Exhibit H (Land Use Plan).

2.49 Kaiser Road Landscape Median Improvements. Defined in Section 2 of Exhibit D (Phasing Plan).

2.50 LAFCO. Defined in Recital G.

2.51 Landowner. Napa Redevelopment Partners, LLC, and its Transferees, as applicable and as determined at the time in question.

2.52 Law(s). The laws of the State of California, the Constitution of the United States and any codes, statutes, regulations or mandates in any court decision, state or federal, thereunder.

2.53 Liquid Asset. Defined in Section 19.2.2.

2.54 Lot. Defined in Section 7.6.

2.55 Low Income Household. A household whose income does not exceed the low income limits applicable to Napa County, as published and periodically updated by HCD pursuant to Section 50079.5 of the California Health and Safety Code, or successor provision, with adjustments for household size.

2.56 Map Approval. Any parcel map or tentative tract map approved by the City Planning Commission or City Council at any time in the future, which subdivides all or a portion of the Property. Each such map shall be called an “**Individual Map**.”

2.57 Master Map. Defined in Recital S.3.

2.58 Membership Warehouse Store. The use described and permitted as “General Wholesale Sales Commercial Activities” under Section 17.32.240 of the Napa Municipal Code as of the Adoption Date, and specifically including operations such as Costco, or such other wholesale sales commercial user of similar type and quality, not to exceed 154,000 square feet, and an associated gas station, convenience store, and related facilities and improvements as reasonably approved by the City.

2.59 Minor Amendment. Defined in Section 24.4.

2.60 Mitigation Measures. The mitigation measures applicable to the Project developed as part of the EIR process and adopted as part of the Project Approvals as reflected in the MMRP.

2.61 MMRP. The Mitigation Monitoring and Reporting Plan defined in Recital K.1, as adopted by the Board on June 4, 2013, by Resolution No. 2013-60, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference.

2.62 Mortgage. A mortgage or deed of trust, or other transaction, in which the Property, or a portion thereof or an interest therein, or any improvements thereon, is conveyed or pledged as security, contracted in good faith and for fair value, or a sale and leaseback arrangement in which the Property, or a portion thereof or an interest therein, or improvements thereon, is sold and leased back concurrently therewith in good faith and for fair value.

2.63 Mortgagee. The holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.

- 2.64 MOU.** Defined in Recital E.
- 2.65 Napa Pipe Zoning District.** Defined in Recital D.6.
- 2.66 Net Worth.** Defined in Section 19.2.2.
- 2.67 New Development Fees and Exactions.** Defined in Section 8.2.8.
- 2.68 NPIIP.** Defined in Section 15.4.1.
- 2.69 Open Space.** All pedestrian and bicycle paths, trails, parks, and other open space shown on the Development Plan, as it may be amended.
- 2.70 Owners' Association.** Defined in Section 16.3.2(d)(i).
- 2.71 Party.** City, Landowner, and their respective successors, assignees or Transferees, determined as of the time in question, which collectively shall be called the "Parties."
- 2.72 Party in Default.** Defined in Section 27.
- 2.73 Permitted Delay.** Defined in Section 35.
- 2.74 Person.** An individual, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.
- 2.75 Phase.** Defined in Section 1.2 of Exhibit D (Phasing Plan).
- 2.76 Phase Infrastructure.** Defined in Section 1.2 of Exhibit D (Phasing Plan).
- 2.77 Plan Review Procedures.** Those procedures governing review and approval of buildings within the Project set forth in Exhibit F (Plan Review Procedures).
- 2.78 Planning Director.** The City's Community Development Director.
- 2.79 Prevailing Party.** Defined in Section 28.
- 2.80 Processing Fee.** A City fee payable upon the submission of an application for a permit or approval which covers only the estimated actual and non-duplicative or supplemental costs to the City of processing that application, including inspections, in accordance with regular practices on a City wide basis, and is not a Development Fee or Exaction.
- 2.81 Project.** Defined in Recital S.
- 2.82 Project Approvals.** Defined in Recital S.
- 2.83 Project EIR.** Defined in Recital D.5.

2.84 Project Infrastructure. The lands and facilities, both on the Property and off-site, to be improved and constructed by Landowner, and publicly dedicated or made available for public use, as provided by the Project Approvals and this Agreement. Except as provided in the Development Plan, all Project Infrastructure on the Property is located in the Napa Pipe Zoning District. More specifically, Project Infrastructure includes improvements constructed for public use and dedicated or conveyed to a public agency (such as the County, the City, a public utility service provider, or any other public agency) to be operated and maintained by such public agency, as well as improvements on private property that will, pursuant to this Agreement, be constructed, operated and maintained by Landowner or its successor owners' associations(s), but will be held open and made available to the public for public uses in accordance with the CC&Rs. Project Infrastructure includes, without limitation, all right-of-way improvements, streets and roads; all utilities facilities (such as gas, electricity, cable television and communications, water, sewer and storm drainage); Open Space; the Community Facilities Space; and all other improvements and facilities required or called for by the Development Plan, the Mitigation Measures and this Agreement to be constructed or installed by Landowner. The Project Infrastructure that will be constructed, installed, operated and maintained by Landowner (or its successors owners' associations) on private property and held open and made available to the public for public uses is described in the Development Plan.

2.85 Property. Defined in Recital C.

2.86 Public Benefits. Defined in Recital W.

2.87 R&D. Defined in Recital D.4.

2.88 Required Transferee. Defined in Section 22.1.

2.89 Residential Project. Defined in Section 1.35 of Exhibit B (the Affordable Housing Plan).

2.90 Responsible Owners Association. Defined in Section 16.3.2(b).

2.91 RHNA. Defined in Recital E.

2.92 RHNA Agreement. Defined in Recital I.3.

2.93 RUL. Defined in Recital G.

2.94 SB 235 Agreement. That certain Agreement Between the City of Napa and Napa County Regarding Annual Reporting of Affordable Housing Production, dated December 17, 2019, as described in Recital O.

2.95 SEA. Defined in Recital D.4.

2.96 Second Amendment Adoption Date. [February 4, 2020], the date the City Council adopted the Second Amendment Enacting Ordinance.

2.97 Second Amendment Effective Date. [March 5, 2020], the date that is thirty (30) days after the Second Amendment Adoption Date.

2.98 Second Amendment Enacting Ordinance. Defined in Recital S.4.

2.99 Subdivision Rules. Defined in Section 1.2 of Exhibit D (Phasing Plan).

2.100 Subsequent Approvals. Any and all land use approvals, entitlements or permits or approvals of any kind or character consistent with the Project Approvals that are necessary or advisable for the implementation and development of the Project in accordance with this Agreement and the other Project Approvals, including, but not limited to, approvals required under the Zoning Ordinance, Design Guidelines, Plan Review Process, the subdivision maps, site permits, minor administrative permits, sign permits, lot mergers, building permits, street and park improvement permits, improvement plans, use permits, variances, demolition permits, site clearance permits, grading and excavation plans and permits, certificates of occupancy, abandonment or establishment of streets or rights-of-way, utility easements, right-of-way transfers, sewer and water conversion permits, and encroachment permits. A Subsequent Approval shall also include any amendment to the foregoing land use approvals, entitlements or permits, or any amendment to the Project Approvals that is sought by Landowner and approved by City in accordance with the standards set forth in this Agreement.

2.101 Subsequent Development. Defined in Section 7.7.1.

2.102 Subsequent Rule. Defined in Section 9.

2.103 Substantive Amendment. Defined in Section 24.3.

2.104 Term. Defined in Section 7.3.

2.105 Transfer. Defined in Section 19.1.

2.106 Transferee. Defined in Section 19.1.

2.107 Transferred Property. Defined in Section 19.1.

2.108 Vested Rights. Defined in Section 8.1.

2.109 UPRR. Defined in Recital C.

2.110 Very Low Income Household. A household whose income does not exceed the very low income limits applicable to Napa County, as published and periodically updated by HCD pursuant to Section 50105 of the California Health and Safety Code, or successor provision, with adjustments for household size.

2.111 Water Service Agreement. Defined in Recital J.

2.112 Western Parcel. The approximately 63-acre portion of the Property lying to the west of the UPRR tracks as described in Recital C and shown on Exhibit A-2.

2.113 Zoning Ordinance. Defined in Recital S.2.

3. Parties to the Development Agreement. The Parties to this Agreement are:

3.1.1 The City of Napa, a California charter city and municipal corporation. The principal place of business of the City is located at 955 School Street, Napa, CA 94559.

3.1.2 Napa Redevelopment Partners, LLC, a Delaware Limited Liability Company. The principal place of business of Landowner is located at 1025 Kaiser Road, Napa, CA 94558.

4. Description of Property. The property that is the subject of this Agreement is described generally in Recital C and with greater particularity in Exhibit A-1 attached hereto.

5. Interest of Landowner. The Landowner has a legal or equitable interest in the entire Property to satisfy the requirement of California Government Code section 65865.

6. Relationship of City and Landowner. The Parties specifically acknowledge that the Project is a private development, that no Party is acting as the agent of the 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 Landowner, the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. City and Landowner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Landowner joint venturers or partners.

7. Execution and Recording; Effective Date; Term.

7.1 Execution and Recording. Not later than ten (10) days after the Second Amendment Adoption Date, City and Landowner shall execute and acknowledge this Agreement. Not later than forty (40) days after the Effective Date of this Second Amendment, the City Clerk shall cause this Agreement to be recorded in the Official Records of Napa County, State of California.

7.2 Effective Date. Provided that no referendum applicable to the Second Amendment Enacting Ordinance or any other Project Approval has been timely filed and submitted to the City, the Second Amendment Effective Date shall be [March 5, 2020], which is the effective date of the Second Amendment Enacting Ordinance (the “**Effective Date**”). If such a referendum has been timely filed and submitted, then this Second Amendment shall remain binding upon all of the Parties but all of the Parties’ respective rights and obligations shall be suspended until the date upon which the Second Amendment Enacting Ordinance is Finally Granted, which date shall then be the Effective Date.

7.3 Term. The term of this Agreement commenced on January 15, 2015 and shall, pursuant to this Second Amendment, extend until January 15, 2040 (“**Term**”), unless said Term is terminated, modified or extended by the terms of this Agreement.

7.4 Extension of Term Due to Litigation. In the event that litigation is filed by a third party (i.e., an entity other than City, Landowner or any of their respective successors, assigns or Transferees) that seeks to invalidate this Agreement or any of the Project Approvals, the Term of this Agreement shall be extended for a period of time equal to the length of time from the date a summons and complaint and/or petition are first served on the defendant(s)/respondent(s) until the date that the resolution of the litigation is final and not subject to appeal; provided, however, that the total amount of time for which the Term may be extended as a result of any and all litigation shall not exceed five (5) years.

7.5 Term of Subdivision Maps. The term of the Master Map and subsequent Individual Maps, including any tentative parcel map, tentative subdivision map, vesting tentative parcel map or vesting tentative subdivision map, relating to the Project, shall be the longer of: (i) the Term, or (ii) the term of the particular map otherwise allowed under the Subdivision Map Act or Title 16 (Subdivisions) of the Napa Municipal Code.

7.6 Automatic Termination Upon Completion of Lots. This Agreement shall be terminated with respect to any single-family, condominium attached or detached residential or commercial lot created under any recorded Final Map (in each case, a “**Lot**”), without any further action by any Party or need to record any additional document upon the issuance of a final certificate of occupancy or similar certificate for the applicable Lot.

7.7 Rights and Obligations Upon Expiration of the Term or Earlier Termination.

7.7.1 Post-Termination Obligations. Upon termination of this Agreement, all of the rights, duties and obligations of the Parties hereunder shall terminate and be of no further force and effect, except as otherwise expressly set forth herein; and except as to Landowner’s obligation to provide the Public Benefits and Project Infrastructure that have arisen in connection with the issuance of Subsequent Approvals and Commencement of Construction of approved building projects thereunder. To the extent that Landowner or its successors or assigns remains entitled, under the City Land Use Regulations to proceed with and does obtain Subsequent Approvals of new development that is consistent with or greater than the Project densities or intensities allowed by the Project Approvals (“**Subsequent Development**”), Landowner agrees that the City shall have the right to require the Public Benefits and Project Infrastructure as conditions of approval for such Subsequent Development, and Landowner hereby waives all rights to object to or challenge such conditions of approval under the Mitigation Fee Act (Government Code Sections 66000-66011) or any other law or authority.

7.7.2 Landowner's Rights. Termination shall not affect any right of Landowner arising from any previously granted Project Approval and Subsequent Approval for development of all or any portion of the Project, including, without limitation, Landowner’s right to complete and/or occupy any Project Infrastructure, building or other improvement authorized by such Project Approval or Subsequent Approval, provided that any such Project Infrastructure,

building or improvement is completed in accordance with all previously granted Project Approvals and Subsequent Approvals in effect at the time of such termination.

8. Vested Rights.

8.1 Vested Rights and Permitted Uses. Except as set forth in Sections 8, 9 and 10 of this Agreement, during the Term of this Agreement, the permitted uses of the Property, the density and intensity of use, the rate, timing and sequence of development, the location and number of buildings, maximum height and design and size of proposed buildings, parking standards, provisions for reservation and dedication of land for public purposes and limitations on Development Fees and Exactions shall be those set forth in the Existing City Land Use Regulations, this Agreement and any Subsequent Approvals. Landowner shall have those benefits granted and obligations created to develop the Project in accordance with the Project Approvals and Existing City Land Use Regulations consistent therewith (the “**Vested Rights**”). By stating that the terms and conditions of this Agreement, the Existing City Land Use Regulations and any Subsequent Approvals control the overall design, development and construction of the Project, this Agreement is consistent with the requirements of California Government Code Section 65865.2 (requiring a development agreement to state permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes).

8.2 Exactions. Except as otherwise provided in this Agreement, including, without limitation, Sections 8 and 9 hereof, City shall not impose any further or additional Development Fees or Exactions on the development of the Project, whether through the exercise of the police power, the taxing power, design review, conditions of approval or any other means other than (i) the amount of County’s Non-Residential Affordable Housing Impact Fee (Napa County Zoning Code, Chapter 18.107), as of the Adoption Date, calculated in accordance with County Resolution 2010-08, which shall be paid to the City in lieu of and in full satisfaction of the City’s Non-Residential Affordable Housing Impact Fee (except as described below for a hotel project); (ii) the Development Fees and Exactions described in Exhibit G (the “**Applicable City Exactions**”); and (iii) all other Development Fees and Exactions set forth in the Project Approvals, the Mitigation Measures and this Agreement. Landowner shall pay the amount of the County Non-Residential Affordable Housing Impact Fee, as applicable, directly to City in connection with the issuance of all non-residential building permits issued for development of the Property. City and Landowner acknowledge that the provisions contained in this Section 8.2 are intended to implement the intent of the Parties that Landowner has the right to develop the Project pursuant to specified and known criteria and rules, and that City and County receive the benefits which will be conferred as a result of such development without abridging the right of City to act in accordance with its powers, duties and obligations. Notwithstanding the foregoing, the limit on new Development Fees and Exactions hereunder shall not include the following, all of which shall apply to the Project:

8.2.1 Terms of the Water Service Agreement between Landowner and the City described in Recital J;

8.2.2 Terms of sewer service separately negotiated between Landowner and the Napa Sanitation District as sewer service provider, as reflected in the applicable “will-serve” approval;

8.2.3 Other utility connection fees in effect from time to time generally applicable on a City-wide basis to similar land uses;

8.2.4 City fees relating to monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Landowner hereunder;

8.2.5 City Development Fees or Exactions applied on a City-wide basis that the City finds based upon substantial evidence are necessary to mitigate specific physical public health and/or safety impacts related to the Project;

8.2.6 The first increase to the City’s Non-Residential Affordable Housing Impact Fee (payable only as to hotel project only) or amount of the County’s Non-Residential Affordable Housing Impact Fee (payable to City) that occurs on or after January 15, 2025 so long as such increase is applicable on a City- or County-wide basis, as applicable;

8.2.7 Increases to Applicable City Fees and Exactions that are either in effect as of January 15, 2025, or enacted by City on or after January 15, 2025, so long as such increases are applicable on a City-wide basis;

8.2.8 New Development Fees and Exactions enacted by the City and that are in effect as of January 15, 2025, or enacted on or after January 15, 2025 (collectively, “**New Development Fees and Exactions**”), so long as such New Development Fees and Exactions (a) are imposed on a City-wide basis, (b) are at identical levels as imposed against other City-wide private property and (c) are not for purposes of funding affordable housing, street, traffic, transportation or transit improvements or park or open space development and acquisition. Nothing in this Agreement shall limit City’s right and power to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, against the Property, or any portion thereof, that is enacted in accordance with all applicable laws and applies to all similarly-situated property on a City-wide basis, provided (i) City shall not institute on its own initiative proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 et seq.) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Property unless the new district is on a City-wide basis or Landowner gives its prior written consent to or requests such proceedings, (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at any or all of the Property unless Landowner gives its prior written consent to or requests such proceedings, and (iii) the governing body of City shall not institute on its own initiative proceedings for any new or increased tax for purposes of funding affordable housing, street, traffic, transportation or transit improvements or park or open space development, programming or acquisition with respect to the Property or Project.

8.2.9 Any and all fees, payments or exactions expressly provided for under this Agreement;

8.2.10 City-wide General Plan update fees; and

8.2.11 City Development Fees or Exactions applied to development of the Industrial Zoning District pursuant to Section 8.6.

8.3 Non-Residential Affordable Housing Impact Fee for Hotel on Parcel

E. Landowner will pay to the City the amount of the County's Affordable Housing Impact Fee for non-residential development in connection with the issuance of a non-residential building permit for a hotel on Parcel E as if the hotel were located in the County, as provided in Section 5.2 of the Affordable Housing Plan; provided, however, that Landowner may elect to pay the amount of the City's Affordable Housing Impact Fee for non-residential development in connection with the issuance of a non-residential building permit for a hotel on Parcel E subject to reimbursement by City of a portion of the fee pursuant to an executed, written agreement between Landowner and the City. If City and Landowner have not executed a written agreement providing for reimbursement of a portion of the fee at the time the fee payment is due, then Applicant shall pay to City the amount of the otherwise applicable County fee.

8.4 Rules Regarding Design, Engineering and Construction for Project

Infrastructure. Except as otherwise provided herein for water and sewer service infrastructure and facilities, all ordinances, resolutions, rules, regulations and official policies governing engineering and construction standards and specifications applicable to Project Infrastructure, (collectively, "**Design and Construction Standards**") shall be those set forth in the Development Plan, or if not so specified, then those in force and effect by the City on the date the application for the tentative subdivision map for the property that includes the specific Project Infrastructure is determined to be complete, unless otherwise provided under Government Code Section 66474.2(b) or (c). Notwithstanding the foregoing, unless a particular Design and Construction Standard is required by state or federal law, the City shall not apply any changes in the Design and Construction Standards in effect as of the Effective Date hereof if such changes would require modification of the density or intensity of uses as set forth in the Development Plan or to the extent that such changes conflict with specifications for Project Infrastructure contained in the Development Plan or Master Map. The Design and Construction Standards for water infrastructure shall be those required by the City. Sewer service infrastructures and facilities shall be subject to the Design and Construction Standards of the Napa Sanitation District.

8.5 Uniform Codes Applicable.

The Project shall be constructed in accordance with the provisions of the California Building Standards (including, without limitation, the California Green Building Standards), Building, Mechanical, Plumbing, Electrical and Fire Codes as set forth in Title 15 of the Napa Municipal Code, the standard construction specifications of the City, and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project.

8.6 Industrial Zoning District. Notwithstanding anything in this Agreement to the contrary, the Parties agree and acknowledge that the only rights vested hereunder as to the Industrial Zoning District, as defined herein, shall be the right to develop up to a total of 165,000 gsf of enclosed non-residential uses, comprised of up to 90,000 gsf of office uses and up to 75,000 gsf of light industrial, R&D, and warehouse uses. Any development of the Industrial Zoning District shall be subject to all City-wide laws and regulations that are in effect at the time of issuance of the applicable Subsequent Approvals, including without limitation, any and all City Land Use Regulations, and any and all applicable Subsequent Rules, including any and all applicable Development Fees and Exactions in effect at the time of issuance of applicable building permits. Development in the Industrial Zoning District, and associated infrastructure improvements, may occur at any time and independent of any requirements of the Phasing Plan.

9. Subsequent Rules and Approvals. Except as set forth in Sections 8.2, 8.4 and 8.6 above and 9.1 through and including 9.3 below, during the Term, no City ordinances, resolutions, rules, regulations or official policies enacted after the Adoption Date (“**Subsequent Rule**”) that conflict with the Vested Rights of Landowner set forth in this Agreement, shall be applicable hereunder without Landowner’s written consent; provided, however, that nothing herein shall prevent City from taking such action as may be necessary and appropriate to protect the physical public health and/or safety impacts caused by the Project or to protect residents of the City against specific physical health and/or safety impacts.

9.1 Conflicting Actions. For purposes of Section 9 above, any action or proceeding of the City (whether enacted by administrative action, or by a commission, board, the legislative body or the electorate) undertaken without the consent of Landowner, that has any of the following effects on the Project shall be considered in conflict with the Vested Rights, this Agreement, and the Existing City Land Use Regulations:

9.1.1 limiting, reducing or modifying the uses, height, bulk, density or intensity of permitted uses of all or any part of the Project, or otherwise requiring any reduction in the square footage or total number or location of buildings, residential units or other improvements;

9.1.2 limiting the location or sites, grading, roadways or other improvements or facilities on the Property in a manner that conflicts with, or is more restrictive than the limitations included in, this Agreement or the Project Approvals; or

9.1.3 limiting or controlling the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of a Project except as otherwise provided herein, including the demolition or removal of existing buildings, facilities or materials;

9.1.4 requiring the issuance of Subsequent Approvals other than those required or contemplated under the Existing City Land Use Regulations as to off-site Project Infrastructure;

9.1.5 limiting the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities for the Project, or any portion thereof, that are required to implement the Project Approvals;

9.1.6 limiting the processing or procuring of applications and approvals of Subsequent Approvals that are required to implement the Project Approvals; or

9.1.7 imposing or increasing any Development Fees and Exactions in a manner that conflicts with this Agreement.

9.1.8 changing or limiting Project Approvals.

9.1.9 limiting, reducing or substantially modifying vehicular access or parking availability and facilities from that described in the Project Approvals or as otherwise contemplated under the Project Approvals.

9.2 Change in State or Federal Law. This Agreement shall not preclude the application to development of the Property of Subsequent Rules mandated and required by changes in Laws.

9.3 Moratorium, Quotas, Restrictions or Other Growth Limitations. Landowner and City intend that, except as otherwise provided in this Agreement, this Agreement shall vest the Project Approvals against subsequent City resolutions, ordinances, initiatives, and other actions, of whatever nature, that would limit the rate, timing, or sequencing of development (except as provided for herein), or prevent or conflict with the permitted uses, and the density and intensity of uses as set forth in the Project Approvals; provided, however, Landowner shall be subject to any growth limitation ordinance, resolution, rule, regulation or policy which (a) is adopted or applied on a City-wide basis, and (b) directly concerns an actual and serious risk to health and safety, in which case City shall treat Landowner in a uniform, City-wide, equitable and proportionate manner with all properties, public and private, which are impacted by that actual and serious risk to safety.

9.4 Subsequent Approvals.

9.4.1 Application Review. Applications for Subsequent Approvals shall be processed by the City consistent with the Plan Review Procedures in Exhibit F and the Subdivision Procedures in Exhibit I, as applicable. Development of the Project is subject to discretionary and ministerial Subsequent Approvals in accordance with the Project Approvals. In considering, reviewing and acting on applications for Subsequent Approvals, the City shall apply the Existing City Land Use Regulations, subject to any changes to Existing City Land Use Regulations permitted or provided for under this Agreement. Notwithstanding the foregoing, in reviewing Subsequent Approvals, the City shall exercise its authority consistent with its customary practice, as modified by Exhibit F, Plan Review Processing, and Exhibit I, Subdivision Procedures, and provided that the scope of City's review of Subsequent Approvals shall be limited to a determination of compliance and consistency with the Project Approvals and any prior Subsequent Approvals and in the course of such review, City shall not apply criteria or standards that would conflict with the Project Approvals or prior Subsequent Approvals. Consequently, the City shall not use its authority to change the policy decisions reflected by the Project Approvals and this Agreement or otherwise to prevent, delay or modify development of the Project as contemplated by the Project Approvals.

9.4.2 Processing and Payment Costs. Development applications for new development that require review and approval for consistency with the Development Plan and Design Guidelines shall be processed in accordance with the Plan Review Procedures attached hereto as Exhibit F. In the processing of Subsequent Approvals, the City may retain a third party permit review consultant having experience and ability to review the application. Such reviews shall be conducted in accordance with this Agreement, including the Plan Review Procedures in Exhibit F hereto. Landowner shall pay all applicable Processing Fees and reimburse the City for the City's actual and non-duplicative costs incurred in the permit review and inspection process, including the costs of review and inspection processes by any third-party consultant, subject to Landowner's right to dispute such costs by the procedure set forth in Section 18.2.3.

9.5 Subsequent Environmental Review.

9.5.1 Subsequent Environmental Review. The provisions of CEQA, as they may be amended from time to time, shall apply to any Subsequent Approval for the Project. The Parties acknowledge, however, that the EIR contains a thorough analysis of the Project and Project alternatives and specifies the feasible Mitigation Measures necessary to eliminate or reduce to an acceptable level adverse environmental impacts of the Project, and acknowledges a statement of overriding considerations in connection with the Project Approvals, pursuant to 14 California Code of Regulations (CEQA Guidelines) Section 15093, for those significant impacts which could not be mitigated. For these reasons, no further review or mitigation under CEQA shall be required for any Subsequent Approvals unless City determines that CEQA mandates such further review or mitigation in accordance with applicable Laws.

9.5.2 Compliance with CEQA Mitigation Measures. Landowner shall perform, or cause to be performed, all Mitigation Measures applicable to each Project component that are identified therein as the responsibility of the Project Applicant (including its successors in interest and contractors), and until Transferred, those of the Property Owners Association and TDM program manager. The EIR and its associated MMRP are intended to be used in connection with each of the Project Approvals and any Subsequent Approvals to the extent appropriate and permitted under applicable law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Substantive Amendments (as defined in Section 24.3) to the Project from that described by the Project Approvals or any Subsequent Approvals as determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA review process; provided, however, any such conditions or measures must be in accordance with this Section 9 and applicable law.

10. Other Governmental Permits; Water Supply.

10.1 Other Governmental Permits. Landowner shall apply for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. City shall reasonably cooperate with Landowner in its efforts to obtain such permits, agreements, entitlements or approvals as may be necessary or desirable for the development, operation and use of the Project.

10.2 Water Supply. The City shall provide water service to the Property pursuant to the Water Service Agreement between City and Landowner described in Recital J. .

11. Easements; Right-of-Entry.

11.1 Easements. Upon Landowner's written request, the City shall reasonably cooperate with Landowner in connection with Landowner's efforts to abandon or relocate existing utility or other easements and facilities or create new easements within the Property necessary or appropriate for development, operation and use of the Property in accordance with the Project Approvals.

11.2 Permits to Enter. Subject to the rights of any third party, the rights of the public and the City's reasonable agreement on the scope of the proposed work and insurance and security requirements, each department or agency with jurisdiction shall grant permits to enter City-owned property on the City's standard form permit or license, including, without limitation, provisions regarding release, waivers and indemnification in keeping with the City's standard practices, so long as the same is consistent with Existing City Land Use Regulations and otherwise on commercially reasonable terms, in order to permit Landowner to enter City-owned property as necessary to construct the Project or comply with or implement the Project Approvals or other requirements in this Agreement.

12. Subdivision of Property; Future Tentative Maps. Landowner shall have the right, from time to time or at any time, to apply for one or more Individual Maps, subdividing the Property into smaller developable parcels, as may be necessary in order to develop, sell, lease or finance any portion of the Property in connection with development of the Project consistent with the Project Approvals, including the Land Use Plan attached hereto as Exhibit H and more particularly described in the Development Plan. Individual Maps shall be processed in accordance with the California Subdivision Map Act and Title 16 (Subdivisions) of the Napa Municipal Code as modified by the procedures and provisions set forth in Exhibit I attached hereto.

13. Affordable Housing Plan. Affordable housing developed as part of the Project shall be provided in accordance with the Affordable Housing Plan attached hereto as Exhibit B.

14. [intentionally deleted].

15. Project Summary and Public Benefits.

15.1 Project Summary. The Project shall be consistent with the Land Use Plan attached hereto as Exhibit H and more particularly described in the Development Plan, and includes the following improvements (and to the extent the following is inconsistent with the Development Plan, the Development Plan shall control):

15.1.1 Up to 945 residential housing units, of which approximately 20% would be deed restricted, as described in Section 15.2.2 and the Affordable Housing Plan, as affordable to moderate, low- and very-low income households. 304 units would be at a minimum density of 20 dwelling units per acre (with 202 of those units permitted by right as defined by Government Code Section 65583.2(i) and as provided in the Zoning Ordinance). The

balance would be allowed, but not required, to be built at densities up to 20 units per acre (plus any requested density bonus). City and Developer may increase the density of the dwelling units per acre.

15.1.2 Approximately (but not to exceed) one hundred fifty-four thousand (154,000) gsf of a Membership Warehouse Store and a gas station;

15.1.3 Up to forty thousand (40,000) gsf of neighborhood-serving retail and restaurants;

15.1.4 A hotel of approximately (but not to exceed) one hundred fifty (150) rooms, with ancillary facilities such as meeting space, restaurant, retail and a spa;

15.1.5 A possible continuing care retirement community of up to one hundred fifty (150) suites with up to two hundred twenty five (225) beds, with 24-hour on-site paramedic service;

15.1.6 Approximately fifteen thousand six hundred (15,600) gsf of various community facilities, identified in the Development Plan, including, without limitation, a large, open plaza in the vicinity of the boathouse and dry-docks; refurbishment of overhead cranes; small boat harbor, a boathouse, a swimming pool and a sunken outdoor event space in the vicinity of the dry-dock area; refurbishment of an existing gantry crane as an outdoor movie screen adjacent to the sunken event space; preservation and display of industrial artifacts, including the existing storage structure, bridge crane, seawall crane, gantry crane, drydocks and seawall; and a transit center kiosk;

15.1.7 Approximately 38 acres of Open Space;

15.1.8 Up to ninety thousand (90,000) gsf of office space and seventy-five thousand (75,000) gsf of warehouse/R&D development within the Industrial Zoning District, subject to all applicable zoning requirements for the applicable zone;

15.1.9 Completed site remediation in accordance with the Remedial Design and Implementation Plan approved by the Regional Water Quality Control Board and all applicable laws;

15.1.10 Grading as shown in the Master Map;

15.1.11 On-site and off-site Project Infrastructure necessary to serve the Project; and

15.1.12 Approximately one thousand (1,000) square feet of Community Facilities Space as described in Section 15.2.5 below.

15.2 Public Benefits.

15.2.1 Open Space. Landowner shall, at its sole cost and expense, acquire all property for and construct all Open Space improvements included in the Development

Plan, including any dedicated parking for the Open Space and installation of art and Historic Artifacts (as defined in Section 15.2.6). Such improvements shall include a trail connection from Kennedy Park to the Property, and through the Property to connect to the future region-wide San Francisco Bay Trail, in accordance with the standards and specifications in the Development Plan. If Landowner is not able to obtain property rights needed for such trail connection, Landowner shall pay all of the costs actually incurred by the City in its acquisition of necessary property rights, subject to Landowner's right to dispute such costs by the procedure set forth in Section 18.2.3, and Landowner shall remain obligated to construct and maintain, in perpetuity, all Open Space improvements in accordance with the standards and specifications in the Development Plan and the requirements of this Agreement. All Open Space improvements shall be constructed in accordance with the Phasing Plan. Landowner's construction of the trail improvements described in this Section 15.2.1 and the other Open Space improvements described in the Development Plan and Phasing Plan shall be deemed in full compliance with all City's parks or open space requirements including the City's Park Dedication and Park Development fee program or any other current or future City park or open space requirements, and City shall not be entitled to require any separate payments or dedications under the City's Park Dedication and Park Development fee program or otherwise.

15.2.2 Affordable Housing. Landowner shall comply with the Affordable Housing Plan attached hereto as Exhibit B. Among other things, the Affordable Housing Plan requires that approximately 20% of residential units be affordable to very low, low and moderate income households.

15.2.3 School Site. Landowner and the Napa Valley Unified School District ("NVUSD") executed that School Facilities Funding Agreement made and entered into as of January 14, 2013 pursuant to which Landowner shall dedicate an approximate 10-acre parcel (outside of the Property) to NVUSD for a proposed school site and provide certain payments subject to the terms and conditions of said agreement.

15.2.4 Continuing Care Retirement Community Obligations.

(a) Affordability. In connection with any CCRC developed on the Property, Landowner shall meet the requirements of the City's Affordable Housing Impact Fee ordinance for the CCRC units through the payment of an amount equivalent to the in-lieu fee determined in accordance with County Code in effect as of the applicable payment date. For purposes of calculating the in-lieu fee applicable to the CCRC, the gsf of residential floor area shall include only the gross square footage of rooms that are designed or used for living by one or more occupants and that contain a sleeping unit, as defined by the Napa Municipal Code, whether or not the unit contains provisions for sanitation or kitchen facilities, and shall not include common areas.

(b) Paramedic Services. Any CCRC facility developed on the Property shall be subject to a condition of approval that the CCRC facility, at no cost to the City, contract with or hire the state licensed provider(s) of advanced life support paramedic services, i.e., Emergency Medical Technician-Paramedics ("**EMT-Ps**") as defined in the California Code of Regulations Section 1797.84 ("**Paramedic Services Provider**") that is then providing paramedic transport services to City or such other

legally authorized provider as is approved by City (any of the foregoing, the “**Approved Services Provider**”). The CCRC shall demonstrate that it is supported, via contract services or employment contracts, by such on-site Approved Services Provider, including all equipment and facilities, necessary to provide on-site paramedic services during a 911 emergency on the CCRC site, and that the on-site Approved Services Provider is located on-site twenty-four (24) hours per day, seven (7) days per week for the duration of the CCRC use. The condition of approval shall require that any such contract(s) provide for annual reporting, as may be required by the City Fire Department, to demonstrate compliance with these requirements. The foregoing requirements will be documented as a condition of approval to the Development Plan and shall be included in a Notice of Special Restrictions to be recorded against the CCRC parcel as a condition of approval of the certificate of occupancy for the CCRC parcel.

(c) Per Bed Fee. If the CCRC operates as a not for profit entity that does not pay property tax, the City may impose a per bed fee to provide City with the same revenues City would otherwise receive.

(d) Parcel C. A CCRC may be located on Parcel C, without amending this Agreement or the Development Plan, subject to Subsequent Approval of an amendment to the Zoning Code and obtaining a consistency determination from the Napa County Airport Land Use Commission with the Airport Land Use Compatibility Plan.

15.2.5 Community Facilities Space. Landowner shall provide an approximately 1,000 gsf “warm shell” space for community facilities (the “**Community Facilities Space**”) on the Property, in a location approved by the City. The Community Facilities Space shall be operated and maintained by the Responsible Owners Association or a successor Owners Association (as those terms are defined in Section 16) and may include, without limitation, a community space that can accommodate a variety of uses, such as public meeting space, rentable space for private events, child-care facilities, environmental or historical education, and various recreational events, or may serve City emergency service providers (such as a police substation or communications center).

15.2.6 Preservation and Reuse of Historic Artifacts/Public Art. The Project includes materials (e.g., equipment, metal, wood, siding) to be retained and reconditioned for reuse on the Property within various areas of the Project’s public parks and open space, as more particularly described in the Development Plan (collectively, the “**Historic Artifacts**”), including Historic Artifacts specifically for placement at the entrance to the Membership Warehouse Store property. The Historic Artifacts located in the Project Open Space shall be maintained by the Responsible Owners Association, or under a separate maintenance agreement in a form approved by the City Attorney. The Responsible Owners Association shall maintain the Historic Artifacts in good condition, normal wear and tear excepted, and shall secure appropriate insurance coverage, including fire and vandalism coverage.

Notwithstanding any contrary provision in Napa Municipal Code Chapter 15.108 (the “**Public Art Ordinance**”), Landowner may provide information to the City Planning Director regarding the proposed design, aggregate value, quality, display and artistic merit of the Historic Artifacts,

including, without limitation, the cost of acquisition, preservation, installation, and any proposed improvements or design work thereon, to enable the City to determine whether the Historic Artifacts should, taking into consideration the above criteria and their intrinsic, historic, and artistic value, be considered as “Public Art” for purposes of satisfying, in whole or in part, Landowner's obligations under the Public Art Ordinance on the Property and, if considered Public Art, whether any additional contribution shall be required of Landowner under the Public Art Ordinance beyond the costs associated with the preparation, preservation, maintenance, design, and other improvements. Any determination that Historic Artifacts or other art proposed for the Project may be considered as Public Art as provided herein shall be made by the City Council. Notwithstanding any contrary provision in the Public Art Ordinance, if the Landowner, at its option and in its sole discretion, prepares and submits to the City Planning Director for approval by the City Council a Project-specific “Public Art Master Plan” for all or any portion of the Property, which may address the use of Public Art fees generated by development on the Property, and includes design criteria for the installation of public art and/or a proposal to have Historic Artifacts considered as Public Art consistent with the Public Art Ordinance and this Section 15.2.6, and the City Council approves the Public Art Master Plan, such determination may be made by the City Planning Director as to the portion of the Property covered by the Public Art Master Plan. Landowner's decision whether to submit and the City's consideration of a Public Art Master Plan proposal by Landowner shall not be a condition to, delay, or otherwise affect the City's timing or consideration of any Subsequent Approvals.

15.3 [intentionally omitted]

15.4 Traffic and Intersection Improvements; Parking.

15.4.1 Napa Pipe Intersection Improvement Plan. In accordance with EIR Mitigation Measures related to traffic impacts, Exhibit C attached hereto, describes the Napa Pipe Intersection Improvement Plan (“**NPIIP**”), which sets forth certain Landowner obligations for implementation of the mitigation program denominated the Napa Pipe Traffic Mitigation Fee Program in the MMRP. The NPIIP requires actual construction of various intersection improvements at specified times, and determines the fair share payments to be paid by Landowner prior to issuance of building permits and dispersed for construction of other improvements if and when such other improvements are constructed. Landowner shall comply with the NPIIP, including payment of all traffic mitigation fees set forth therein in the amount and according to the schedule as more particularly described in Exhibit C attached hereto.

15.4.2 Intersection Improvements. Landowner shall construct all on-site and off-site traffic and intersection improvements as set forth in the Development Plan, NPIIP and MMRP and in accordance with the Phasing Plan.

15.4.3 Parking Program. Landowner shall implement a parking program in accordance with the Project Approvals.

15.4.4 Kaiser Road Landscape Median Improvements. Landowner shall complete at its sole cost and expense, the Kaiser Road Landscape Median Improvements described in Section 4.3 of Exhibit D, Phasing Plan, attached hereto.

15.4.5 Kaiser Road/State Route 221 Intersection Improvements. All language of this Agreement to the contrary notwithstanding, Landowner shall construct and complete the improvements to the intersection of Kaiser Road and State Route (SR) 221 as described and on the schedule set forth in Section 4.3 of Exhibit D (Phasing Plan) to this Agreement.

15.5 Stormwater Management Requirements. Landowner shall construct Stormwater Management Improvements in accordance with the Development Plan.

15.6 Floodgates. Consistent with the requirements of the Zoning Ordinance, Landowner shall construct the floodgates in accordance with the Development Plan, subject to obtaining all necessary regulatory approvals, including the City's Director of Public Works, and the Napa County Flood and Water Conservation District (the "**Flood District**"). Without limiting the foregoing, it is anticipated that Flood District approval will require Flood District review and approval over the planning, design and construction of the floodgates operation and maintenance of the floodgates and an obligation for Landowner (and upon transfer, the Responsible Owners Association described in Section 16) to reimburse Flood District for costs incurred by it in connection with the review, approval and oversight of the floodgate planning, design and construction. The Development Plan shall include a condition of approval that will require Landowner to obtain the regulatory approvals described above and to install the floodgates prior to issuance of the first certificate of occupancy for any residential or non-residential building structure on the Western Parcel. The floodgates, and associated real property interests will be dedicated to and accepted by the Flood District. Landowner or the successor Responsible Owners' Association shall pay the Flood District for the costs of maintaining and operating the floodgates in perpetuity, which obligation shall be included in the CC&R's recorded against the Property.

16. Project Infrastructure; Owners' Associations.

16.1 Landowner Responsibilities. Landowner shall be solely responsible for all costs necessary to design and construct the Project Infrastructure necessary for development and operation of the Project. In connection with each final map, Landowner shall provide an offer of dedication as applicable of (i) the City water service facilities components of Project Infrastructure and associated easements or other rights for access and maintenance to the City, (ii) the waste water facilities components of Project Infrastructure and associated easements or other rights for access and maintenance to the Napa Sanitation District, and (iii) the right-of-way improvements required to be publicly dedicated in accordance with the conditions of approval adopted by the County (as applicable for off-site improvements) and the City in connection with approvals of the Development Plan and Master Map, as amended; provided, however, that such service providers shall not be required to accept such offers of dedication unless and until the Project Infrastructure at issue has been constructed in accordance with the approved Improvement Plans, and, if applicable, to the reasonable satisfaction of the City's Director of Public Works and such service providers, as applicable. Landowner shall be responsible for the on-going operation, maintenance and repair associated with all publicly-dedicated Project Infrastructure until the applicable offer of dedication has been accepted, and for all privately-owned Project Infrastructure until such time as all such obligations (other than privately-owned Project Infrastructure in the Industrial Zoning District, if any) are assumed by the Responsible

Owners Association in accordance with Section 16.3.2 hereof; provided, however, it is understood that individual lots or parcels containing portions of the privately-owned Project Infrastructure will be transferred to the Responsible Owners Association for operation, maintenance and repair thereof on a time schedule determined by Landowner and that there will be points in time when Responsible Owners Association is responsible for the operation, maintenance and repair of some of the privately-owned Project Infrastructure and Landowner is responsible for the operation, maintenance and repair of the remaining privately-owned Project Infrastructure. Until such time as all such obligations for the Project Infrastructure have been assigned to the Responsible Owners Association in a manner that allows the City to enforce such obligations against the Responsible Owners Association, Landowner shall ensure (as a member of the Board of Directors of the Responsible Owners Association, or in its capacity as Landowner) that the Project Infrastructure is operated, maintained and repaired consistent with the Standards for Maintenance and Security for Streets, Parks and Open Space attached hereto as Exhibit J. The obligations for on-going operation, maintenance and repair for the privately-owned Project Infrastructure shall be contained within CC&Rs recorded against the Property as more particularly described in Section 16.3 hereof, and shall be at no cost or expense to City, or any other public agency. The on-going operation, maintenance and repair obligations of Landowner and the Responsible Owners Association described in this Section 16 shall survive the termination of this Agreement.

16.2 City Action; Reimbursement of City Costs. City shall have the right, but not the obligation, to undertake the maintenance or repair of any privately maintained Project Infrastructure if its Director of Public Works determines in his or her sole discretion that the applicable Project Infrastructure, or Landowner's or the Responsible Owners Association's failure to comply with its obligations under this Agreement or the CC&Rs (including but not limited to a failure to maintain required access so that emergency and utility vehicles can service the property described in the final map(s) and the properties contiguous or adjacent thereto), presents a substantial threat to the physical health and safety of the public that is immediate or on-going. In such event, and except in the event of an actual emergency, the Director of Public Works shall provide not less than fourteen (14) days prior written notice to the Landowner, or the Responsible Owners Associations with actual maintenance and repair responsibility, as applicable identifying the unsafe condition and proposed corrective action to avoid, eliminate, repair or correct the condition. If City elects, in accordance with the foregoing provisions, to maintain or repair any Project Infrastructure then City (i) shall be responsible for obtaining any necessary permits, approvals or authorizations that may be required to perform such work; and (ii) shall perform such work in accordance with applicable City regulations and all other applicable approvals, conditions and requirements. City's rights and obligations under this Section shall survive the expiration or termination of this Agreement and shall be documented in the CC&R's recorded against the Property. If City in accordance with Section 16.2.1 above incurs costs to repair, maintain, or correct unsafe conditions for privately-owned Project Infrastructure, Landowner or the Responsible Owners Association, as applicable, shall timely reimburse City for all such actual and reasonable costs, subject to Landowner's right to dispute such costs by the procedure set forth in Section 18.2.3. For purposes of this Section 16.2.2, timely reimbursement means payment not later than forty-five (45) days following receipt of a written invoice from City detailing costs incurred by City relating to such Project Infrastructure with reasonable and appropriate documentation substantiating such costs.

16.3 Conditions, Covenants & Restrictions Providing for Public Use and Maintenance of Project Infrastructure.

16.3.1 Approval and Timing of Recordation of CC&Rs. As a condition of approval for each final map for the Project, Landowner shall submit to City staff, and obtain administrative approval of, CC&Rs, annexations and such other declarations or instruments, which may include deed restrictions, public use easements and maintenance agreements, as reasonably deemed necessary by the City (collectively, the “**Governing Documents**”) as more fully described in this Section 16.3, that are proposed to be recorded against the property shown on such final map. City shall provide written notice of its approval or disapproval of the CC&Rs to Landowner within sixty (60) days of receipt thereof. In the event of a disapproval, City shall provide reasonably detailed comments as to the reasons for its disapproval, and Landowner shall revise and re-submit the CC&Rs accordingly until approved by City. If City fails to respond to submittal of such CC&Rs within such sixty (60) day period, the CC&Rs shall be deemed approved for the purposes of this Section 16.3.1. Such review by City staff is intended to ensure that the Governing Documents comply with the Project Approvals (including, without limitation, the requirements of this Agreement) and the conditions of approval for the final map at issue and that the Governing Documents do not, directly or indirectly and intentionally or unintentionally, burden the City with any costs, obligations or responsibilities that the City has not agreed to accept pursuant to this Agreement or through the conditions of approval for the final map at issue. If the final map contains only residential property or a combination of residential and commercial property (a mixed-use site), the City, through the City Manager, or his or her designee, in consultation with the City Attorney, shall approve the CC&Rs and other Governing Documents required by the conditions of approval for such final map prior to the recording of such final map; provided however, Landowner shall not be required to record the Governing Documents against any residential property shown on such final map until after the California Department of Real Estate (“**DRE**”) has reviewed all Governing Documents applicable to the residential property and given its approval to record said Governing Documents; and further provided that, in no event shall Landowner record Governing Documents in a form that has not been approved by City, or in a form that is different from the form of Governing Documents reviewed and approved by City without the consent of City. If City fails to approve, disapprove or conditionally approve the Governing Documents (or any modifications thereto) within sixty (60) days of submittal (subject to extension by mutual agreement of the Parties), the Governing Documents shall be deemed approved by City. In any event, the applicable Governing Documents shall be recorded against all residential property that is the subject of the final map prior to issuance of the first building permit for any residential or mixed-use site subject to such Governing Documents. If there are Governing Documents required by the City for a mixed-use site that apply only to the commercial property on that final map, or for a commercial only final map, such Governing Documents shall record with the final map; provided, however, that Landowner may record CC&Rs against the first tract map covering commercial property and annex the remaining commercial property to said CC&Rs in stages that are consistent with the mapping of the commercial property, but in any event, CC&Rs or an annexation instrument shall be recorded against the property within a final map area no later than the issuance of the first building permit for a commercial building in that final map.

16.3.2 CC&Rs Requirements.

(a) Davis-Stirling. CC&Rs for the residential property shall comply with the requirements of the Davis-Stirling Common Interest Development Act and this Section 16.3.2.

(b) Recordation/Legal Effect. A single owners association (the “**Responsible Owners Association**”) shall be made responsible for the on-going operation, maintenance and repair associated with all privately-owned Project Infrastructure within the Napa Pipe Zoning District portion of the Property. Subject to the foregoing, the Landowner may record one overall set of Governing Documents to govern the Property or may record Governing Documents against the commercial portions of the Property and separate Governing Documents against the residential portions of the Property. The Responsible Owners Association shall be entitled to reimbursement from any owner of the Property who is not a member of the Responsible Owners Association for such owner’s fair share of the costs associated with such operation, maintenance and repair, which rights shall be set forth in one or more cost sharing agreements. Such Governing Documents and cost sharing agreements shall be binding on all owners of the Property described in each final map (except as may be limited to certain portions of such property as described in each Governing Document) and all successors thereto, and on any Owners’ Associations (as defined in Section 16.3.2(d)(i)) formed by the property owner(s), and shall run with the land.

(c) Relationship between Owners’ Associations/Affordable Housing Parcels. If there is more than one Owners’ Association and more than one CC&Rs for the Property, Landowner shall record reciprocal easement and cost sharing agreements between the different Owners’ Associations to set forth the relative obligations of each of the Owners’ Associations to ensure that funding for all maintenance and repair obligations of Landowner, Transferees and successors and assigns have been met under this Agreement; provided, however, that the Responsible Owners Association shall be responsible for the on-going operation, maintenance and repair of all privately-owned Project Infrastructure as described in Section 16.3.2(b) and the reimbursement obligations for the Flood District’s operation and maintenance of the floodgates described in Section 15.6 hereof, if applicable. Landowner shall not require any Affordable Housing Project (as defined in the Affordable Housing Plan attached hereto as Exhibit B) owner to join an Owners’ Association, provided, however, that any Affordable Housing Project owner that fails to join an Owners’ Association shall be required to enter into a reciprocal easement and cost sharing agreement with the Landowner and Owners’ Associations to pay its fair share of the costs associated with maintenance of the Project Infrastructure and other “common area” that principally serves or benefits the Affordable Housing Project.

(d) Contents of CC&Rs.

(i) Funding and Other Responsibilities. The Governing Documents shall describe the various relationships between City, the Landowner and its successors, including the Responsible Owners Association and

individual property owners regarding payments for funding the Responsible Owners Association's obligations and detailing the Responsible Owners Association's responsibility for the public use, maintenance and repair of the Project Infrastructure covered by each final map (other than Project Infrastructure to be dedicated to City or utility service provider). The Governing Documents for any other homeowners' and/or commercial property owners' associations formed within the Project (excluding the Responsible Owners Association) (each an "**Owners' Association**" and collectively, the "**Owners' Associations**") shall describe the various relationships between City, the Landowner and its successors, including the obligation of the individual property owners and the applicable Owners' Association regarding the payment of such Owners' Association's fair share of the cost associated with the Responsible Owners Association's obligations under the Project Approvals (including, without limitation, this Agreement).

(ii) Maintenance and Other Obligations. The Governing Documents shall require each Owners' Association to comply with all requirements of the Governing Documents and applicable state and local laws. The recorded CC&Rs and other Governing Documents for the Responsible Owners Association shall include the text attached hereto in Exhibit J (Standards for Maintenance and Security for Streets, Parks and Open Space), and Exhibit K (Landowner Indemnification of City), and require the Responsible Owners' Association to provide all necessary and on-going maintenance and repairs required by Section 16.1 and in conformance with the standards set forth in Exhibit J at no cost to City, to reimburse the Flood District for operation and maintenance costs for the floodgates as described in Section 15.6 hereof, if applicable, to indemnify City, as applicable, as to any Claims or costs and expenses incurred by City as a result of Landowner's or its successors' failure to comply with its maintenance and repair obligations, except to the extent of the negligence or willful misconduct of City or the extent that such actions are undertaken by City and reimbursed under Section 16.2.1, and to obtain and maintain comprehensive general liability insurance in an amount not less than \$3,000,000 or such other amount as may be required in California Civil Code Section 5805 or its successor statute(s) per occurrence combined single limit with City and its officials, employees and agents identified as additional insureds on the insurance policy. The CC&Rs or applicable Governing Documents shall provide City with authority to enter the Property and to repair and maintain the Project Infrastructure as provided in Section 16.2.1.

(iii) Required Provisions. The CC&Rs shall (i) provide for a minimum term of sixty (60) years with ten (10) year automatic renewals, (ii) provide for the establishment of a Responsible Owners Association (for the residential portions of the Project) or an Owners' Association (comprised of the owners of each individual lot or condominium unit within the portion of the property covered by such CC&Rs), and (iii) provide for the ownership of the privately maintained Project Infrastructure, or "common area", by (a) the Responsible Owners Association, (b) an Owners' Association, or (c) the owners of each individual lot or condominium unit as tenants in common. In addition, each CC&Rs covering the Property or portions thereof, shall contain substantially the following language (subject to changes for defined terms in the CC&Rs):

“Notwithstanding any provision in these CC&Rs to the contrary, the following provisions shall apply:

The property owners’ association established herein shall manage and continuously maintain the ‘common area’, more particularly described on Exhibit ____, attached hereto, and shall not sell or transfer the ‘common area’ or any part thereof, absent the prior written consent of the City’s Community Development Director.

The property owners’ association shall have the right and obligation to assess the owners of each individual lot or condominium unit for the reasonable cost of maintaining such ‘common area’, shall have the right to lien the property of any such owner who defaults in the payment of a maintenance assessment and shall diligently pursue all reasonable actions permitted under the Laws as necessary to collect delinquencies, which actions may include imposing an assessment lien against delinquent lots or units and foreclosing on such lien when the delinquent assessment exceeds \$1,800 (or such other minimum amount imposed applicable law), and after following the procedures and timelines required by the Davis Stirling Common Interest Development Act and other applicable Laws. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien. The property owners’ association shall perform, or cause to be performed, a reserve study of all common areas owned or maintained by said association no less frequently than once every three years and shall distribute a summary of said reserve study to the owners of each individual lot or condominium unit, including without limitation, information concerning whether the reserves are underfunded, adequately funded, or overfunded at the time the reserve study was conducted and any increase in assessments or special assessments that may be required to bring reserve funding to the appropriate level if the reserves are underfunded.

These CC&Rs shall not be terminated, ‘substantially’ amended, or property deannexed therefrom without the prior written consent of the City’s Community Development Director. A proposed amendment shall be considered ‘substantial’ if it affects the usage or maintenance of the ‘common area’ established pursuant to the CC&Rs or if it modifies any language required by the conditions of approval for the applicable tract map(s).

The City of Napa shall be a third party beneficiary to these CC&Rs and shall have the right, but not the duty, to enforce the CC&Rs against the property Owners Association and to receive copies of all information and documentation that are sent to all of the owners of lots and units pursuant to the requirements of the CC&Rs or required by law related to the ongoing operation and maintenance and of ‘common area’ as provided

herein, including without limitation, a copy of (i) the annual budget of the property Owners Association when it is distributed to the property owners, and (ii) a copy of the reserve study performed by the property Owners Association (as required in the CC&Rs) when it is distributed to the property owners.

In the event of any conflict between these CC&Rs and the Articles of Incorporation, the Bylaws, or the property Owners' Associations' Rules and Regulations, if any, these CC&Rs shall control."

16.4 Budget Review. At least forty-five days prior to submittal to DRE, the Landowner shall submit to the City Planning Director for its approval a copy of the draft build-out budget for the Project and any subsequent update to the build-out budget that Landowner intends to submit to DRE. The draft build-out budget shall conform to DRE requirements, and shall include, at a minimum, anticipated costs of and all sources of revenue for (including anticipated monthly Responsible Owners Association dues per unit) the maintenance, repair and operation of all privately-owned Project Infrastructure (excepting any privately-owned Project Infrastructure in the Industrial Zoning District), and other common areas, anticipated reserves, and the Responsible Owners Association's reimbursement obligations for the Flood District's ongoing operation and maintenance obligations for the flood gates described in Section 15.6 hereof. Said review and approval shall be limited to ensuring that the build-out budget includes funds for the Responsible Owners Association's maintenance and repair of the Project Infrastructure, including reserves that are necessary for the replacement of said Project Infrastructure in accordance with the budget guidelines of the DRE, reimbursement obligations for the Flood District's ongoing operation and maintenance obligations for the floodgates described in Section 15.6 hereof, and compliance with any terms of this Agreement or the Project Approvals that Responsible Owners Association has assumed, including, without limitation, any mitigation measures under the MMRP. City shall provide written notice of its approval or disapproval of the build-out budget to Landowner within thirty (30) days of receipt thereof. In the event of a disapproval, City shall provide reasonably detailed comments as to the reasons for its disapproval, and Landowner shall revise and re-submit the build-out budget accordingly until approved by City. If City fails to respond to such build-out budget within such thirty (30) day period, the build-out budget shall be deemed approved for the purposes of this Section 16.4.

16.5 City as Third Party Beneficiary. The CC&Rs or other Governing Documents required by Section 16.3 shall be subject to reasonable review and approval as to form by the City Attorney, and shall expressly provide City with a third party right to enforce the Landowners' or its successors' and assigns', including the Responsible Owners Association and each Owners' Associations, obligations under Section 16.2 and 16.3 hereunder. City shall be entitled to receive copies of all information and documentation that are sent to all of the owners of lots and units pursuant to the requirements of the CC&Rs or required by law related to the ongoing operation, maintenance and repair of Project Infrastructure as provided herein, including without limitation, a copy of (i) the annual budget of the Responsible Owners Association when it is distributed to the property owners, (ii) a copy of the reserve study performed by the Responsible Owners Association (as required in the CC&Rs) when it is distributed to the property owners, and (iii) the annual budget of each Owners' Association (other than the

Responsible Owners Association) indicating that funds are set aside to pay the Owners' Association's cost sharing obligations to the Responsible Owners Association when such budget is distributed to the property owners. The City's review of the Responsible Owners' Association's budget and reserve study is intended to provide evidence that the Responsible Owners' Association has included in its budget the necessary funding of the Project Infrastructure in compliance with the Project Approvals (including, without limitation, this Agreement) and that reserves are being funded at appropriate levels. The City's review of the remaining Owners' Associations budgets is intended to provide evidence that each such Owners' Association has included in its budget the necessary funding for its share of the costs to be paid to the Responsible Owners Association. If the Responsible Owners Association or any Owners' Association breaches its obligations to provide all necessary and ongoing operation, maintenance and repairs in accordance with this Agreement, such breach shall not be considered a breach, Default, justification for a Certificate of Non-Compliance or otherwise be held against the Landowner under this Agreement (except to the extent the applicable Owners' Association is a Transferee of Landowner, the Landowner maintains voting control of such Owners' Association, and the Transferee is in default of its express obligations under this Section 16), and then only as to such Transferee, unless Landowner has failed to record CC&Rs or other appropriate Governing Documents for the property that is the subject of the breach.

17. No Development Obligation; Phasing.

17.1 No Development Obligation. There is no requirement under this Agreement that Landowner initiate or complete development of the Project, or any portion thereof, except for Project Infrastructure, public benefits and affordable housing, to the extent any such obligation has arisen as provided in this Agreement. There is no requirement that development of the Project be initiated or completed within any period of time or in any particular order except as provided in Section 17.2. The development of the Project is subject to numerous factors that are not within the control of Landowner or City, such as the availability of financing, interest rates, access to capital and other market conditions and similar factors. Except as expressly required by this Agreement, including the requirements of the Phasing Plan, Landowner may develop the Project in such order and at such rate and times as Landowner deems appropriate within the exercise of its sole and subjective business judgment, provided, however, that City shall have the right to withhold building permits for any proposed development to the extent the proposed sequence of development of Project Infrastructure (including but not limited to the Open Space Phasing) fails to conform to the Phasing Plan set forth in Exhibit D. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The Parties acknowledge that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Landowner's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute and this Agreement.

17.2 Phasing. Project Infrastructure shall be constructed as specified in the Phasing Plan as set forth in Exhibit D.

18. Permit Processing/Costs.

18.1 Permit Processing. The City shall accept and process all complete applications for development of any portion of the Property that has been effectively annexed to the City as provided in Government Code Section 57202.

18.2 City Cost Recovery and Landowner Reimbursement Obligations.

18.2.1 City Cost Recovery. Landowner shall timely pay to City the actual and reasonable costs incurred by City, including its outside consultants, contractors and outside counsel, in drafting, reviewing, revising, processing and implementing this Agreement, including, but not limited to, recording fees, ordinance publication fees, special notice or special meeting costs, staff time in preparing staff reports, and staff time, including legal counsel fees, for preparation and review of this Agreement and changes requested by Landowner, and actual and reasonable costs to implement the Project Approvals, all Subsequent Approvals, and the provisions herein (all of the foregoing, collectively, "**City Costs**"), as determined on a time and materials basis, including any defense costs as set forth in Section 28, but excluding Processing Fees applicable to the processing or review of applications for the Project Approvals, the Subsequent Approvals or for inspection of work associated therewith, recovery of which shall be governed by Section 9.4.2 hereof, under applicable City laws or as otherwise established under the Project Approvals, or recovery of costs incurred by City under Section 16.2.2 hereof, recovery of which shall be governed by that Section. In connection with any environmental review relative to a Subsequent Approval, Landowner shall reimburse City or pay directly all reasonable and actual costs relating to the hiring of consultants and the performing of studies as may be necessary to perform such environmental review. City's reasonably detailed invoices shall be provided on a not more frequent than monthly basis (or such alternative period as agreed by the Parties). Developer shall pay to City all of City's actual and reasonable Costs during the Term within thirty (30) days following receipt of a written invoice from City. Landowner's obligation to pay previously incurred City Costs hereunder shall survive the termination of this Agreement.

18.2.2 Invoices. The invoices described above shall show the cost incurred for each staff member, contractor or consultant, including hours spent and hourly rates, any additional costs incurred and a brief non-confidential description of the work completed. Landowner's reimbursement obligations under this Section shall terminate if Landowner is not invoiced within twelve (12) months from the date the applicable costs were incurred.

18.2.3 Disputed Costs. If Landowner disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice, Landowner shall provide notice of the amount disputed and the reason for the dispute, without withholding the disputed amount, and the Parties will in good faith attempt to reconcile the dispute as soon as practicable. If not resolved within ninety (90) days following receipt of Landowner's notice, Landowner may pursue its remedies under this Agreement. The terms and conditions of this Section 18.2.3 shall be included in the CC&Rs with respect to Landowner's reimbursement of City costs under Section 16.2 hereof. City's covenant of further assurances in Section 41 hereof shall extend to such additional agreements or measures as reasonably necessary to implement such measure.

19. Transfers and Assignments.

19.1 Transfers Generally. Subject to the terms of this Section 18, Landowner shall have the right to assign or transfer all or any portion of its interest, rights or obligations under this Agreement to an Affiliate or to third Persons (the “**Transferee**”) acquiring an interest or estate in all or a portion of the Property (the “**Transferred Property**”), including, but not limited to, purchasers or long term ground lessees of lots, parcels, or of any of the buildings located within the Property. Any sale, transfer or conveyance of the Property, or portion thereof, shall comply with the state Subdivision Map Act and Title 16 (Subdivisions) of the Napa Municipal Code, as amended by the Project Approvals. Landowner shall provide thirty (30) days written notice to City prior to the effective date of any sale, transfer or assignment (collectively, “**Transfer**”) of its interest in all or any portion of the Property or any of its interests, rights and obligations under this Agreement, and upon giving of such notice and closing the conveyance, transfer, sale or lease, said Transferee shall be deemed a Party.

19.2 Assignment and Release of Project Infrastructure Obligations.

19.2.1 Conditions for Assignment and Release. Landowner shall remain responsible for all obligations and requirements under this Agreement after the effective date of a Transfer unless Landowner satisfies the following conditions: (i) prior to the effective date of the Transfer, Transferee executes and delivers to City an Assignment and Assumption Agreement substantially in the form set forth in Exhibit L to this Agreement specifying the obligations and requirements to be assumed by the Transferee; (ii) Landowner has not received a notice of a Default under this Agreement that remains uncured as of the effective date of the Transfer; and (iii) if required, Landowner has received from the Planning Director the consent to the Assignment and Assumption Agreement as follows: If Transferee is to assume any of the obligations or requirements to construct Project Infrastructure (but not including within such construction obligations or requirements the requirements to maintain Project Infrastructure to be assumed by owners association(s) as provided in Section 16 above), then prior written consent of the Planning Director shall be required, which consent shall not be unreasonably withheld, conditioned or delayed so long as the proposed Transferee, to the reasonable satisfaction of the Planning Director, has experience acting as the developer of projects similar in size and complexity to the development opportunity being transferred and the Transferee has the financial resources necessary to develop or complete the Project Infrastructure associated with development of the Transferred Property. If the Planning Director does not provide Consent, he or she shall state the reasons for the refusal and the corrections to be made to obtain such Consent.

19.2.2 Net Worth and Liquid Assets/Experience. It shall be presumptively deemed that the Transferee has the requisite financial resources if the proposed Transferee has a Net Worth or Liquid Assets in an amount that is not less than one hundred twenty five percent (125%) of the reasonably estimated cost to complete the Project Infrastructure associated with the portion of the Property to be transferred. For purposes of the foregoing “**Liquid Asset**” shall mean any of the following, but only to the extent owned individually, free of security interests, liens, pledges, charges or any other encumbrance: (a) cash, (b) certificates of deposit (with a maturity of two years or less) issued by, or savings account with, any bank or other financial institution reasonably acceptable to the Planning

Director, or (c) marketable securities listed on a national or international exchange, marked to market; and “**Net Worth**” shall mean, as of a given date, (x) Transferee’s total assets as of such date less (y) Transferee’s total liabilities (taking into consideration contingent liabilities) as of such date, determined in accordance with generally accepted accounting principles, consistently applied.

19.2.3 Site Specific Transfers. Notwithstanding the foregoing, if Transferee is not assuming any obligation to construct Project Infrastructure, then no consent shall be required.

19.2.4 Effect of Transfer. If conditions (i) and (ii) in Section 19.2.1 above are satisfied, and any consent required in subsection (iii) is given or if no such consent is required, then Landowner shall be released from any further liability or obligation under this Agreement related to the Transferred Property as specified in the Assignment and Assumption Agreement, and the Transferee shall be deemed to be the Landowner under this Agreement with all rights and obligations related thereto, with respect to such Transferred Property, and City shall provide Landowner a written instrument to such effect in a form and substance reasonably satisfactory to Landowner. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such Default shall not constitute a Default by Landowner (or any other Transferee) with respect to any other portion of the Property hereunder and shall not entitle City to terminate or modify this Agreement with respect to such other portion of the Property.

19.2.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property and undertakes any development activities on the Property is, and shall be, constructively deemed to have consented and agreed to, and is obligated by, all of the terms and conditions of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

19.2.6 Rights of Landowner. The provisions in this Section 19 shall not be deemed to prohibit or otherwise restrict Landowner from (i) granting easements or licenses to facilitate development of the Property, (ii) encumbering the Property or any portion thereof or of the improvements thereon by any mortgage, deed of trust, or other devise securing financing with respect to the Property or Project, (iii) granting a leasehold interest in portions of the Property, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Property pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage.

19.2.7 Transfer to Owners’ Association. In addition to the other Transfer provisions of this Agreement, following the issuance of a temporary or final Certificate of Occupancy for an individual building project, or notice of completion or acceptance of Project

Infrastructure associated with either an individual building project, or all or an identified portion of a final map, Landowner may Transfer any remaining obligations which pertain to the individual building project or to the applicable completed work of Project Infrastructure to the Responsible Owners' Association or Owners' Association with the ability and financial capacity (as provided in Section 16 hereto), to perform such duties so Transferred, including, without limitation, obligations associated with the operation, maintenance and repair of privately-owned Project Infrastructure and obligations associated with any transportation systems management plan or other on-going obligations under the MMRP, this Agreement, other Project Approvals or Subsequent Approvals.

20. Lender Obligations and Protections.

20.1 Encumbrances on the Property. The Parties hereto agree that this Agreement shall not prevent or limit Landowner, in any manner, from encumbering the Property or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use, or operation of the Property.

20.2 Mortgagee Obligations. A Mortgagee not in legal possession of the Property or any portion thereof shall not be subject to the obligations or liabilities of the Landowner under this Agreement, including the obligation to construct or complete construction of improvements or pay fees. A Mortgagee in legal possession shall not have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition. A Mortgagee in legal possession of the Property or portion thereof shall only be entitled to use of Property or to construct any improvements on the Property in accordance with the Project Approvals and this Agreement if Mortgagee fully complies with the terms of this Agreement.

20.3 Mortgage Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, after the date of recording this Agreement, including the lien for any deed of trust or Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any Person or entity, including any deed of trust beneficiary or Mortgagee that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise, and any such Mortgagee or successor to a Mortgagee that takes title to the Property or any portion thereof shall be entitled to the benefits arising under this Agreement.

20.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of Default given Landowner under this Agreement and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Landowner, any notice given to Landowner with respect to any claim by City that Landowner is in Default and/or Certificate of Non-Compliance. Each Mortgagee shall have the right during the same period available to Landowner to cure or remedy, or to commence to cure or remedy, the Default or non-compliance as provided in this Agreement; provided, however, that if the Default, noncompliance or Certificate of Non-Compliance is of a nature which can only be remedied or cured by such

Mortgagee upon obtaining possession, such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Default, noncompliance or Certificate of Non-Compliance within ninety (90) days after obtaining possession. If any such Default, noncompliance or Certificate of Non-Compliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Default, noncompliance or Certificate of Non-Compliance (including but not limited to proceeding to gain possession of the Property) if such Mortgagee commences cure during such ninety (90) day period, and thereafter diligently pursues completion of such cure to the extent possible.

21. Estoppel Certificate. Any Party may, at any time, and from time to time, deliver written notice to any other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, (c) the requesting Party is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Default; and (d) such other information as may reasonably be requested. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The City Manager, or its designee, shall have the right to execute any certificate requested by Landowner hereunder. City acknowledges that a certificate hereunder may be relied upon by Transferees, lenders and Mortgagees.

22. Annual Review.

22.1 Review Date. The annual review date for this Agreement shall occur each year as of the anniversary date of the Second Amendment Adoption Date (“**Annual Review Date**”). The annual review letter required hereunder shall be submitted by the Landowner and each Transferee pursuant to Section 19 hereof that has assumed any of the obligations or requirements to construct Project Infrastructure (a “**Required Transferee**”).

22.2 Required Information from Landowner. Not more than sixty (60) days and not less than forty-five (45) days prior to the Annual Review Date, the Landowner and each Required Transferee shall provide a letter to the City Manager demonstrating its compliance with this Agreement, including, but not limited to, compliance with the requirements regarding the Phasing Plan and the public benefits to be provided under this Agreement.

22.3 Local Agency Report. Within forty (40) days after Landowner and each Required Transferee submits its letter, the City Manager shall review the information submitted and all other available evidence on Landowner’s and each Required Transferee’s compliance with this Agreement. All such available evidence including public comments and final staff reports shall, upon receipt by the City, be made available as soon as practicable to Landowner and each Required Transferee. The City Manager shall notify the Landowner and each Required Transferee in writing whether it has complied with the terms of this Agreement. If City Manager finds the Landowner or a Required Transferee in compliance, the City Manager shall issue a Certificate of Compliance. If the City Manager finds the Landowner or a Required Transferee is not in compliance, the City Manager shall issue a Certificate of Non-Compliance after

complying with the procedures set forth in Section 22.4. City's failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date.

22.4 Non-compliance with Agreement; Hearing. Prior to issuing a Certificate of Non-Compliance, if the City Manager, on the basis of substantial evidence, finds that the Landowner or a Required Transferee has not complied with the terms of this Agreement, it shall specify in writing to such Landowner or Required Transferee, with reasonable specificity, the respects in which Landowner or Required Transferee has failed to comply. The City Manager shall also specify a reasonable time for Landowner and Required Transferee to respond, provide additional evidence of compliance or to meet the terms of compliance, which time shall be not less than thirty (30) days, and shall be reasonably related to the time necessary for Landowner or Required Transferee to adequately bring its performance into compliance with the terms of this Agreement, subject to any Permitted Delay; provided, however, that if the non-compliance solely involves a monetary Default, then the City Manager may require payment in thirty (30) days. If after the reasonable time for Landowner or Required Transferee to meet the terms of compliance has passed and the City Manager, on the basis of substantial evidence, continues to find that the Landowner or Required Transferee has not complied, then the City Manager shall issue a Certificate of Non-Compliance. Any Certificate of Non-Compliance shall be made in writing with reasonable specificity as to the reasons for the determination, and a copy shall be provided to Landowner and Required Transferee in the manner prescribed in Section 22.3. If the City Manager issues a Certificate of Non-Compliance, then the City Council shall conduct a hearing within thirty (30) days of the City Manager's issuance of the Certificate of Non-Compliance, or at the next available, regularly scheduled hearing thereafter. The Landowner and Required Transferee shall be given not less than ten (10) days written notice of the hearing and copies of the evidence upon which the City Manager made her/his determination. Landowner and Required Transferee will be given the opportunity to present evidence at the hearing. If the City Council determines that the Landowner or a Required Transferee is not in compliance with this Agreement, it may proceed to enforce the City's rights and remedies, including, modifying or terminating this Agreement at a subsequent public hearing.

22.5 Appeal of Determination. The decision of the City Council as to Landowner's or a Required Transferee's compliance shall be final, and any Court action or proceeding to attack, review, set aside, void or annul any decision of the determination by the City Council shall be commenced within thirty (30) days of the decision by the City Council.

22.6 Costs. Costs reasonably incurred by City in connection with the annual review and related hearings shall be paid by Landowner and Required Transferee(s) in accordance with City's schedule of fees and billing rates for staff time in effect at the time of review.

22.7 Effect on Transferees. If Landowner has completed a transfer so that its interest in the Property has been divided between Transferees, and an annual review hereunder has been performed with respect to Landowner and one or more Transferees, then the City Manager, and if appealed, the City Council shall make its determinations and take its actions separately with respect to each Party. If the City Manager or City Council terminates, modifies or takes such other actions as may be provided by this Agreement in connection with a determination that such Party has not complied with the terms and conditions of this Agreement

(in consultation and coordination with County, as applicable), such action shall be effective only as to the Party as to whom the determination is made and the portions of the Property in which such Party has an interest.

22.8 No Limit on Remedies for Default. The rights and powers of the City Council under this Section 22 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Landowner or a Transferee of an event of Default.

23. Indemnification. To the fullest extent permitted by law, Landowner agrees to indemnify, defend and hold harmless City, and its elected and appointed councils, boards, commissions, officers, agents, employees, volunteers and representatives from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death or physical property damage (including inverse condemnation) and from any and all claims, demands and actions in law or equity (including attorneys' fees and litigation expenses) (collectively, "**Claims**") by any Person or entity, directly or indirectly arising or alleged to have arisen out of or in any way related to (1) any third party claim arising from the approval of or Landowner's default or failure to comply with the Project Approvals (including this Agreement) or any Subsequent Approvals; (2) failure of the Project Infrastructure to comply with Laws; (3) any development or use of the Property under this Agreement, the Project Approvals or any Subsequent Project Approvals; and (4) any actions or inactions by the Landowner or its contractors, subcontractors, agents, or employees or by any one or more persons directly or indirectly employed by or acting as an agent for Landowner or any of Landowner's contractors or subcontractors in connection with the construction or improvement of the Property and the Project, including Project Infrastructure. Notwithstanding the foregoing, with respect to any Project Infrastructure to be dedicated to City, or any other public entity or agency or utility service provider, once City or any other public entity or agency or utility service provider accepts the Project Infrastructure, Landowner's indemnification obligation with respect to those improvements shall cease subject to the terms of any ongoing warranty or other improvement agreement obligation.

Notwithstanding the foregoing, Landowner shall have no indemnification obligation with respect to (1) the gross negligence or willful misconduct of City, or its contractors, subcontractors, agents or employees, or by any one or more persons directly or indirectly employed by or acting as an agent for Landowner or any of Landowner's contractors or subcontractors; (2) the maintenance, use or condition of any improvement or portion of the Property after the time it has been dedicated to and accepted by City, or another public entity or agency or utility service provider, or taken over by an Owners' Association, so long as such indemnification obligation has been assumed by such Owners' Association through the CC&R's or otherwise (except as provided in an improvement agreement or warranty bond); or (3) any public use easements for water and sewer services after the time such public use easements have been accepted by City (or Napa Sanitation District in the case of sewer and wastewater facilities) (except as provided in an improvement agreement or warranty bond).

The indemnity under this Section shall survive termination of this Agreement. Landowner shall timely pay all costs incurred by City in defending any such Claims or

challenges, and Landowner shall be solely responsible to pay, in a timely manner and on City's behalf, any and all awards of money damages, attorney fees and court costs against City.

24. Amendment, Cancellation or Suspension.

24.1 Modification Because of Conflict with State or Federal Laws. In the event that Laws or regulations enacted after the Adoption Date prevent or preclude compliance with one or more provisions of this Agreement or require substantial and material changes in Project Approvals, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such change in Laws. Any such amendment of the Agreement shall be approved by the City Council, in accordance with existing local laws and this Agreement.

24.2 Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto and in accordance with the procedures of State law, the City of Napa Municipal Code and this Agreement.

24.3 Substantive Amendments. Any substantive amendment to the Agreement shall require approval of an amendment to this Agreement in accordance with state law and the City of Napa Municipal Code. The term "**Substantive Amendment**" is defined to include the following: (a) any change to the Term of this Agreement; (b) any changes to the permitted uses of the Project or the density and/or intensity of use of the Project; (c) any changes to provisions in this Agreement or the Project Approvals related to reservation or dedication of land or easements; (d) any changes to provisions in this Agreement or the Project Approvals related to monetary contributions or payments by Landowner; (e) a material amendment to the Affordable Housing Plan or Phasing Plan; or (f) any other proposed amendment reasonably determined by the City Manager to be a Substantive Amendment. If a Substantive Amendment is required, the City, in its reasonable discretion, may withhold or suspend any Subsequent Approval until the approval of the Substantive Amendment is final.

24.4 Minor Amendment. A "**Minor Amendment**" is any amendment of this Agreement other than a Substantive Amendment. Subject to compliance with the requirements of Section 24.2, a Minor Amendment may be approved by means of a written agreement approved, without a public hearing, by the City Manager or Planning Director.

24.5 Amendment Exemptions. No Subsequent Approval and no amendment of a Project Approval or a Subsequent Approval shall require an amendment to this Agreement. Upon approval of an amendment to a Project Approval, the meaning of the term "**Project Approval**" as used in this Agreement shall be amended to reflect the approved amendment to the Project Approval (and any conditions imposed by City thereon), and, along with any Subsequent Approval or amendment to a Subsequent Approval, shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the Subsequent Approval or amendment). Notwithstanding the foregoing, in the event of any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to a Project Approval or Subsequent Approval, the terms of this Agreement shall prevail.

24.6 Cancellation by Mutual Consent. This Agreement may be terminated in whole or in part by the mutual consent of Landowner and City or their respective successors in interest, in accordance with the provisions of the State law and the Napa Municipal Code. Any fees or payments of any kind paid pursuant to this Agreement prior to the date of mutual termination shall be retained by City, as the recipient thereof.

24.7 Suspension by City. City may suspend a portion of this Agreement, if it finds, in its reasonable and sole discretion, that suspension is necessary to protect persons or property from a condition which would create an immediate and serious risk to the physical health and safety of the general public or residents or employees who are occupying or will occupy the Property, such as might be the case in the event of a major earthquake or natural disaster of similar magnitude.

25. Default. Subject to Section 26, a Party's violation of any material term of this Agreement or failure by any Party to perform any material obligation of this Agreement required to be performed by such Party shall constitute a default ("**Default**"). A Default by the Landowner includes, but is not limited to any failure by the Landowner to: (a) pay when due any fee, tax, assessment or other charge applicable to the Project or Property and required pursuant to this Agreement to be paid by Landowner; (b) transfer, reserve or dedicate land for Project Infrastructure; or (c) implement or comply with terms and conditions set out in the Project Approvals, including, but not limited to, Mitigation Measures. While a Landowner is in Default under this Agreement, City may in its sole discretion, but shall not be obligated to grant to such Landowner any Subsequent Approval with respect to any Property that is owned by such Landowner, until such Landowner cures the Default in accordance with Section 27.3.

26. Remedies for Default. Subject to the notice and opportunity to cure provisions in this Section 26, the sole and exclusive judicial remedy for any Party in the event of a Default by the other Party (except with respect to a payment Default) shall be an action in mandamus, specific performance, or other injunctive or declaratory relief. In addition, upon the occurrence of a Default and subject to the procedures described in Section 27, the non-defaulting Party shall have the right to terminate this Agreement, but any such termination shall not affect such Party's right to seek such remedies as are provided for in this Agreement on account of the Default for which this Agreement has been terminated, and shall be subject to the procedures specified in this Agreement. Landowner expressly agrees that except in the case of monetary disputes arising under Section 16.2 or Section 18.2.3, neither City, nor any of its elected and appointed officials, boards, commissions, officers, agents, employees, volunteers and representatives (collectively, for purposes of this Section 26, the "**Agencies**") shall be liable for any monetary damage for a Default by City or any claims against the City arising out of this Agreement. Except as provided above, Landowner, for itself and all of its officers, agents, employees, volunteers and representatives (collectively, for purposes of this Section 26, "**Landowner**") waives any such monetary damages against City, and, except with respect to payment or cost disputes arising under specific terms of this Agreement, City expressly agrees that the Landowner shall not be liable for any monetary damage for a Default by the Landowner or any claims by City against Landowner arising out of this Agreement. City hereby expressly waives any such monetary damages against Landowner. Any legal action by a Party alleging a Default shall be filed within one hundred eighty (180) days from the end of the default procedure described in Section 27.

27. Procedure Regarding Defaults. For purposes of this Agreement, a Party claiming another Party is in Default shall be referred to as the “**Complaining Party**,” and the Party alleged to be in Default shall be referred to as the “**Party in Default**.” A Complaining Party shall not exercise any of its remedies as the result of Default unless such Complaining Party first gives notice to the Party in Default as provided in this Section, and the Party in Default fails to cure such Default within the applicable cure period.

27.1 Notice; Meet and Confer. The Complaining Party shall give written notice of Default to the Party in Default, specifying the Default alleged by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any Default nor shall it change the time of Default. Before sending a Notice of Default, the Complaining Party shall first attempt to meet and confer with the Party in Default to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement or (ii) if a delay in sending a notice pursuant to this Section would materially and adversely affect a Party or its rights under this Agreement. The Complaining Party shall request and if, despite the good faith efforts of the Complaining Party, such meeting has not occurred within seven (7) business days of such request, the Complaining Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default.

27.2 Notice. The Complaining Party shall give written notice of Default to the Party in Default, specifying the Default alleged by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any Default nor shall it change the time of Default.

27.3 Cure. The Party in Default shall have thirty (30) days from receipt of the Notice of Default to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged Default is such that it cannot practicably be cured within such thirty (30) day period, then it shall not be considered a Default during that thirty (30) day period so long as: (a) the cure was commenced at the earliest practicable date following receipt of the notice; (b) the cure was diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (in no event later than thirty (30) days after the Party in Default’s receipt of the notice), the Party in Default provided written notice to the Complaining Party that the cure cannot practicably be completed within such thirty (30) day period; and (d) the cure was completed at the earliest practicable date. The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided such cure, correction or remedy shall be completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be agreed to by the Complaining Party to be reasonably necessary to correct the matter).

27.4 Failure to Assert. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining 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.

27.5 Procedure for Terminating Agreement upon Default. If City desires to terminate this Agreement in the event of a Default that has not been cured pursuant to Section 27.3, the matter shall be set for a public hearing before the City Council. The burden of proof of whether a Party is in Default shall be on the Complaining Party. If the City determines that Landowner is in Default and has not cured to the City's reasonable satisfaction, or that the Default presents a serious risk to the physical public health, safety or welfare, the City Council, if appropriate, may terminate this Agreement.

27.6 No Cross Default. Notwithstanding anything to the contrary in this Agreement, if Landowner has completed a Transfer so that its interest in the Property has been divided between Landowner and one or more Transferees, then any determination that a Party is in Default (and any termination of this Agreement or portion thereof, pursuant to Section 27.5) shall be effective only as to the Party to whom the determination is made and the portions of the Property in which such Party has an interest.

28. Attorneys' Fees and Costs In Legal Actions by Parties to the Agreement. If either Party brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against another Party by reason of a Default, or otherwise arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees (including, without limitation, costs and expenses), which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing Party**" within the meaning of this Section 28 shall include, without limitation, a Party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

29. Attorneys' Fees and Costs In Legal Actions by Third Parties. If any Person or entity not a Party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement, the Project Approvals or Subsequent Approvals, the Parties shall cooperate in defending such action. Landowner shall bear its own costs of defense as a real party in interest in any such action, and Landowner shall timely reimburse City for all costs (including, court costs) and attorneys' fees incurred by City in defense of any such action or other proceeding. For purposes of this provision, "**timely**" reimbursement means full payment by Landowner of costs incurred by City not later than forty-five (45) days following Landowner's receipt of an invoice from City describing costs previously incurred by City in defense of such action. In its sole discretion, City may tender its defense of such action to Landowner or defend the action itself. Upon a tender of defense to Landowner by City, Landowner shall defend through counsel approved by City, which approval shall not be unreasonably withheld, and Landowner shall bear all attorneys' fees and costs from the date of tender.

30. Third Party Court Action/Limitation on Action. If any court action or proceeding is brought by any third party to challenge any Project Approval or this Agreement, then (a) Landowner shall have the right to terminate this Agreement upon thirty (30) days' notice, in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (b) any such action or proceeding shall constitute a

Permitted Delay(s). If this Agreement is terminated pursuant to the authority in this Section, the following Project Approvals shall be terminated and of no further force and effect: the Master Map; the Development Plan; the Enacting Ordinance; and the Second Amendment Enacting Ordinance.

31. Eminent Domain. If Landowner is required by City to acquire from a third party an interest in property necessary for construction of Project Infrastructure and is unable to do so despite commercially reasonable, good-faith efforts, City may attempt to negotiate a purchase with the property owner. If necessary, and in compliance with State law, City may use its power of eminent domain, in which case Landowner shall pay for all costs, expenses and fees, including attorneys' fees and staff time, incurred by City in an eminent domain action.

32. Agreement Runs with the Land. Except as otherwise provided for in this Agreement, all of the provisions, agreements, rights, terms, powers, standards, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other Persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the California Civil Code, and the burdens and benefits shall be binding upon and inure to the benefit of each of the Parties and their respective heirs, successors (by merger, consolidation, or otherwise), assigns, devisees, administrators, representatives, and lessees.

33. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

34. Insurance.

34.1 Liability and Property Damage Insurance. At all times that Landowner is constructing any improvements that will become Project Infrastructure, Landowner shall maintain an effective policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than five million (\$5,000,000) dollars and a deductible of not more than fifty thousand (\$50,000) dollars per Claim. The policy so maintained by Landowner shall name City as an additional insured as directed by City's risk manager and shall include either a severability of interest clause or cross-liability endorsement.

34.2 Workers' Compensation Insurance. At all times that Landowner is constructing any improvements that will become Project Infrastructure, Landowner shall maintain workers' compensation insurance as required by California law for all persons employed by Landowner for work at the Property. Landowner shall require each contractor and subcontractor similarly to provide workers' compensation insurance for its respective employees. Landowner agrees to indemnify City for any damage resulting from Landowner's failure to maintain any such insurance.

34.3 Evidence of Insurance. Prior to commencing construction of any improvements which will become Project Infrastructure, Landowner shall furnish City with

satisfactory evidence of the insurance required in Sections 34.1 and 34.2 and evidence that the carrier is required to give City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to City and its agencies and their respective elective and appointive boards, commissions, officers, agents, employees, volunteers and representatives and to Landowner performing work on the Project.

35. Excuse for Nonperformance. Notwithstanding anything to the contrary in this Agreement, Landowner and City shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sum of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, civil unrest, quarantine restrictions, invasion, insurrection, riot, mob violence, sabotage, inability to procure or shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, freight embargoes, strikes, lockouts, labor disputes, condemnation, requisition, changes in Laws, litigation, orders of governmental, civil, military or naval authority, the failure of any governmental agency, public utility or communication or transportation provider to issue a permit, authorization, consent, or approval required for development, construction, use, or operation of the Project or portion thereof within typical, standard or customary timeframes, or any other cause, whether similar or dissimilar to the foregoing, not within the control of the Party claiming the extension of time to perform (a “**Permitted Delay**”). The Party claiming such extension shall send written notice of the claimed extension to the other Party within thirty (30) days from the commencement of the cause entitling the Party to the extension.

36. Third-Party Beneficiary.

36.1 Third Party Beneficiary. Subject to Sections 36.2 through 36.4 regarding the County, this Agreement is made and entered into solely for the protection and benefit of the Landowner and City, and their respective successors and assigns, and no other Person shall have any right of action based upon any provision in this Agreement.

36.2 County as Third-Party Beneficiary. Following upon the full annexation of the Property to City, County will no longer be a party to this Agreement. However, solely with respect to the Parties’ rights, obligations and implementation of Section 15.1.1 of this Agreement and Sections 2, 3, 4 and 5.1 of the Affordable Housing Plan, as set forth in Exhibit B to this Agreement, the County shall be a third-party beneficiary of this Agreement as to said sections of the Affordable Housing Plan, with the right to seek such legal remedies as are available under this Agreement, including but not limited to specific enforcement, subject to the further terms and conditions of this Section. Notwithstanding the foregoing, the County's rights as a third party beneficiary shall be limited to an amendment of any of such above referenced sections of this Agreement and the Affordable Housing Plan, or any claims arising from a failure by City or Landowner to comply with any terms or conditions of said sections that could, in the exercise of the County's reasonable discretion, be anticipated to materially and detrimentally affect the rights or interests of the County to be able to demonstrate satisfaction of the terms of its Housing Element (pertaining to the Project) in effect as of the Effective Date, as stated in Section 15.1.1, and its ability to report housing approved or constructed after City annexed the Property as reflected in the SB 235 Agreement and its enabling legislation. Without limiting the

foregoing, County shall not challenge City actions in processing or approving Subsequent Approvals, including, without limitation, individual maps, improvement agreements, individual building projects or changes to Approved Sites under Section 3.3 of the Affordable Housing Plan, that are consistent with the above referenced sections of this Agreement and the Affordable Housing Plan, and that do not materially and detrimentally affect the rights or interests of the County to be able to demonstrate satisfaction of the terms of its Housing Element in effect as of the Effective Date, as stated in Section 15.1.1, and its ability to report housing approved or constructed after City annexed the Property as reflected in the SB 235 Agreement and its enabling legislation.

36.3 County Notice. City will provide County with prior notice of any proposed Substantive or Minor Amendments to the sections of this Agreement, including the Affordable Housing Plan, to which County is a third party beneficiary. County shall not institute any legal action hereunder without first providing both City and Landowner with written notice thereof (the “**County Notice**”), stating in reasonable detail the nature of the complaint. City or Landowner, as applicable, shall respond to the County Notice by either (i) taking diligent and expeditious action to resolve the complaint within thirty (30) days, or if the nature of the alleged complaint is such that it cannot practicably be cured within such thirty (30) day period, then County will take no further legal action so long as (a) the cure was commenced within thirty (30) days following receipt of the notice; and (b) the cure was diligently prosecuted to completion within 180 days; or (ii) responding in writing to County with the reasons that the responding Party disagrees with the complaint cited in the County Notice. If the responding Party disputes the County Notice, then the City, County, and Landowner shall diligently meet and confer to resolve the issues within thirty (30) days after the responding Party's written response. If after such time the City, County, and Landowner are unable to resolve their differences, County may proceed to seek all available legal remedies hereunder (other than suspension or termination of this Agreement or portion thereof), and in such event, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. Notwithstanding the foregoing, if County determines, in its reasonable discretion, that the failure by City or Landowner to comply with the terms and conditions of the Affordable Housing Plan poses a substantial and immediate threat to the health or safety of persons residing in or visiting the County of Napa, County may immediately proceed to seek its available legal remedies hereunder without first completing the notice, response, and meet and confer requirements of this Section 36.3, provided that the County concurrently and in good faith undertakes to complete such requirements.

37. Notice. Any notice to any Party required by this Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and given by delivering the same to such party in person or by sending the same by registered or certified mail, or express mail, return receipt requested, with postage prepaid, to the party's mailing address. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

County (limited to third party beneficiary rights under Section 36 only):

Napa County
County Administration Building
1195 Third Street, Suite 310
Napa, CA 94559
Attention: County Executive Officer

with a copy to:

Office of County Counsel
County Administration Building
1195 Third Street, Suite 310
Napa, CA 94559
Attention: County Counsel

Landowner:

Napa Redevelopment Partners, LLC
1025 Kaiser Road
Napa, CA 94558
Attention: Keith Rogal

with a copy to:

Farallon Capital Management, LLC
One Maritime Plaza, Suite 2100
San Francisco, CA 94111
Attn: Stephen P. Heath

City:

City of Napa
955 School Street
Napa, CA 94559
Attention: City Manager

with a copy to:

Office of the City Attorney
City of Napa
955 School Street
Napa, CA 94559
Attention: City Attorney

Any Party may change its mailing address at any time by giving written notice of such change to the other Party in the manner provided herein at least ten (10) days prior to the date such change is affected. All notices under this Agreement shall be deemed given, received, made or

communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

38. Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any Person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to Persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party hereto of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.

39. Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of a Default shall be effective or binding upon such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take any action with respect to such Default. No express written waiver of any Default shall affect any other Default, or cover any other period of time, other than any Default and/or period of time specified in such express waiver. Except as provided in Section 26, all of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

40. Applicable Law and Venue. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California. The Parties agree that any lawsuit or legal proceeding arising hereunder shall be heard in the Federal District Court in the Northern District (San Francisco branch) if in federal court or the Napa County Superior Court if in California Superior Court.

41. Further Assurances. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to use good faith efforts to take all actions and do all things as may reasonably be necessary or appropriate to carry out this Agreement, the Project Approvals and Subsequent Approvals, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or appropriate to achieve the purposes and objectives of this Agreement, the Project Approvals and Subsequent Approvals.

42. Approvals. Unless otherwise herein provided, whenever a determination, approval, consent or satisfaction (herein collectively referred to as "**Consent**") is required of a Party pursuant to this Agreement, such Consent shall not be unreasonably withheld or delayed. If a Party shall not Consent, the reasons therefore shall be stated in reasonable detail in writing. Consent by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary Consent to or of any similar or subsequent acts or requests. Consent given or

withheld by the City Manager or the City's Planning Director may be appealed to the City Council.

43. Not a Public Dedication. Except as provided herein and in the Project Approvals, nothing contained herein shall be deemed to be a gift or dedication of the Property to the general public, for the general public.

44. Entire Agreement. This written Agreement and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement.

45. Form of Agreement; Entirety; Recordation; Exhibits. This written Agreement, which consists of 57 pages and 13 exhibits (Exhibits A-1 through L), contains all of the representations and the entire agreement between the Parties with respect to its subject matter. Except as otherwise specified herein, any prior correspondence, memoranda, agreements, warranties or representations by, among and between the Parties are superseded in total by this Agreement. The City shall cause this Agreement, any amendment hereto and any termination of any parts or provisions hereof, to be recorded, at Landowner's expense, with the County Recorder as provided in Section 7.1, the date of the approval of an amendment hereto, or the date of termination of any parts or provisions hereof, as applicable. Any amendment or termination of this Agreement to be recorded that affects less than all of the Property shall describe the portion thereof that is the subject of such amendment or termination. This Agreement is executed in three duplicate originals, each of which is deemed to be an original.

46. Construction of Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning in order to achieve the objectives and purposes of the Parties, and not strictly for or against any Party. The captions and headings are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. The exhibits to this Agreement are intended to be and shall be incorporated into this Agreement as if stated fully herein. The use in this Agreement of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. This Agreement has been reviewed and revised by legal counsel for Landowner and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

47. Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages in counterparts which, when attached to this Agreement, shall constitute this as one complete Agreement.

48. Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

IN WITNESS WHEREOF, this Agreement is executed on the date(s) indicated below:

“LANDOWNER”

NAPA REDEVELOPMENT PARTNERS, LLC

By: _____
Name:
Its:

“CITY”

CITY OF NAPA,
a California charter city and municipal corporation

Steve Potter, City Manager

Date: _____

ATTEST:

Tiffany Carranza, City Clerk

Date: _____

COUNTERSIGNED:

Desiree Brun, City Auditor

Date: _____

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

Date: _____

Exhibits

| | |
|-------------|---|
| Exhibit A-1 | Legal Description |
| Exhibit A-2 | Map of Property |
| Exhibit B | Affordable Housing Plan |
| Exhibit C | Napa Pipe Intersection Improvement Plan |
| Exhibit D | Phasing Plan |
| Exhibit E | MMRP |
| Exhibit F | Plan Review Procedures |
| Exhibit G | Applicable City Exactions |
| Exhibit H | Land Use Plan |
| Exhibit I | Subdivision Procedures |
| Exhibit J | Standards for Maintenance and Security of Streets, Parks and Open Space |
| Exhibit K | Landowner Indemnification |
| Exhibit L | Assignment and Assumption Agreement |

EXHIBIT A-1

Legal Description

For APN/Parcel ID(s): 046-412-006-000, 046-400-054-000, 046-412-007-000 and 046-400-055-000

Tract One (APN: 046-412-006-000 and 046-400-054):

Parcel One:

Beginning at the point where the projection of the Southerly line of the 129 acre tract of land described in the Deed from Fedele Martinelli, et ux, to The Mercantile Trust Company, recorded July 9, 1920 in Book 128 of Deeds, at Page 497, Napa County Records intersects the centerline of the Southern Pacific Railroad Company Right of Way; thence South 78° 46' 23" West 335.41 feet; thence North 58° 38' West, 117.19 feet to the Southern line of the 1.22 acre tract of land described in the Deed from the American Trust Co. to Basalt Rock Co., Inc., dated June 11, 1934 and recorded in Book 88 at page 153 of Official Records of Napa County; thence South 86° 22' West 18.14 feet to the Southwest corner thereof; thence along the mean high tide line of the Eastern Bank of Napa River, South 34° 22' West 211.1 feet, South 61° 08' West 188.4 feet, South 14° 54' West, 79.00 feet, South 2° 12' West, 286.4 feet, South 11° 58' West 221.8 feet, South 18° 51' West 251.10 feet; thence along the Western face of existing drydocks South 23° 3' 45" West, 276.77 feet to the Northeastern corner of the 1.114 acre tract of land described in the Deed from Basalt Rock Co., Inc. to The County of Napa recorded May 13, 1949 in Book 305 at page 164 of Official Records of Napa County; thence along the Easterly boundary of the Napa River Channel Right of Way, South 2° 01' 42" East, 284.49 feet, South 81° 18' East 76.33 feet, thence South 2° 01' 42" East 785.60 feet to the point that bears South 49° 21' 48" West 1222.03 feet from the south end of the east tangent line of the Southern Pacific Railroad as shown as on that certain Parcel Map entitled "Parcel Map of a portion of the lands of Basalt Rock Company, Inc.", filed April 1, 1972 in Book 3 of Parcel Maps at Page 98 of Official Records; thence leaving said Napa River Channel Right of Way along a non-tangent curve concave to the south having a radius of 10000.00 feet and to which a radial line bears North 10° 06' 43" West; thence 568.34 feet along said curve through a central angle of 3° 15' 23"; thence along a non-tangent line South 0° 11' 03" West 44.34 feet to the beginning of a non-tangent curve concave to the south having a radius of 9956.00 feet and to which a radial line bears North 6° 53' 13" West; thence 220.86 feet, more or less, along said curve through a central angle of 1° 16' 16", more or less, to the westerly boundary of the Southern Pacific Railroad; said point being the beginning of a non-tangent curve concave to the west having a radius of 4257.27 feet and to which a radial line bears South 79° 54' 15" East; thence northerly 688.99 feet along said curve through a central angle of 9° 16' 22" to the point on the west line of said Southern Pacific Railroad; thence leaving said westerly boundary a non-tangent bearing South 89° 48' 57" East 1080.25 feet, more or less, to the point on the east line of the 106.56 acre tract of land described in the Deed to Kaiser Steel Corporation recorded in Book 474 at Page 240 of Official Records of Napa County said point being South 1678.01 feet from the northeast corner of said Lands of Kaiser Steel Corporation as shown on that certain Parcel Map entitled "Parcel Map of a portion of the lands of Basalt Rock Company, Inc.", filed for record April 1, 1972 in Book 3 of Parcel Maps at Page 98 of Official Records; thence North along said east line 1678.01 feet to the north line as described in said Deed to Kaiser Steel Corporation; thence westerly along said northern line to the centerline of said Southern Pacific Railroad; thence northerly along said centerline to the Point of Beginning.

Excepting therefrom a strip of land of undetermined width as occupied by the Southern Pacific Railroad, the centerline of which passes through the point of commencement, thence runs in a general Southerly direction passing through the Southern boundary of the hereinabove described property.

Also excepting therefrom a parcel of land circumscribed by a 20 feet radius circle surrounding an existing well, the center of which is located South 29° 41' East, 954.31 feet from the aforementioned point of commencement, together with the right to take water from the well situate on the above described premises and a Right of Way across the land described in Parcel One above to the said well, including the right of laying, inspecting, repairing and replacing pipelines for the purpose of taking water therefrom, said Right of Way to lie in a general Easterly direction from said well.

EXHIBIT A-1**Legal Description
(continued)**

Also excepting therefrom a parcel of land bounded by a circle having a diameter of 40 feet as described in the deed to Basalt Rock Company, Inc. recorded November 22, 1940 in Book 158 at page 137, of Official Records of Napa County.

Pursuant to a Lot Line Adjustment on file with the County of Napa, as disclosed by that certain Corporate Grant Deed, recorded September 20, 2016, Instrument No. 2016-0023528, of Official Records.

Parcel Two:

Easements and rights of way for ingress and egress for persons and vehicles to and from the parcel of land described in Parcel One above as granted in the document recorded May 9, 1955 in Book 474 at page 240 of Official Records for roads, underground pipelines, power and telephone lines and other utility services, in, over, along and across the following described real property:

1) A strip of land, 60 feet in width, running from the West side of the State Highway from Napa to Vallejo to the East side of the Southern Pacific Railroad parcel, as excepted in Parcel One above. The Northerly line of said 60 foot Right of Way being the Southerly line of a 129 acre tract of land described in the Deed from Fedele Martinelli, et ux, to The Mercantile Trust Company, recorded July 9, 1920 in Book 128 of Deeds, at page 497, Napa County Records. A portion of the Southerly boundary of said 60 feet Right of Way being the Northerly line of that portion of the parcel of land first above described herein which lies East of the said Southern Pacific Railroad parcel.

Excepting therefrom any portion that lies within Kaiser Road, a public road.

2) A strip of land, 25 feet in width, Northerly of and parallel to the first described line, namely South 78° 46' 23" West 335.41 feet, constituting a portion of the parcel of land hereinabove first described running from the Westerly line of the Southern Pacific Railroad parcel, as excepted in Parcel One above to the second described line of the aforementioned parcel of land hereinabove first described.

3) A strip of land, 60 feet wide, running South from the Southerly line of the aforementioned Right of Way running from the State Highway to the Southern Pacific Railroad parcel, as excepted in Parcel One above. The westerly line of said Right of Way being 2555.52 feet in length and common to the Easterly line of the parcel of land first hereinabove described and conveyed.

Tract Two (APN: 046-412-007-000):

Commencing at the point where the projection of the Southerly line of the 129 acre tract of land described in the Deed from Fedele Martinelli, et ux, to The Mercantile Trust Company, recorded July 9, 1920 in Book 128 of Deeds, at Page 497, Napa County Records intersects the centerline of the Southern Pacific Railroad Company Right of Way; thence South 78° 46' 23" West 335.41 feet; thence North 58° 38' West, 117.19 feet to the Southern line of the 1.22 acre tract of land described in the Deed from the American Trust Co. to Basalt Rock Co., Inc., dated June 11, 1934 and recorded in Book 88 at page 153 of Official Records of Napa County; thence South 86° 22' West 18.14 feet to the Southwest corner thereof; thence along the mean high tide line of the Eastern Bank of Napa River, South 34° 22' West 211.1 feet, South 61° 08' West 188.4 feet, South 14° 54' West, 79.00 feet, South 2° 12' West, 286.4 feet, South 11° 58' West 221.8 feet, South 18° 51' West 251.10 feet; thence along the Western face of existing drydocks South 23° 3' 45" West, 276.77 feet to the Northeastern corner of the 1.114 acre tract of land described in the Deed from Basalt Rock Co., Inc. to The County of Napa recorded May 13, 1949 in Book 305 at page 164 of Official Records of Napa County; thence along the Easterly boundary of the Napa River Channel Right of Way, South 2° 01' 42" East, 284.49 feet, South 81° 18' East 76.33 feet, thence South 2° 01' 42" East 785.60 feet to the point that bears South 49° 21' 48" West 1222.03 feet from the south end of the east tangent line

EXHIBIT A-1**Legal Description
(continued)**

of the Southern Pacific Railroad as shown as on that certain Parcel Map entitled "Parcel Map of a portion of the lands of Basalt Rock Company, Inc.", filed April 1, 1972 in Book 3 of Parcel Maps at Page 98 of Official Records and said point being the Point of Beginning; thence leaving said Napa River Channel Right of Way along a non-tangent curve concave to the south having a radius of 10000.00 feet and to which a radial line bears North 10° 06' 43" West; thence 568.34 feet along said curve through a central angle of 3° 15' 23"; thence along a non-tangent line South 0° 11' 03" West 44.34 feet to the beginning of a non-tangent curve concave to the south having a radius of 9956.00 feet and to which a radial line bears North 6° 53' 13" West; thence 220.86 feet, more or less, along said curve through a central angle of 1° 16' 16", more or less, to the easterly boundary of the Southern Pacific Railroad; said point being the beginning of a non-tangent curve concave to the west having a radius of 4257.27 feet and to which a radial line bears South 79° 54' 15" East; thence southerly 1533.53 feet along said curve through a central angle of 20° 38' 19"; thence southwesterly along the Westerly line of said Right of Way to the Southerly line of the Napa River Channel Right of Way; thence along said Napa River Channel Right of Way North 1° 50' 38" West 1694.55 feet to the Point of Beginning,

Pursuant to a Lot Line Adjustment on file with the County of Napa, as disclosed by that certain Corporate Grant Deed, recorded September 20, 2016, Instrument No. 2016-0023529, of Official Records.

Tract Three (APN: 046-400-055):**Parcel One:**

Beginning at the Southeastern corner of the 106.56 acre tract of land described in the Deed to Kaiser Steel Corporation recorded in Book 474 at Page 240 of Official Records of Napa County; running thence South 1007.30 feet to the centerline of that certain 75 foot Power Line Easement granted to Pacific Gas and Electric Company as described in Book 484 at Page 33 of Official Records of Napa County; thence along said Easement centerline South 82° 59' 45" West 1566.96 feet to the Southeastern line of the Southern Pacific Railroad Company Right of Way; thence along said Southeastern line of said Right of Way on a curve to the left from which a tangent line bears North 29° 18' 40" East, having a radius of 4337.27 feet through a central angle of 28° 41' for an arc length of 2171.60 feet; thence leaving said Southern Pacific Railroad Company Right of Way South 89° 48' 57" East 1000.25 feet, more or less, to the point on the east line of said 106.56 acre tract; that bears South 1678.01 feet from the northeast corner of said Lands of Kaiser Steel Corporation; thence South along said east line 877.49 feet to the Point of Beginning.

Pursuant to a Lot Line Adjustment on file with the County of Napa, as disclosed by that certain Corporate Grant Deed, recorded September 20, 2016, Instrument No. 2016-0023530, of Official Records.

Parcel Two:

Easements and rights of way for ingress and egress for persons and vehicles to and from the parcel of land described in Parcel One above as granted in the document recorded May 9, 1955 in Book 474 at page 240 of Official Records for roads, underground pipelines, power and telephone lines and other utility services, in, over, along and across the following described real property:

1) A strip of land, 60 feet in width, running from the West side of the State Highway from Napa to Vallejo to the East side of the Southern Pacific Railroad parcel, as expected in Parcel One above. The Northerly line of said 60 foot Right of Way being the Southerly line of a 129 acre tract of land described in the Deed from Fedele Martinelli, et ux, to The Mercantile Trust Company, recorded July 9, 1920 in Book 128 of Deeds, at page 497, Napa County Records, A portion of the Southerly boundary of said 60 feet Right of Way being the Northerly line of that portion of the parcel of land first above described herein which lies East of the said Southern Pacific Railroad parcel.

EXHIBIT A-1**Legal Description**
(continued)

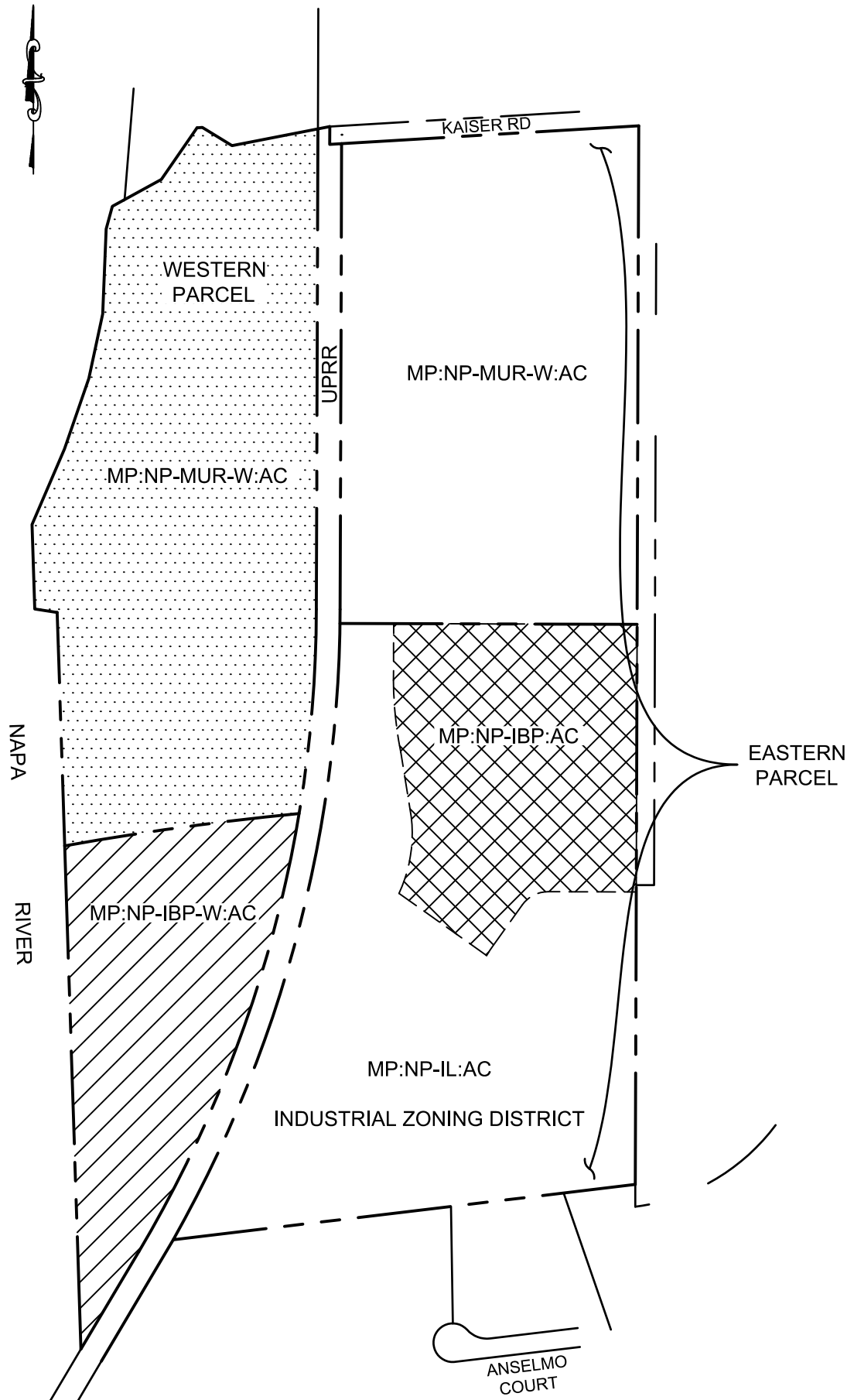
Excepting therefrom any portion that lies within Kaiser Road, a public road.

2) A strip of land, 25 feet in width, Northerly of and parallel to the first described line, namely South 78° 46' 23" West 335.41 feet, constituting a portion of the parcel of land hereinabove first described running from the Westerly line of the Southern Pacific Railroad parcel, as excepted in Parcel One above to the second described line of the aforementioned parcel of land hereinabove first described.

3) A strip of land, 60 feet wide, running South from the Southerly line of the aforementioned Right of Way running from the State Highway to the Southern Pacific Railroad parcel, as excepted in Parcel One above. The westerly line of said Right of Way being 2555.52 feet in length and common to the Easterly line of the parcel of land first hereinabove described and conveyed.

EXHIBIT "A"
EXHIBIT A-2
MAP OF PROPERTY

ATTACHMENT 2



**EXHIBIT B
NAPA PIPE
AFFORDABLE HOUSING PLAN**

1. DEFINITIONS

Initially capitalized terms unless separately defined in this Affordable Housing Plan have the meanings and content set forth elsewhere in the Agreement. Terms defined elsewhere in the Agreement and also set forth in this Section are provided herein for convenience only.

1.1 Adequate Security means security provided by Landowner that (i) provides reasonable assurances regarding the obligations secured thereby in accordance with the Agreement; and (ii) is in a form determined by Landowner and reasonably approved by the City Director of Public Works, including, but not limited to a guaranty, bonds, letters of credit, certificates of deposit or any other form that provides reasonable assurances regarding the obligations secured thereby. Any security provided in connection with a final subdivision map that conforms to the requirements of Exhibit I to this Agreement, Subdivision Procedures, shall be considered Adequate Security. Landowner and City Director of Public Works will in good faith consider reasonable modifications to such Adequate Security for an Approved Site's Project Infrastructure as may be necessary to respond to a request from the Qualified Housing Developer's lender, provided such request does not require substantial changes to the form, scope, or nature of the Project Infrastructure security that conforms to the requirements of Exhibit I of this Agreement or increase the Landowner's costs or obligations with respect to such security, and the modified security provides adequate assurances regarding the secured obligations, as determined by the City Director of Public Works.

1.2 Adequately Secured means an obligation that is covered by Adequate Security.

1.3 Affordable Homes shall mean Residential Units constructed by a Qualified Housing Developer on the Developable Affordable Parcels which are available at an Affordable Housing Cost and rented to Very Low Income Households or Low Income Households.

1.4 Affordable Homes Regulatory Agreement means an agreement between the City and the Qualified Housing Developer to be recorded against the Developable Affordable Parcels to ensure that the Developable Affordable Parcels are utilized for Affordable Homes, which shall be in substantially the form of the draft Affordable Homes Regulatory Agreement attached to this Affordable Housing Plan as Attachment C.

1.5 Affordable or Affordable Housing Cost means (i) with respect to a Rental Residential Unit required to be Affordable to a Very Low Income Household a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one-twelfth of fifty percent (50%) of the Area Median Income based on Assumed Household Size; (ii) with respect to a Rental Residential Unit Affordable to a Low Income Household a monthly rental charge, including a Utility Allowance which does not exceed thirty percent (30%) of one-twelfth of sixty percent (60%) of the Area Median Income based upon Assumed Household Size and

(iii) with respect to Rental Residential Unit required to be Affordable to Moderate Income Household, a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one-twelfth of one hundred ten percent (110%) of Area Median Income based upon Assumed Household Size. With respect to a For-Sale Residential Unit, Affordable or Affordable Housing Cost means a purchase price determined such that the homeowner's total annual housing payment does not exceed thirty three percent (33%) of the maximum Area Median Income permitted for the applicable type of Residential Unit, based upon Assumed Household Size. For purposes of such For-Sale Residential Units, the total annual housing payment will include principal and interest on a fixed rate thirty (30) year mortgage with commercially reasonable rates, points, and fees, assuming a five percent (5%) down payment, taxes, assessments and insurance (annual cost not to exceed .30% of the purchase price), and any homeowners association dues.

1.6 Affordable Housing Parcel shall mean a parcel designated by Landowner and approved by the City as a site for development of an Affordable Housing Project, meeting the standards for Developable Affordable Parcels.

1.7 Affordable Housing Parcel Deed means a grant deed substantially in the form of Attachment A hereto.

1.8 Affordable Housing Project means a Residential Project containing Affordable Homes and may also contain other uses permitted under the Agreement or other Project Approvals.

1.9 Annual household income means the combined gross income for all adult persons living in a Residential Unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor.

1.10 Approved Sites has the meaning set forth in Section 3.2.1 hereof.

1.11 Area Median Income means the median income for households in Napa County, as established and periodically amended by HUD pursuant to Section 8 of the United States Housing Act of 1937, with adjustments for actual household size or Assumed Household Size as specified in this Affordable Housing Plan.

1.12 Assumed Household Size means one person in a studio unit, and for non-studio units, the total number of bedrooms multiplied by 1.5.

1.13 Commence Construction or Commencement of Construction means, for purposes of this Affordable Housing Plan, commencement of excavation for or commencement of structural foundations for a Residential Project.

1.14 Completed means, for purposes of this Affordable Housing Plan, completion of all Project Infrastructure required by City in order to enable a Qualified Housing Developer to obtain a building permit to Commence Construction and upon the completion of construction, to obtain a permanent certificate of occupancy for the Affordable Housing Project, subject only to (i) satisfaction of any conditions related to subdivision and completion of all

improvement work required under the applicable Subsequent Approvals for the Developable Affordable Parcel (other than any Project Infrastructure obligation within the responsibility of Landowner); (ii) submittal of building plans to the City for approval; and (iii) payment of all applicable Processing Fees.

1.15 Conveyance Agreement means an agreement between the City and the Qualified Housing Developer which specifies the terms by which the City will convey the Developable Affordable Parcel to the Qualified Housing Developer, which shall be in substantially the form of the draft Conveyance Agreement attached to this Affordable Housing Plan as Attachment B.

1.16 Costa-Hawkins Act has the meaning set forth in Section 6 hereof.

1.17 Deferred Project Infrastructure means items of Project Infrastructure related to the applicable Developable Affordable Parcel consisting of (i) final, primarily behind the curb, right-of-way improvements, including, sidewalks, light fixtures, street furniture, landscaping, irrigation and drainage, and driveway cuts, and (ii) utility laterals serving the applicable Developable Affordable Parcel, including storm, sewer, water, reclaimed water, dry utilities, and joint trench as necessary to provide operable electrical, gas, phone and cable, and utility boxes.

1.18 Developable Affordable Parcels means an Approved Site that is a Residential Project building site to be prepared by Landowner and conveyed to the City for subsequent conveyance to a Qualified Housing Developer for the development of Affordable Homes that complies with all of the following:

1.18.1 The building site has been environmentally remediated to a standard sufficient to allow for residential development on the site. Environmental remediation shall be evidenced by a no further action letter or similar letter from the applicable regulatory entity stating that the building site is appropriate for residential use.

1.18.2 The building site has been rough graded in accordance with the grading plans approved by the City;

1.18.3 A final subdivision map for conveyance and financing of the building site as a separate legal parcel has been recorded in the Official Records of the County of Napa.

1.18.4 Landowner has Completed all Project Infrastructure applicable to the building site (with the exception of any Deferred Project Infrastructure which shall be governed by the procedures of Section 3.8 hereof), or Landowner's obligation to Complete such Project Infrastructure is covered in a subdivision or other separate improvement agreement governing the applicable Project Infrastructure (including any Deferred Project Infrastructure) in which (i) Landowner is obligated to Complete the applicable Project Infrastructure (other than any applicable Deferred Project Infrastructure) on the earlier of (A) the date that the Qualified Housing Developer Commences Construction of the Affordable Housing Project provided such date is not less than one hundred eighty (180) days after Landowner receives written notice from the Qualified Housing Developer of the date that the Qualified Housing Developer intends to

Commence Construction of the Affordable Housing Project, or (B) two (2) years from the recordation of the final subdivision map referenced in Section 1.17.3 above; and (ii) Landowner's obligations to Complete the Project Infrastructure and Deferred Project Infrastructure within the timeframes required under the subdivision or other separate improvement agreement have been Adequately Secured.

1.19 For-Rent or Rental Residential Unit means a Residential Unit which is not a For-Sale Residential Unit.

1.20 For-Sale Residential Unit means a Residential Unit which is intended to be offered for sale.

1.21 HCD means the California Department of Housing and Community Development.

1.22 Housing Contribution has the meaning set forth in Section 5 hereof.

1.23 HUD means the United States Department of Housing and Urban Development.

1.24 Initial Financing Plan means the financing plan for the construction of all of the Affordable Homes to be developed by the Qualified Housing Developer in consultation with the Landowner and the City as described in Section 3.4.

1.25 Low Income Household means a household with an annual household income which does not exceed eighty percent (80%) of Area Median Income, adjusted for actual household size.

1.27 Low Income Unit means a For-Rent Residential Unit which is available to and occupied by Low Income Households and rented at an Affordable Housing Cost for Low Income Households.

1.28 Market Rate or Market Rate Residential Unit means a Residential Unit that is not a Low Income Unit, Very Low Income Unit or Moderate Income Unit.

1.29 Moderate-Income Household means a household with an annual household income that does not exceed one hundred twenty percent (120%) of Area Median Income, adjusted for actual household size.

1.30 Moderate Income Regulatory Agreement means an agreement between the City and a Residential Project developer to be recorded against the Moderate Income Units to ensure that the Moderate Income Units are sold or rented at an Affordable Housing Cost to Moderate Income Households, in a form to be approved by the City, as described in Section 4.1.1 of this Affordable Housing Plan.

1.31 Moderate Income Unit means a For-Sale Residential Unit or a For-Rent Residential Unit which is available to and occupied by Moderate Income Households and sold or rented at an Affordable Housing Cost for Moderate Income Households.

1.32 Project Financing Plan means the financing plan for each Affordable Housing Project to be prepared by the Qualified Housing Developer and submitted to the City for approval in accordance with the Conveyance Agreement.

1.33 Qualified Housing Developer means organizations, including governmental or quasi-governmental agencies, nonprofits and limited partnerships, with the financial capacity and experience and a proven history of developing Affordable Homes consistent with the character and quality of the Residential Projects, the Development Agreement and this Affordable Housing Plan, as determined by the City. The City has approved MidPen Housing Corporation as a Qualified Housing Developer.

1.34 [Intentionally omitted]

1.35 Residential Project means a Project containing Residential Units and may also contain other uses permitted under the Development Agreement and the Project Approvals.

1.36 Residential Unit means a building or portion of a building including one or more rooms which is designed or used as a residence for one household with facilities for living, sleeping, cooking, dining and sanitation and designed for occupancy for 32 consecutive days or more.

1.37 Site Selection Process has the meaning set forth in Section 3.3 hereof.

1.38 Title Defects has the meaning set forth in Section 3.5 hereof.

1.39 Utility Allowance means a utility allowance based on the utility allowance schedule published by the Housing Authority of the City of Napa or the California Tax Credit Allocation Commission.

1.40 Very Low Income Household means a household with an annual household income which does not exceed fifty percent (50%) of Area Median Income, adjusted for actual household size.

1.41 Very Low Income Unit means a For-Rent Residential Unit which is available to and occupied by Very Low Income Households and rented at an Affordable Housing Cost for Very Low Income Households.

2. AFFORDABLE HOUSING OBLIGATIONS.

A total of twenty percent (20%) of all Residential Units developed on the Property shall be affordable to Very Low Income Households, Low Income Households and Moderate Income Households. The Affordable Homes will be built on two Developable Affordable Parcels conveyed by the Landowner to the City that are sufficient, as determined by the City, to accommodate one hundred and forty (140) Affordable Homes in compliance with all applicable local and state codes and regulations, and City will in turn convey the Developable Affordable Parcels to a Qualified Housing Developer, in accordance with Section 3 hereof, who would be responsible for developing the Affordable Homes. Except as otherwise provided

herein, Landowner will have no obligations related to the construction of the Affordable Homes beyond the land dedication. As described in this Affordable Housing Plan, one hundred and forty (140) Affordable Homes will be developed and at least seventy (70) of the Affordable Homes will be Affordable to Very Low Income Households, with the remaining Affordable Homes Affordable to Low Income Households. In addition to the Affordable Homes, Landowner shall develop the greater of forty four (44) or six and six-tenths of one percent (6.6%) of the Market Rate Residential Units as Moderate Income Units Affordable to Moderate-Income Households as described in Section 4 of this Affordable Housing Plan. For example, for 300 Market Residential Units, at 6.6%, 20 Moderate Income Units would be provided, for a total of 320 Market Rate and Moderate Income Units. In addition, Landowner is required to make a Housing Contribution to the City in the amount of One Million Dollars (\$1,000,000) to be deposited by the City in a separate designated fund and used in accordance with the terms of Section 5 of this Affordable Housing Plan. In addition, Landowner shall pay to City, for all non-residential development on the Property except for development of a hotel on Parcel E, the amount of the County's Non-Residential Affordable Housing Impact Fees that would be due for such development if the Property had remained in the County's jurisdiction as provided in Section 5.2 of this Affordable Housing Plan. For development of a hotel on Parcel E, Landowner shall pay the amount of the City's Non-Residential Affordable Housing Impact Fee, subject to the provisions of Section 8.3 of the Agreement, as provided in Section 5.2 of this Affordable Housing Plan.

3. AFFORDABLE HOUSING LAND CONVEYANCE.

3.1 Affordable Housing Parcel Conveyance. Landowner shall convey to the City, at no cost to the City, two Developable Affordable Parcels which have been determined by the City to be of sufficient size and physical characteristics to accommodate the development of one hundred and forty (140) Affordable Homes in compliance with all applicable local and state codes and regulations, as required by this Affordable Housing Plan. Landowner shall convey a Developable Affordable Parcel in Phase One sufficient for the intended development of a minimum of seventy (70) Affordable Homes. Landowner shall convey a Developable Affordable Parcel in Phase Two sufficient for the intended development of the remaining required Affordable Homes. The City will convey the Developable Affordable Parcels, at no cost, to Qualified Housing Developers in accordance with the Conveyance Agreement. City agrees that the Developable Affordable Parcels may be used only for the construction of Affordable Homes as described in this Affordable Housing Plan.

3.2 Approved Sites. It is contemplated that Landowner will satisfy its obligation to convey two Developable Affordable Parcels to the City for development of the Affordable Homes in accordance with Section 3.1 of this Affordable Housing Plan by Completing all applicable Project Infrastructure (with the exception of any Deferred Project Infrastructure which shall be governed by the procedures of Section 3.8 hereof), or by entering into a secured improvement agreement in a form acceptable to the City to provide the Project Infrastructure, and by conveying the Developable Affordable Parcels selected in accordance with the procedures of Section 3.2 and Section 3.3 hereof.

3.2.1 Approved Sites. Landowner has selected and the City has approved Parcel 23 (Phase One) and Parcel 1 (Phase Two) as shown on the Land Use Plan,

Exhibit G to the Agreement, (each an “**Approved Site**” and collectively, the “**Approved Sites**”) as the parcels for development of the Affordable Homes and which Landowner will prepare as Developable Affordable Parcels for conveyance to the City in accordance with Sections 1.17 and 3.1 above. The Approved Sites are more particularly described on the Master Map.

3.2.2 Substitution or Modification of Approved Site. Prior to, or in connection with, Landowner’s submittal of a Final Map that includes an Approved Site, Landowner may substitute another parcel for an Approved Site, or modify or substitute an Approved Site in accordance with Section 3.3 below. For purposes of the Final Map, a change in an Approved Site approved in accordance with this Affordable Housing Plan shall be considered in substantial conformance with the Master Map.

3.3 Site Selection Process. Landowner and the City shall comply with the following procedures (the “**Site Selection Process**”) to determine any modification, reconfiguration, relocation or substitution of an Approved Site.

3.3.1 Criteria. A parcel (except as provided herein) proposed by Landowner to be modified, reconfigured, relocated or substituted for an Approved Site must meet the following criteria unless explicitly waived in writing by the City:

(i) Size. Be of sufficient size to accommodate the same number of Affordable Homes as the Approved Site taking into account the physical characteristics of the parcel and assuming a minimum density of twenty (20) units per acre.

(ii) Dimensions. Parcel dimensions shall be generally similar in shape to lots designated for Market Rate Residential Units with a similar configuration.

(iii) Frontages. Have a minimum of one (1) frontage (which may include an alleyway) that provides immediate vehicular access and immediate pedestrian access to a publicly accessible walkway or right of way.

(iv) Fiscal Impact. Not have a negative impact on the reasonably anticipated or proposed financing for the development of Affordable Homes on the parcel when compared to the Approved Site.

(v) Dispersal of Affordable Units, Timing and Location. Maintains the overall balance of providing Affordable Homes with access to transit, proximity to parks and other public amenities and that are dispersed throughout the Property, integrates the location of the Affordable Homes and the Market Rate Residential Units, and generally maintains the timing and proportionality of Affordable Homes and the Market Rate and Moderate Income Units relative to the Phasing Plan.

(vi) Site Conditions. Should not result in a parcel that is more difficult or expensive to develop (i.e., sites that include the need for extensive retaining walls, subsurface improvements, ongoing monitoring responsibilities, or that cannot accommodate the contemplated parking or common areas).

(vii) Project Infrastructure. Has or will have Completed Project Infrastructure (other than the Deferred Project Infrastructure, including as may be provided in a secured improvement agreement), access, and utility connections that are sufficient to support the proposed Affordable Housing Project at Commencement of Construction of the Affordable Housing Project.

(viii) Other Matters. The City may consider such additional or unique matters as may arise during the course of the development of the Project.

3.3.2 City Agreement. Within thirty (30) days after Landowner has provided the information in Subsection 3.3.1 above, the City shall confirm in writing its agreement, such agreement not to be unreasonably withheld, that the proposed parcel meets the criteria of this Section. In the event the City determines that the proposed parcel does not meet the criteria in Subsection 3.3.1 above and the Parties are unable to resolve such disagreement within thirty (30) days thereafter, the Landowner shall not be allowed to modify or substitute the Approved Site with the proposed parcel.

3.4 Conditions to Conveyance of Developable Affordable Parcels. Landowner shall convey to the City one Developable Affordable Parcel in Phase One and one Developable Affordable Parcel in Phase Two when the following conditions have been met:

3.4.1 Qualified Housing Developer. Landowner has designated a Qualified Housing Developer approved by the City. As of the date of this Agreement, MidPen Housing Corporation has been so designated and approved to develop the Developable Affordable Parcels, subject to the possible designation of an alternative Qualified Housing Developer as may be necessary or appropriate.

3.4.2 Initial Financing Plan. The City shall have approved an Initial Financing Plan prepared by the Qualified Housing Developer, in consultation with the City and the Landowner, for the construction and operation of the Affordable Homes on each Developable Affordable Parcel. The Initial Financing Plan shall include a sources and uses breakdown of the costs of constructing the Affordable Homes and an operating proforma for the Affordable Homes for the applicable Developable Affordable Parcel. Such sources and uses breakdown and operating proforma shall reflect the Qualified Housing Developer's then current expectations for development costs and funding sources (including, without limitation, funding provided from the County's Affordable Housing Fund and low income housing tax credits, federal and state affordable housing funding sources and conventional loans). The City's review of the proposed Initial Financing Plan shall be solely to determine if, in the City's reasonable judgment, there are sufficient sources of funds available to construct and operate the Affordable Homes on the applicable Developable Affordable Parcel. The City shall either approve or disapprove the Initial Financing Plan in writing within thirty (30) days of receipt. If disapproved, the City shall give specific reasons for disapproval. If the Initial Financing Plan is disapproved, Landowner and Qualified Housing Developer may resubmit, and the City shall promptly review and approve or disapprove a revised Initial Financing Plan that addresses the reasons for disapproval.

3.4.3 Conveyance Agreement. The City and the Qualified Housing Developer have entered into a Conveyance Agreement for the Developable Affordable Parcel,

which shall be substantially in the form attached hereto as Attachment B and which meets the requirements set forth in Section 3.6 below. The City and the Qualified Housing Developer shall enter into the Conveyance Agreement no later than close of escrow for conveyance of each Developable Affordable Parcel to the City by Landowner.

3.4.4 City Approvals. The City has approved the Approved Site as meeting all of the standards necessary to accommodate a sufficient number of Affordable Homes as required by this Agreement and to create a Developable Affordable Parcel and, if determined necessary by City to meet the "all appropriate inquiries" standards under 40 CFR Part 312: Standards and Practice for All Appropriate Inquiries; Final Rule, the City has obtained on or before the effective date of the Conveyance Agreement a Phase 1 Environmental Site Assessment prepared in accordance with ASTM International's E1527-13 standard, or such replacement standard as is adopted under federal rules to meet the all appropriate inquiry standard.

3.5 Conveyance of Developable Affordable Parcel to City.

3.5.1 Delivery of Affordable Housing Parcel Deed. Within thirty (30) days of satisfaction of the conditions set forth in Section 3.4, the Landowner shall, at no cost to the City, deliver to the escrow established by the Landowner and the City an Affordable Housing Parcel Deed substantially in the form attached hereto as Attachment A, conveying title to the City. Landowner shall be responsible for paying all escrow costs, transfer tax, recording fees and title insurance costs for a CLTA Owner's Policy with reasonable endorsements.

3.5.2 Recordation of Conveyance Agreement. At close of escrow conveying the Developable Affordable Parcel to the City, a memorandum of the Conveyance Agreement shall be recorded against the Developable Affordable Parcel.

3.5.3 Delivery of Title. At close of escrow, the Landowner shall deliver insurable title to the Developable Affordable Parcel to the City free and clear of liens, encumbrances, leases or other rights or possession, actual possession by any person, covenants, easements, taxes, assessments and other limitations or title defects, and all claims to any of the foregoing (collectively, "**Title Defects**"), except:

- (i) applicable building and zoning laws and regulations;
- (ii) the Affordable Housing Parcel Deed;
- (iii) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Affordable Housing Parcel Deed;
- (iv) title exceptions reasonably approved by the City;
- (v) the liens of any financing approved by the City;

(vi) the Development Agreement and other Project Approvals and Subsequent Approvals, including, without limitation, the final map recorded for the Developable Affordable Parcel and all matters disclosed therein; and

(vii) any environmental restrictions and covenants required to be recorded by the State of California Regional Water Quality Control Board (RWQCB) consistent with the approved environmental investigation and responses program, including the regional monitoring program (RMP).

The exceptions listed in (i) through (vii) are the "**Approved Title Exceptions.**"

3.5.4 Conveyance of Developable Affordable Parcel. The City, after obtaining title to the Developable Affordable Parcel shall subsequently convey the Developable Affordable Parcel to the Qualified Housing Developer in accordance with the terms of the Conveyance Agreement and subject only to the Approved Title Exceptions.

3.5.5 Applications for Tax Credit or Other Financing. Prior to the conveyance of a Developable Affordable Parcel to the City, the Landowner shall reasonably cooperate with the City's or Qualified Housing Developer's requests to be a co-applicant on any tax credit or other financing application for the financing of Affordable Homes on the Developable Affordable Parcel, provided that such reasonable cooperation shall be at no cost to the Landowner and the Landowner shall assume no liability whatsoever relating to or arising out of the Landowner being a co-applicant.

3.6 Requirements for Conveyance Agreement.

The Conveyance Agreement shall include the following:

3.6.1 Subsequent Approvals. The Qualified Housing Developer shall be obligated to obtain all applicable Subsequent Approvals in accordance with the Project Approvals, prior to conveyance of the Developable Affordable Parcel.

3.6.2 Project Financing Plan. The Qualified Housing Developer shall (A) have submitted or be required to submit an Initial Financing Plan, as described in Section 3.4.3 and (B) be required to submit to the City for City approval a Project Financing Plan prior to conveyance of the Developable Affordable Parcel. The Project Financing Plan shall be in substantial conformance with the guiding documents of the City Affordable Housing Impact Fee Fund, including specifically (a) the Policies and Procedures Manual (approved in 2010); (b) the Multifamily Rental Housing Transaction Underwriting Guidelines (approved in 2010); and (c) any updated versions of these documents or new guiding policies and documents that may be issued for the Affordable Housing Impact Fee Fund prior to the date for submission of the Project Financing Plan in the Conveyance Agreement. The Project Financing Plan shall include sources and uses breakdown of the costs of constructing the Affordable Homes on the Developable Affordable Parcel and an operating proforma for the Affordable Homes. Funding sources identified in the Project Financing Plan shall be based on evidence of preliminary funding commitments reasonably satisfactory to City. Notwithstanding the foregoing, if the Qualified Housing Developer is unable to provide preliminary commitments for sources of funds other than funding provided from the County's Affordable Housing Impact Fee Fund, the City in its sole discretion may nevertheless approve the Project Financing Plan based on information provided by the Qualified Housing Developer as to the feasibility of such identified sources not already committed and the City's own investigation as to the feasibility of obtaining such funding

sources, including competitiveness of the proposed development for such sources based on the then applicable scoring systems in place for such funding sources. The City shall either approve or disapprove the Project Financing Plan in writing within thirty (30) days of receipt. If disapproved, the City shall give specific reasons for disapproval. If the Project Financing Plan is disapproved, the Qualified Housing Developer may resubmit, and the City shall promptly review and approve or disapprove a revised Project Financing Plan that addresses the reasons for disapproval.

3.6.3 Affordable Home Requirements. The Qualified Housing Developer shall be obligated to provide to the City a breakdown of the number of Low Income Units and Very Low Income Units prior to conveyance of each Developable Affordable Parcel to the Qualified Housing Developer. No fewer than fifty percent (50%) of the Affordable Homes to be developed on each Developable Affordable Parcel shall be Very Low Income Units unless the number of Completed Very Low Income Units exceeds fifty percent (50%) of the total number of Affordable Homes Completed, in which event the Qualified Housing Developer may propose a lesser number of Very Low Income Units as long as the total number of Very Low Income Units Completed plus the number proposed is not less than fifty percent (50%) of the total number of Affordable Homes Completed and proposed.

3.6.4 Consistency. The Qualified Housing Developer shall be obligated to develop and construct the Affordable Housing Project in accordance with the applicable Project Approvals and Subsequent Approvals and to manage and operate the Affordable Homes consistent with the requirements of this Affordable Housing Plan.

3.6.5 Sources of Financing. Prior to conveyance of each Developable Affordable Parcel to the Qualified Housing Developer, the Qualified Housing Developer shall have secured the financing necessary for the development and operation of the Affordable Homes consistent with the approved Initial Financing Plan and, upon approval, the Project Financing Plan. If the Qualified Housing Developer is not able to obtain any source of financing that was identified in the approved Project Financing Plan, the Conveyance Agreement shall require the Qualified Housing Developer to submit to the City an updated Project Financing Plan showing alternative sources of funding and feasibility of obtaining such funding.

3.6.6 Regulatory Agreement. The Qualified Housing Developer shall be required to enter into a Regulatory Agreement for the Affordable Homes for the benefit of the City (which shall be binding on its successors and assigns) substantially in the form attached as Attachment C ("Affordable Homes Regulatory Agreement"). The Affordable Homes Regulatory Agreement shall require that the Affordable Homes be rented at an Affordable Housing Cost and occupied by Very Low Income Households and Low Income Households for a term of not less than fifty-five (55) years. The Affordable Homes Regulatory Agreement will be recorded against each Approved Site at the time of conveyance to the Qualified Housing Developer.

3.6.7 Performance Measures. The Conveyance Agreement will include performance measures that the Qualified Housing Developer is required to meet with regards to the development of the Affordable Homes and grant the City the right to terminate the Conveyance Agreement in the event the Qualified Housing Developer fails to meet the performance measures.

3.6.8 Right of Reverter. The Conveyance Agreement shall include a right of reverter for the benefit of the City that will provide the City the right to reacquire title to the Developable Affordable Parcel if the Qualified Housing Developer fails to construct the Affordable Homes in accordance with the terms and conditions of the Conveyance Agreement. If the City acquires the Developable Affordable Parcel pursuant to the right of reverter, the City shall take title subject to the Affordable Homes Regulatory Agreement and the conditions set forth in this Affordable Housing Plan and shall cause the development of the proposed Affordable Housing Project on the Developable Affordable Parcel consistent with the Project Approvals and Subsequent Approvals. If the City exercises its right of reverter and the Qualified Housing Developer has accepted a Deferred Infrastructure Liquidation Amount pursuant to Section 3.8 below and the Qualified Housing Developer has not installed the Deferred Project Infrastructure prior to the City's exercise of the right of reverter, the Qualified Housing Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the City at time of transfer of Title to the Developable Affordable Parcel. If the City exercises the right of reverter and takes title to the Developable Affordable Parcel, the City shall also be entitled to an assignment of all plans, studies and other materials prepared by the Qualified Housing Developer related to the development of the Affordable Housing Project, provided the City and the Qualified Housing Developer are able to reach agreement on compensation to the Qualified Housing Developer for the costs incurred for the preparation of such plans and studies.

3.6.9 RESERVED.

3.6.10 Notice Prior to Construction. The Qualified Housing Developer shall be required to give the Landowner the Preliminary Development Notice required pursuant to Section 3.7 as well as a written Commencement Notice at least six (6) months prior to the date the Qualified Housing Developer intends to Commence Construction and to provide the Landowner with notice of any subsequent revision to Qualified Housing Developer's Commencement of Construction date in order to allow the Landowner sufficient time to coordinate and Complete the applicable Project Infrastructure (other than Deferred Project Infrastructure) required to provide access and utility service to the Developable Affordable Housing Parcel prior to Commencement of Construction.

3.6.11 Approved Site Maintenance. The Qualified Housing Developer shall agree to maintain the Approved Site in a safe and orderly condition, including by fencing it to prevent entry by the public.

3.6.12 Coordination Provisions. The Conveyance Agreement shall incorporate the provisions of Sections 3.7 and 3.8.

3.6.13 Other Requirements. Such other requirements as the City and the Qualified Housing Developer may mutually determine are necessary to meet the goals and objectives of this Affordable Housing Plan to ensure the development of the Affordable Homes.

3.7 Preliminary Development Notice.

3.7.1 Cooperation and Coordination Agreement. The planning, design and construction of the Affordable Housing Project and its associated Project Infrastructure and

Deferred Project Infrastructure required to provide minimum access and utility services for the Affordable Housing Project will require cooperation and coordination between Landowner and the Qualified Housing Developer, and coordination and cooperation will also be required of them with respect to the construction of other projects and Project Infrastructure that may, from time to time, also be concurrently under construction. The Qualified Housing Developer and Landowner shall agree to cooperate and to take all acts reasonably necessary to reduce conflicts between the Affordable Housing Project's development and its associated Project Infrastructure and the development of other portions of the Property and associated Project Infrastructure.

3.7.2 Preliminary Development Notice. The Qualified Housing Developer shall provide Landowner with a preliminary development notice at the earlier of (i) eighteen (18) months prior to its targeted date for Commencement of Construction on a Developable Affordable Parcel, or (ii) the date that Qualified Housing Developer submits its first application for tax credit financing to the California Tax Credit Committee (the "**Preliminary Development Notice**"). The Preliminary Development Notice shall include to the extent available, and if not then available, as soon thereafter as such information becomes available, the information reasonably required to prepare and coordinate approval of improvement plans, permits and agreements, including the Qualified Housing Developer's anticipated construction start date, preliminary construction schedule, description of the general location of buildings, parking areas, site access, schematic utility design, power loads, wet utility demands and sanitary discharge loads, and anticipated dates for completion of construction of the Affordable Housing Project, when Deferred Project Infrastructure, including utility hookups and public access, will be required. The Preliminary Development Notice shall be updated on regular intervals, but not less frequently than every three months.

3.7.3 Notice of Changes in Development Schedule; Good Faith Negotiations. The Qualified Housing Developer shall notify Landowner if at any time, or from time to time, its development plans, or changes thereto, are likely to require changes to the Project Infrastructure or Deferred Project Infrastructure, or to the noticed Completion dates thereof. The Qualified Housing Developer and Landowner shall agree to negotiate in good faith with respect to any amendments to such construction schedule as may be necessary or appropriate from time to time to enable Landowner to prepare and obtain approval of necessary improvement plans, and to obtain required permits and authorizations for any Project Infrastructure changes.

3.7.4 Project Infrastructure Improvement Plans. Landowner shall provide the Qualified Housing Developer with a reasonable opportunity (of not less than fourteen (14) days), to review and comment on draft improvement plans for Project Infrastructure and Deferred Project Infrastructure, provided that nothing herein shall require Landowner to delay preparation or approval of improvement plans or construction to accommodate the Qualified Housing Developer's schedule for design and construction, absent notice and request from the Qualified Housing Developer and consent thereto by Landowner. Upon conveyance of the Developable Affordable Parcel to the City, Landowner shall provide the City and the Qualified Housing Developer with a copy of the approved Project Infrastructure Improvement Plans applicable to the Developable Affordable Parcel and shall thereafter provide copies of any modifications thereto.

3.8 Coordination of Construction and Deferred Project Infrastructure.

3.8.1 Coordination of Construction Deferred Project Infrastructure. The Parties intend that Deferred Project Infrastructure related to a Developable Affordable Parcel will be completed by Landowner in coordination with the development of the Affordable Housing Project on the Developable Affordable Parcel. Landowner's obligation to Complete any Deferred Project Infrastructure will be secured by Adequate Security, and City shall cause the Qualified Housing Developer to provide Landowner with all access needed to Complete Deferred Project Infrastructure on the Developable Affordable Parcels. Landowner shall coordinate the construction of the Deferred Project Infrastructure with the construction of the Affordable Housing Project to ensure that (i) the Deferred Project Infrastructure (other than utility laterals serving the applicable Developable Affordable Parcel) is Completed at or before completion of the Affordable Housing Project, (ii) the utility laterals serving the applicable Developable Affordable Parcel are Completed in coordination with the construction of the Affordable Housing Project, and (iii) Landowner's work does not interfere with or obstruct the Qualified Housing Developer's work during such construction to the maximum extent reasonably feasible and that the Qualified Housing Developer's work similarly does not interfere with Landowner's work.

3.8.2 Landowner's Right to Commence and Complete Deferred Project Infrastructure. Notwithstanding the foregoing, if Landowner has Commenced the Project Infrastructure required to serve parcels adjacent to or in the same Phase and in the vicinity of an Developable Affordable Parcel, then Landowner shall have the right to Commence and Complete the Deferred Project Infrastructure related to that Developable Affordable Parcel (other than the utility laterals for that particular Approved Site) even though design, development or construction of the applicable Affordable Housing Project may not yet have Commenced to the same extent.

Landowner shall provide the Qualified Housing Developer and the City not less than ninety (90) days' notice of its intent to Commence the Deferred Project Infrastructure, and such right shall accrue unless (i) the City or the Qualified Housing Developer objects within thirty (30) days following the receipt of Landowner's notice, and (ii) the City or Qualified Housing Developer, as applicable, and the Landowner agree, within sixty (60) days following the objection, to a payment amount equal to Landowner's anticipated cost of completing some or all of the Deferred Project Infrastructure on the applicable Developable Affordable Parcel (the "**Deferred Infrastructure Liquidation Amount**"). The City, the Qualified Housing Developer, and the Landowner shall meet and confer in good faith during the 60-day period (or such longer period as may be agreed to by the City, the Qualified Housing Developer and the Landowner) to reach agreement on the Deferred Project Infrastructure Liquidation Amount. Landowner shall provide its estimate of such costs, based upon the Deferred Project Infrastructure to be completed and substantiated by qualified contractor bid(s) or estimates(s) specifying the quantity and cost to complete the Deferred Project Infrastructure. If the City, Qualified Housing Developer and the Landowner are able to reach agreement on the Deferred Infrastructure Liquidation Amount, then Landowner shall promptly pay this sum to the then current owner of the Developable Affordable Parcel, either the City or the Qualified Housing Developer, and thereafter (i) Landowner shall be released from any further obligation to construct that portion of the Deferred Project

Infrastructure for which Landowner has paid the Deferred Infrastructure Liquidation Amount, and (ii) the City shall release any associated Adequate Security.

If the City receives the Deferred Infrastructure Liquidation Amount, the City shall transfer the Deferred Infrastructure Liquidation Amount to the Qualified Housing Developer at time of the conveyance of the Developable Affordable Parcel. Upon receipt of the Deferred Infrastructure Liquidation Amount, the Qualified Housing Developer shall be responsible to construct the portion of the Deferred Project Infrastructure covered by the Deferred Infrastructure Liquidation Amount. If the City, Qualified Housing Developer and the Landowner are not able to reach agreement on the Deferred Infrastructure Liquidation Amount within the time frame set forth above, then Landowner shall proceed to install the Deferred Project Infrastructure related to the applicable Developable Affordable Parcel. The Parties agree that completion of the utility laterals and other components of Deferred Project Infrastructure on the Developable Affordable Parcel in advance of the design development or related construction of the Affordable Housing Project on a particular Developable Affordable Parcel may result in the need to move or replace all or part of said Deferred Project Infrastructure. In order to avoid unnecessary costs and duplication of work, in the event the Landowner elects to proceed and to install the Deferred Project Infrastructure serving a Developable Affordable Parcel prior to adequate design development or construction to define and locate said Deferred Project Infrastructure for the Affordable Housing Project, Landowner shall Complete all of the Deferred Project Infrastructure except for the utility laterals and any other components of Deferred Project Infrastructure for which Landowner does not have sufficient design information from the Qualified Housing Developer, and the Landowner shall pay to the City or the Qualified Housing Developer a Deferred Infrastructure Liquidation Amount equal to the amount determined by Landowner and Approved by the City and the Qualified Housing Developer as the reasonably estimated cost of installing the utility lateral(s) or other deferred components of Deferred Project Infrastructure upon Completion of the remaining Deferred Project Infrastructure and upon such payment (i) Landowner shall be released from any obligation to Complete such Deferred Project Infrastructure and (ii) the City shall release any associated Adequate Security.

3.8.3 Payment in Lieu of Deferred Project Infrastructure Obligation.

Landowner and the Qualified Housing Developer shall also have the right to request at any time after conveyance of a Developable Affordable Parcel for the Landowner to pay the Deferred Infrastructure Liquidation Amount in lieu of Landowner's obligation to provide the Deferred Project Infrastructure for such Developable Affordable Parcel. If the City, the Qualified Housing Developer, and the Landowner are able to agree upon the Deferred Infrastructure Liquidation Amount as set forth in subsection 3.8.2 above, then Landowner shall pay this amount to the City or the Qualified Housing Developer, as applicable, at such time and thereafter (i) Landowner shall be released from the obligation to provide the Deferred Project Infrastructure for which the Deferred Infrastructure Liquidation Amount has been paid and (ii) the City shall release any associated Adequate Security. The City shall transfer the Deferred Infrastructure Liquidation Amount to the Qualified Housing Developer upon conveyance of the Developable Affordable Parcel to the Qualified Housing Developer. The Qualified Housing Developer shall use such funds for the Deferred Project Infrastructure, and for no other purpose, as set forth in subsection 3.8.2 above. If the City and the Landowner are not able to agree upon the Deferred Infrastructure Liquidation Amount, then there will be no action or payment on the Deferred Project Infrastructure unless and until Landowner provides notice to the Qualified Housing

Developer and the City pursuant to subsection 3.8.2 above of its intent to commence the Deferred Project Infrastructure on a particular Developable Affordable Parcel or Landowner is otherwise required to commence and Complete the Deferred Project Infrastructure in accordance with this Agreement.

3.8.4 Schedule Adjustments. Landowner's schedule under this Affordable Housing Plan to deliver Project Infrastructure and Deferred Project Infrastructure required to service an Affordable Housing Project shall be subject to modification if and to the extent changes in the type, nature, locations, amount, cost or phasing of Project Infrastructure or Deferred Project Infrastructure are required to respond to a Qualified Housing Developer's request or to accommodate changes in the Affordable Housing Project from those assumed in the previously approved improvement plans and agreement. Landowner shall have the right to reject such proposed Project Infrastructure changes if it would materially and adversely: (i) delay (unless such delay is accepted by the Qualified Housing Developer) or increase the costs of Project Infrastructure for the Affordable Housing Project; (ii) increase the costs to other Residential Projects or their associated Project Infrastructure; or (iii) delay or interfere with actual construction of such other Project Infrastructure or such other Residential Projects. If Landowner believes any adjustment to the Project Infrastructure or Deferred Project Infrastructure Completion dates related to the Affordable Housing Project is required, it shall provide City and the Qualified Housing Developer with notice and the detailed reasons therefor, and the Parties shall thereafter proceed in good faith to attempt to mutually agree upon a revised schedule, provided that the Landowner shall have the right to modify the schedule as necessary to respond to such materially changed circumstances or information related to the design and development of the Affordable Housing Project.

3.8.5 Completion Delay. Any delay in Completing any Project Infrastructure resulting from either a Force Majeure Delay or Affordable Housing Project specific infrastructure changes as described in Section 3.8.4 above shall not constitute a default by Landowner under this Agreement, nor shall Landowner's failure to Complete any Project Infrastructure (or Deferred Project Infrastructure) on or before the Project Infrastructure or Deferred Project Infrastructure Completion dates resulting from a Force Majeure Delay or project specific infrastructure changes described in Section 3.8.4 above constitute a default by Landowner under this Agreement, except to the extent that such delay is the result of the gross negligence or willful misconduct of Landowner or any contractor or agent of Landowner.

3.8.6 Performance. During the construction of Project Infrastructure and Deferred Project Infrastructure, Landowner shall deliver status reports to the City and the Qualified Housing Developer advising of the status and progress of the preparation of improvement plans and the construction of the Project Infrastructure (or Deferred Project Infrastructure), including a report of any significant delays in the progress of such construction and whether such delays are due to Force Majeure Delay or Affordable Housing Project specific infrastructure changes described in Section 3.8.4, and updating, as necessary, the estimated Project Infrastructure Completion date. Notwithstanding the foregoing provisions of this Affordable Housing Plan to the contrary, in no event shall Landowner be in default of its obligation to Complete the Project Infrastructure (or Deferred Project Infrastructure) hereunder unless Landowner's failure materially and adversely interferes with the Qualified Housing Developer's obtaining construction financing, permits and/or approvals for development of the

Affordable Housing Project, or the construction, use or occupancy of the Affordable Housing Project thereon, materially increases the Qualified Housing Developer's costs with respect to such Affordable Housing Project, or materially delays the Qualified Housing Developer's construction or occupancy of the Affordable Housing Project (when compared to the development schedule, including any updates provided or agreed upon in good faith), and such failure continues for more than forty-five (45) days following Landowner's receipt of written notice thereof from the Qualified Housing Developer; provided, however, that if more than forty-five (45) days is reasonably required to sufficiently complete the Project Infrastructure (or Deferred Project Infrastructure) to eliminate the interference with or delay to the Qualified Housing Developer's obtaining construction permits or approvals for development of the Affordable Housing Project or its construction, use or occupancy of the Affordable Housing Project, then Landowner will not be in default hereunder so long as: (i) temporary infrastructure is available to eliminate such interference or delay, including any interference or delay in the Qualified Housing Developer's obtaining construction permits or approvals for the Affordable Housing Project or, if applicable, a certificate of occupancy, and Landowner provides such temporary infrastructure within thirty (30) days following Landowner's receipt of the Qualified Housing Developer's notice described above; (ii) Landowner continues to so provide such temporary infrastructure until the completion of the Project Infrastructure (or Deferred Project Infrastructure); and (iii) Landowner diligently pursues completion of the Project Infrastructure (or Deferred Project Infrastructure). The Qualified Housing Developer's notice to Landowner of Landowner's failure to complete the Project Infrastructure (or Deferred Project Infrastructure) must specify, in reasonable detail, the basis for the Qualified Housing Developer's assertion that Landowner's failure to complete the Project Infrastructure (or Deferred Project Infrastructure) constitutes a default in Landowner's obligations as described above.

3.8.7 Post-Completion Changes to Project Infrastructure. If the Project Infrastructure (or Deferred Project Infrastructure) required to service an Affordable Housing Project has been completed at the time a change is requested by the Qualified Housing Developer or City with respect thereto to accommodate a change to or design of the Affordable Housing Project, then Landowner may, at its sole option, require the requesting Party to construct or to pay the costs associated with such Project Infrastructure changes, including, without limitation, the costs of obtaining necessary permits, design work, approvals or other authorizations, and providing all supplemental Security. Any such additional Project Infrastructure work shall include replacement or restoration of previously completed Project Infrastructure.

4. MODERATE INCOME HOUSING PROGRAM.

4.1 Moderate Income Unit Requirements.

4.1.1 Development of Moderate Income Units. As part of Landowner's obligation to provide 20% Affordable residential units, the Landowner shall construct, or cause to be constructed, up to the greater of forty-four (44) Moderate Income Units or Moderate Income Units that total six and six-tenths of one percent (6.6%) of the total number of Market Rate Residential Units in the Project (assuming maximum build-out of 755 Market Rate Residential Units this would be equivalent to fifty (50) Moderate Income Units) on the Property, which units will be disbursed throughout the Project and included within the Market-Rate

Residential Projects. The Moderate Income Units may be either For-Sale or For-Rent Residential Units at the Landowner's discretion. The Moderate Income Units shall be constructed in each Phase in which Residential Units are constructed such that no fewer than six and six-tenths of one percent (6.6%) of the Residential Units in each Phase shall be Moderate Income Units. Landowner shall have discretion to determine the exact number of Moderate Income Units to be developed in each Market Rate Residential Project, provided that the required number of Moderate Income Units is provided in each Phase. Landowner shall provide the City with written notice, prior to the conveyance of the first Market Rate Residential Project parcel in each Phase to a Residential Project developer, of the Market Rate Residential Projects designated or anticipated to be designated to include Moderate Income Units. Landowner may update the designation of Market Rate Residential Projects to include Moderate Income Units at any time as long as the designation in each Phase meets the required number of Moderate Income Units for that Phase.

Landowner shall impose the requirement to provide Moderate Income Units in the Market Rate Residential Projects designated by Landowner to include Moderate Income Units upon Residential Project developers at the time of sale or transfer of the parcels so designated (each a "Moderate Income Parcel") and an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (a "**Moderate Income Regulatory Agreement**"), in a form to be approved by the City, shall be recorded against each Moderate Income Parcel at time of conveyance to a Residential Project developer. If the Moderate Income Units to be constructed on a Moderate Income Parcel will be Rental Residential Units, the Moderate Income Regulatory Agreement shall require that the Moderate Income Units be rented at an Affordable Housing Cost and occupied by Moderate Income Households for a term of fifty-five (55) years. If the Moderate Income Units to be constructed on a Moderate Income Parcel will be For-Sale Residential Units, the Moderate Income Regulatory Agreement shall require that the Moderate Income Units be sold at an Affordable Housing Cost and occupied by Moderate Income Households for a term of forty-five (45) years. After Phase One, Landowner shall not be entitled to issuance of building permits for development of residential or commercial private development in Phase Two or Phase Three of the Project (except for the proposed hotel on Block E or other development in the Industrial Zoning District) unless the number of building permits issued for Moderate Income Units to date meets the proportion of Moderate Income Units required pursuant to this Section 4.1 in proportion to the number of Market-Rate Residential Units developed to-date.

4.1.2 Reserved

4.1.3 Comparability. Moderate Income Units shall be dispersed throughout each Residential Development Phase and shall include a range of sizes generally reflecting the range of sizes of Market Rate Residential Units. Moderate Income Units and Market Rate Residential Units in the same Residential Project with the same bedroom count shall be substantially similar in size, exterior appearance and overall quality of construction. Moderate Income Units' interior features need not be the same as or equivalent to those of the Market Rate Residential Units, as long as such features are of good quality.

4.1.4 Marketing Guidelines. Prior to marketing a Moderate Income Unit, Landowner shall submit to the City: (i) the marketing plan that gives a priority to

households who work in Napa County; (ii) the proposed rental charges and purchase prices for such Moderate Income Units that are consistent with the requirements of this Affordable Housing Plan; (iii) proposed eligibility and income-qualifications of renters and purchasers. The City shall review and approve or disapprove the marketing plan, such approval not to be unreasonably withheld, within thirty (30) days of receipt. If the City disapproves the marketing plan, it shall state its reasons for such disapproval in writing and with specificity. The Landowner shall resubmit a revised marketing plan addressing the reasons for disapproval prior to marketing the Moderate Income Units.

4.2 Congregate Care Retirement Community. In addition to the Market Rate Residential Units, the Landowner may develop on the Property a continuing care retirement community (CCRC) facility of up to 150 suites. If the Landowner develops such a facility, Landowner shall pay to the City, prior to the issuance of a building permit for the facility, the amount that would be due under the County's Affordable Housing Impact Fee Ordinance (County Code of Ordinances Section 18.) for the congregate care retirement community, calculated on the square footage of congregate living or assisted living dwelling units (exclusive of common areas and all other areas) located within the congregate care retirement community facility. Landowner's payment to the City of the amount of the County's Affordable Housing Impact Fee for the CCRC facility shall be in lieu of and full satisfaction of the City's Affordable Housing Impact Fee for such facility. Any impact fee paid by the Landowner in connection with the CCRC shall be used to assist the development of the Affordable Homes on the Property by the Qualified Housing Developer.

4.3 Marketing of the Market Rate Residential Units. The Landowner recognizes that the provision of the Project Approvals was predicated in part on the need to provide housing opportunities within the County for persons employed within the County. In order to maximize the opportunity for persons employed within the County to purchase or rent the Market Rate Residential Units in the Project, the Landowner, prior to the first sale or rental of a Market Rate Residential Unit, shall develop and submit to the City for its approval an outreach and marketing plan for the Market Rate Residential Units that will focus marketing efforts on persons employed within the County. The marketing plan will include preferences for those who currently live or work in Napa County, to the extent reasonably practicable and consistent with commercially reasonable criteria. The City will approve or disapprove the marketing plan within thirty (30) days of submission, such approval not to be unreasonably withheld. The Landowner shall implement the City -approved marketing plan, as it may be amended from time to time, when marketing any Market Rate Residential Units and will require any Residential Project developers developing Residential Units to do so as well.

4.4 Landowner's Obligation. Landowner's only obligations with respect to any affordable housing requirement(s) for the Property are to convey the Developable Affordable Parcels and provide Project Infrastructure (and Deferred Project Infrastructure) as required herein at no cost to the City and Qualified Housing Developer, pay the One Million Dollar Housing Contribution (as described in Section 5 below of this Affordable Housing Plan), to include or require the Residential Project developers to include the Moderate Income Units in the Market Rate Residential Developments in accordance with Section 4 of this Affordable Housing Plan, and to market the Moderate Income Units and the Market Rate Residential Units as required under Section 4 of this Affordable Housing Plan, in the condition and in the manner

described herein. Landowner will be obligated to convey the Developable Affordable Parcels to the City whether or not a Qualified Housing Developer Commences Construction of Affordable Homes or Completes Construction and regardless of how many Affordable Homes are actually built by the Qualified Housing Developers. Landowner shall not be entitled to issuance of building permits for development of residential or commercial private development in a subsequent Phase of the Project (except for the proposed hotel on Block E or other development in the Industrial Zoning District) unless in the previous Phase Landowner is in compliance with its obligations to date under this Affordable Housing Plan, including, where required or not otherwise conditioned, with respect to conveyance of a Developable Affordable Parcel to the City in accordance with and subject to Section 3, which is, among other things, subject to a City approved Initial Financing Plan, and Landowner has Completed the minimum Project Infrastructure (except for Deferred Project Infrastructure) required to serve such Approved Site in the prior Phase, as and to the extent provided herein.

5. LANDOWNER MILLION DOLLAR HOUSING CONTRIBUTION; NON-RESIDENTIAL AFFORDABLE HOUSING FEE; USE OF AFFORDABLE HOUSING IMPACT FEES.

5.1 Housing Contribution. As described in the Agreement, Landowner shall pay to the City One Million Dollars (\$1,000,000) as a Housing Contribution in accordance with this Section 5. The City shall deposit Housing Contribution payments received into a separate designated fund and shall use all such amounts to provide assistance to homebuyers whose households include at least one member who works in Napa County for purchase of Market Rate Residential Units and the Moderate Income Units developed as part of the Project. Landowner shall pay City Five Hundred Thousand Dollars (\$500,000) prior to the issuance of the first building permit for any Residential Project in Phase One. Landowner shall pay City an additional Two Hundred Fifty Thousand Dollars (\$250,000) prior to issuance of the first building permit for any Residential Project in Phase Two. Landowner shall pay City the final Two Hundred Fifty Thousand Dollars (\$250,000) prior to issuance of the first building permit for any Residential Project in Phase Three. Guidelines for use of these Housing Contribution payments will be submitted by the City to the County Housing Director, and City will in good faith consider County's comments and recommendations regarding the City's use of these funds, to ensure that the program serves the same overall purpose as the County's Proximity Housing Program to provide homeownership opportunities for the County's Workforce.

5.2 Non-Residential Affordable Housing Fee. As set forth in Section 8.2 of the Agreement, Landowner must pay directly to the City the amount of the County's Non-Residential Affordable Housing Impact Fee in connection with the issuance of all non-residential building permits issued for development of the Property, provided, however, that Landowner shall pay the either the County's or the City's Non-Residential Affordable Housing Impact Fee (but not both) to the City in connection with the issuance of a non-residential building permit for a hotel on Parcel E, in accordance with the provisions of Section 8.3 of the Agreement. Landowner's payment to the City of the amount of the County's Non-Residential Affordable Housing Impact Fee for non-residential building permits shall be in lieu of and full satisfaction of City's Non-Residential Affordable Housing Impact Fee for such non-residential development.

5.3 Use of Affordable Housing Impact Fees Generated by Project. The City shall use all Affordable Housing Impact Fees generated from development on the Property only for purposes of providing funding assistance to the Qualified Housing Developer for the development of the Affordable Homes through the date that Commencement of Construction (as defined in the Affordable Housing Plan) of one hundred and forty (140) Affordable Homes has occurred. Thereafter, any Affordable Housing Impact Fees generated from development on the Property shall be used to fund the development of the Moderate Income Homes on the Property or to assist Moderate Income Households who work in the County of Napa to rent or purchase the Moderate Income Homes. Notwithstanding the foregoing, the City's obligation to use Affordable Housing Impact Fees as described in this Section 3.1 shall terminate on the first date that both (a) Commencement of Construction of 140 Affordable Homes occurred, and (b) the City has issued Certificates of Occupancy for forty-five (45) deed restricted Moderate Income Homes on the Property.

6. NON-APPLICABILITY OF COSTA HAWKINS ACT

The Parties understand and agree that the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 et seq.; the "Costa-Hawkins Act") does not and in no way shall limit or otherwise affect the restriction of rental charges for the Affordable Homes or the Moderate Income Units developed pursuant to this Affordable Housing Plan. The Agreement falls within an express exception to the Costa-Hawkins Act because the Agreement is a contract with a public entity in consideration for a direct financial contribution and other forms of assistance specified in Chapter 4.3 (commencing with section 65915) of Division 1 of Title 7 of the California Government Code. Accordingly, Landowner, on behalf of itself and all of its successors and assigns, including all Residential Project developers, agrees not to challenge, and expressly waives, now and forever, any and all rights to challenge, Landowner's obligations set forth in this Affordable Housing Plan related to Moderate Income Units, under the Costa-Hawkins Act, as the same may be amended or supplanted from time to time. Landowner shall include the following language, in substantially the following form, in all agreements it enters into with Residential Project developers:

"The Development Agreement (including the Affordable Housing Plan) by and between the City of Napa and Napa Redevelopment Partners, LLC, dated _____ and recorded _____, at _____ implements County of Napa policies and City of Napa policies and includes regulatory concessions, incentives and significant public investment in the Napa Pipe Project. These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of Landowner and Residential Project developer, as contemplated by California Government Code section 65915. In light of the City's authority under Government Code Section 53395.3 and in consideration of the direct financial contribution and other forms of public assistance described above, the Parties understand and agree that the Costa-Hawkins Act does not and shall not apply to the Moderate Income Units as defined in the Development Agreement developed at the Napa Pipe Project Site."

The Parties understand and agree that neither the City nor Landowner would be willing to enter into this Agreement, without the agreement and waivers as set forth in this Article 6.

ATTACHMENT A: Affordable Housing Project Deed

ATTACHMENT B: Form of Conveyance Agreement

ATTACHMENT C: Form of Regulatory Agreement

EXHIBIT "A"
ATTACHMENT A
Affordable Housing Project Deed

ATTACHMENT 2

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

MAIL TAX STATEMENTS TO:

(Above Space for Recorder's Use Only)

GRANT DEED

(_____)

Documentary Transfer Tax not shown
pursuant to Section 11932 of the Revenue
and Taxation Code, as amended.

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, NAPA REDEVELOPMENT PARTNERS, a Delaware limited liability company ("Grantor"), hereby GRANTS to the CITY OF NAPA, a California charter city and municipal corporation ("Grantee"), the real property located in the City of Napa, State of California, as described in Exhibit 1 attached hereto and incorporated herein by this reference (the "Property").

This Affordable Housing Parcel Deed ("Deed") is given in accordance with the Second Amendment to and First Restatement of Development Agreement between Grantor and Grantee dated as of _____ and recorded on _____ in the Official Records of Napa County as Document No. _____ ("Development Agreement"), including, without limitation the Affordable Housing Plan attached as Exhibit B to the Development Agreement ("Housing Plan"). Capitalized terms used in this Deed and not otherwise defined shall have the meanings set forth in the Development Agreement and the Housing Plan.

For a continuous period of __ years from the date of issuance of a Certificate of Occupancy for a Residential Project located on the Property, regardless of any termination of the Development Agreement (the "Term"), the Grantee shall use the Property solely in accordance with the requirements of the Development Agreement and the Housing Plan, including but not limited to compliance with the use restrictions described in the Housing Plan, as such document may be amended from time to time. Grantee covenants that the restrictions in this Deed shall be binding on Grantee and its successor and assigns for the Term, and that upon expiration of the Term, Grantee and its successors and assigns may utilize the Property without regard to the restrictions contained in the Housing Plan.

EXHIBIT "A"
ATTACHMENT A
Affordable Housing Project Deed

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This Grant Deed may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single agreement with the same effect as if both parties had signed the same counterpart. Any signature page from any counterpart of this Grant Deed, signed only by one party, may be detached from such counterpart and re-attached to any other counterpart of this Grant Deed signed only by the other party.

IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed as of

_____, _____.

NAPA REDEVELOPMENT PARTNERS,
LLC

By_____

Name:_____

Its:_____

EXHIBIT "A"
ATTACHMENT A
Affordable Housing Project Deed

ATTACHMENT 2

ACCEPTANCE BY GRANTEE

Grantee hereby accepts this Grant Deed and agrees to be bound by the reservations and exceptions contained herein and by the covenants made by Grantee herein.

CITY OF NAPA, a California charter city
and municipal corporation

By _____
Name: _____
Its: _____

EXHIBIT "A"
ATTACHMENT A
Affordable Housing Project Deed

ATTACHMENT 2

CERTIFICATE OF ACKNOWLEDGMENT
OF NOTARY PUBLIC

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"
ATTACHMENT A
Affordable Housing Project Deed

ATTACHMENT 2

CERTIFICATE OF ACKNOWLEDGMENT
OF NOTARY PUBLIC

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"
ATTACHMENT A
Affordable Housing Project Deed

ATTACHMENT 2

EXHIBIT "1"

LEGAL DESCRIPTION OF PROPERTY

All that certain real property located in the City of Napa, State of California, described as follows:

EXHIBIT "A"
ATTACHMENT B
Form of Conveyance Agreement

ATTACHMENT 2

CONVEYANCE AGREEMENT

BETWEEN

THE CITY OF NAPA

AND

MIDPEN HOUSING CORPORATION

EXHIBIT "A"
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CONVEYANCE AGREEMENT
(NAPA PIPE)

This Conveyance Agreement (the "Agreement") is entered into as of _____, _____ (the "Effective Date"), by and between the City of Napa, a California charter city and municipal corporation (the "City"), and MidPen Housing Corporation, a California nonprofit public benefit corporation (the "Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined in Article I of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The City and Napa Redevelopment Partners, LLC ("NRP") entered into that certain Second Amendment to and First Restatement of Development Agreement related to the Napa Pipe project (the "Project"), dated as of _____ ("Development Agreement") providing for the redevelopment of certain property commonly referred to as the Napa Pipe property ("Development Area").

C. The Development Agreement and in particular the Affordable Housing Plan attached as Exhibit B to the Development Agreement require that NRP convey to the City certain property located within the Development Area to be developed with housing affordable to Very Low Income and Low Income Households in accordance with the Affordable Housing Plan.

D. The Developer has been selected by NRP and approved by the City under the Affordable Housing Plan as the Qualified Housing Developer for the Property.

E. The City and the Developer desire to determine the conditions under which the Property will be conveyed to the Developer in accordance with the Affordable Housing Plan, so that the Developer may develop the Improvements on the Property and operate an affordable housing project thereon.

F. The Project was subject to a certified environmental impact report ("Project EIR"). The Project EIR, along with a subsequent Addendum, was determined to constitute complete and adequate environmental review for this Agreement in accordance with CEQA.

THEREFORE, the City and the Developer agree as follows:

ARTICLE I.
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

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(a) “Affordable or Affordable Housing Cost” means (i) with respect to a Residential Unit required to be Affordable to a Very Low Income Household, a monthly rental charge, including a Utility Allowance, which does not exceed thirty percent (30%) of one-twelfth of fifty percent (50%) of the Area Median Income based on Assumed Household Size; (ii) with respect to a Residential Unit Affordable to a Low Income Household a monthly rental charge, including a Utility Allowance which does not exceed thirty percent (30%) of one-twelfth of sixty percent (60%) of the Area Median Income based upon Assumed Household Size.

(b) “Affordable Housing Plan” means Exhibit B to the Development Agreement, as it may be amended from time to time.

(c) “Annual Income” means the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations, Section 6914.

(d) “Area Median Income” means the median income for households in Napa County, as established and periodically amended by HUD pursuant to Section 8 of the United States Housing Act of 1937, with adjustments for actual household size or Assumed Household Size as specified in this Agreement or the Regulatory Agreement.

(e) “Assumed Household Size” means one person in a studio unit, and for non-studio units, the total number of bedrooms multiplied by 1.5.

(f) “CEQA” means the California Environmental Quality Act (Public Resource Code §§ 21000 et seq.) and its implementing regulations.

(g) “Certificate of Completion” means the certificate to be issued by the City pursuant to Section 4.14 of this Agreement.

(h) “Certificate of Occupancy” means the final certificate of occupancy issued by the City upon completion of construction of the Improvements.

(i) “City” means the City of Napa, a municipal corporation.

(j) “Close of Escrow” means the date the Grant Deed is recorded in the Official Records.

(k) “Control” means direct or indirect management or control of the: (i) managing member or members in the case of a limited liability company; (ii) the managing general partner or general partners in the case of a partnership; and (iii) boards of directors that overlap by fifty percent (50%) or more of their directors, or a majority of the directors in the case of a corporation.

(l) “County” means Napa County, a political subdivision of the State.

(m) [intentionally omitted]

(n) “City Event of Default” has the meaning set forth in Section 7.3.

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(o) "Deferred Project Infrastructure" means items of Project Infrastructure related to the Property consisting of (1) final, primarily behind the curb, right-of-way improvements, including, sidewalks, light fixtures, street furniture, landscaping, irrigation and drainage, and driveway cuts, and (2) utility laterals serving the Property, including storm, sewer, water, reclaimed water, dry utilities, and joint trench as necessary to provide operable electrical, gas, phone and cable, and utility boxes.

(p) "Deferred Infrastructure Liquidation Amount" means that amount agreed upon by NRP, the City and the Developer as the cost of completing some or all of the Deferred Project Infrastructure on the Property as determined pursuant to the Affordable Housing Plan.

(q) "Developer" means MidPen Housing Corporation, a California nonprofit public benefit corporation, and its successors and assigns as permitted by this Agreement.

(r) "Developer Event of Default" has the meaning set forth in Section 7.4.

(s) "Development" means the Property and the Improvements.

(t) "Development Schedule" means the schedule attached as Exhibit C, as approved by the City setting forth the Developer's anticipated schedule for the Developer's acquisition of the Property and development of the Development.

(u) "Effective Date" means the date this Agreement is entered into by the Parties as first written above.

(v) "Grant Deed" means the grant deed by which the City conveys the Property to the Developer in a form to be provided by the City.

(w) "Hazardous Materials" means:

(1) any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;

(2) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;

(3) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq.), Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and

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(4) any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Development.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction or maintenance, of residential developments, or typically used in office or residential activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Development, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

(x) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.

(y) "Improvements" means, collectively, the Low Income Homes and the related improvements to be developed on the Property.

(z) "Initial Financing Plan" means the initial financing Plan prepared by the Developer in consultation with NRP and City for the construction of all of the Low Income Homes on the Development Area and approved by the City, attached hereto as Exhibit B.

(aa) [intentionally omitted]

(bb) "Low Income Homes" means, collectively, the _____ (____) for-rent Residential Units to be developed by the Developer on the Property at an Affordable Housing Cost and rented to Very Low and Low Income Households in accordance with this Agreement and the Regulatory Agreement.

(cc) "Low Income Household" means a household with an annual income which does not exceed eighty percent (80%) of Area Median Income, adjusted for actual household size.

(dd) "Memorandum of Conveyance Agreement" means the Memorandum of Conveyance Agreement to be recorded against the Property when the Property is conveyed to the City and this Agreement is entered into by the Developer and the City. A form of the Memorandum of Conveyance Agreement shall be provided by the City.

(ee) "Official Records" means the official land records of the County.

(ff) "Preliminary Development Notice" means that notice to be given by the Developer to NRP pursuant to Section 4.1 of this Agreement.

(gg) "Project Approvals" means those certain approvals for the mixed use project known as Napa Pipe, which Project Approvals include:

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(1) Resolution No. [REDACTED], adopted by the City Council on [DATE], approving a General Plan amendment;

(2) Ordinance No. [REDACTED], adopted by the City Council on [DATE], amending Title 17 of the Napa Municipal Code ;

(3) Resolution No. [REDACTED], adopted by the City Council on [DATE], approving an amendment to the Master Map, an amendment to the Development Plan and an amendment to the Design Guidelines;

(6) Ordinance No. [REDACTED], adopted by the City Council on [DATE], approving this Second Amendment.

(hh) “Project Financing Plan” means the Developer’s plan for financing the development of the Improvements, as more fully described in the Affordable Housing Plan and in Section 2.3 of this Agreement.

(ii) “Project Infrastructure” shall have the meaning set forth in the Development Agreement.

(jj) “Property” means the real property to be developed by the Developer pursuant to this Agreement, which real property is more particularly described in Exhibit A.

(kk) “Residential Unit” means a building or portion of a building including one or more rooms which is designed or used as a residence for one household with facilities for living, sleeping, cooking, dining and sanitation and designed for occupancy for 32 consecutive days or more.

(ll) “Security Financing Interest” has the meaning set forth in Section 8.1.

(mm) “Subsequent Approvals” means any and all land use approvals, entitlements or permits or approvals of any kind or character consistent with the Project Approvals that are necessary or advisable for the development, construction, use, and occupancy of the Improvements in accordance with the Development Agreement, the other Project Approvals, and this Agreement, including, but not limited to, approvals required under the Zoning Ordinance, Design Guidelines, Plan Review Process, subdivision maps, site permits, minor administrative permits, sign permits, lot mergers, building permits, street and park improvement permits, improvement plans, use permits, variances, demolition permits, site clearance permits, grading and excavation plans and permits, certificates of occupancy, abandonment or establishment of streets or rights-of-way, utility easements, right-of-way transfers, sewer and water conversion permits, and encroachment permits.

(nn) “Title Company” means _____, or such other title company as the Parties may mutually select.

(oo) “Title Report” means that certain title report dated _____, issued by the Title Company for the Property.

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(pp) “Transfer” has the meaning set forth in Section 6.1.

(qq) “Utility Allowance” means a utility allowance based on the utility allowance schedule published by the Housing Authority of the City of Napa or the California Tax Credit Allocation Commission.

(rr) “Very Low Income Household” means a household with an annual income which does not exceed fifty percent (50%) of Area Median Income, adjusted for actual household size.

Section 1.2 Exhibits.

The following exhibits are attached to and incorporated in the Agreement:

Exhibit A: Legal Description of the Property
Exhibit B: Initial Financing Plan
Exhibit C: Development Schedule

ARTICLE 2.
PREDISPOSITION REQUIREMENTS FOR
CONVEYANCE OF THE PROPERTY

Section 2.1 Conditions Precedent to Disposition of Property.

The requirements set forth in this Article 2 are conditions precedent to the City’s obligation to convey the Property to the Developer. The City shall have no obligation to convey the Property to the Developer unless the Developer has satisfied the conditions precedent set forth in this Article 2 in the manner set forth below and within the timeframe set forth in the Development Schedule. Developer may request extensions to the time periods and dates set forth in the Development Schedule and the City may grant such requests in its sole and absolute discretion. In no event shall the City be obligated to provide such extensions.

Section 2.2 Subsequent Approvals.

No later than the date set forth in the Development Schedule, the Developer shall apply for, and exercise diligent good faith efforts to obtain, the Subsequent Approvals, including without limitation design review approval in accordance with the Project Approvals. Without limiting any other provision of this Agreement, Developer’s failure to obtain building permits by the date set forth in the Development Schedule shall be a material default of this Agreement by Developer. The Developer’s application for the Subsequent Approvals shall be substantially consistent with the Project Approvals. Procurement by the Developer of all Subsequent Approvals necessary to commence construction of the Improvements shall be a condition precedent to the City’s obligation to convey the Property to the Developer.

As set forth in Section 9.14, the Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit allocation and approval process.

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Section 2.3 Initial Financing Plan and Project Financing Plan.

As of the Effective Date, the City has approved the Initial Financing Plan attached to this Agreement as Exhibit B prepared by the Developer in consultation with NRP providing an initial financing plan for all of the Low Income Homes to be developed on the Development Area. No later than the date set forth in the Development Schedule, the Developer shall submit an updated and revised Project Financing Plan for the Development. The Project Financing Plan shall be in substantial conformance with the guiding documents of the Napa County Affordable Housing Trust Fund, including specifically (a) the Policies and Procedures Manual (approved in 2010); (b) the Multifamily Rental Housing Transaction Underwriting Guidelines (approved in 2010); and (c) any updated versions of these documents or new guiding policies and documents that may be issued for the Affordable Housing Trust Fund prior to the date of submission of the Project Financing Plan". The Project Financing Plan shall include the following:

(a) A breakdown of the number of Low Income Homes the Developer intends to develop and rent at Affordable Housing Costs to Very Low Income Households and Low Income Households. No fewer than fifty percent (50%) of the Low Income Homes shall be Affordable to Very Low Income Households unless the number of completed Low Income Homes Affordable to Very Low Income Households in the Development Area exceeds fifty percent (50%) of the total number of Low Income Homes completed, in which event the Developer may propose a lesser number of Low Income Homes Affordable to Very Low Income Households as long as the total number of completed Low Income Homes Affordable to Very Low Income Households plus the number proposed is not less than fifty percent (50%) of the total number of Low Income Homes completed and proposed.

(b) An updated "sources and uses" breakdown of the costs of constructing the Improvements, and an updated operating proforma for the Development. Such updated sources and uses breakdown and operating proforma shall reflect the Developer's then current expectations for funding sources and development costs.

(c) Copies of funding commitments for any financing source, including loans and grants, in amounts sufficient to demonstrate that the Development is financially feasible and copies of any funding commitments for all other financing required to develop and operate the Development. If at the time of submission of the Project Financing Plan, the Developer does not have commitments from all sources of financing, the Project Financing Plan shall include information on the Developer's actions to obtain such financing commitments and the Developer's estimate of the likelihood of receiving such financing commitments.

(d) A Tax Credit Reservation from TCAC and a letter of intent from an investor for equity funding for the Development in an amount that when combined with the other sources of financing committed to the Development demonstrates that the Development is financially feasible, or if the Developer has not applied for tax credits at the time of submission, the Project Financing Plan shall include the Developer's projected date for submitting an application for tax credits, the requirements for submitting an application that is likely to score sufficient points to receive a Tax Credit Reservation and Developer's estimation of the feasibility of meeting those requirements within the time frame set out in the Project Financing Plan.

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(e) Any other information that would assist the City in determining that the Developer has the financial capability to pay all costs of constructing the Improvements and operating the Development.

The City shall review the Project Financing Plan to determine if, in the City's reasonable judgment, the Developer has the financial capability to pay all realistically established costs of constructing the Improvements, and operating the Development. The City shall either approve, disapprove, or conditionally approve the Project Financing Plan and any proposed amendments of the Project Financing Plan in writing within thirty (30) days of receipt. If disapproved, the City shall give specific reasons for disapproval. If the Project Financing Plan is disapproved, the Developer may resubmit, and the City shall promptly review, a revised Project Financing Plan that addresses the reasons for disapproval, and the City shall grant the Developer a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Project Financing Plan. If, at the time of submission of the Project Financing Plan, the Developer does not have commitments for all financing required to pay for the costs of constructing the Improvements and a Tax Credit Reservation, the City, in its sole discretion, may conditionally approve the Project Financing Plan, in which event, the City's conditional approval will require that the Developer submit amendments to the Project Financing Plan demonstrating progress on obtaining the necessary financing within time frames to be determined by the City based on information provided by the Developer in the submitted Project Financing Plan. The City shall not be obligated to convey the Property to the Developer until the City has unconditionally approved a Project Financing Plan.

All financing necessary to construct the Improvements, as approved by the City in the Project Financing Plan, shall be closed by the Developer prior to, or simultaneously with, the conveyance of the Property by the City to the Developer. The Developer shall also submit to the City evidence, reasonably satisfactory to the City, that any conditions to the release or expenditure of the financing described in the approved Project Financing Plan as the sources of funds to pay the costs of constructing the Improvements have been met, or will be met upon conveyance of the Property to the Developer, and that such funds will be available, subject to the Developer's satisfaction of standard disbursement preconditions required to be satisfied on a periodic basis, for constructing the Improvements. Submission by the Developer, and approval by the City, of such evidence of financing availability shall be a condition precedent to the City's obligation to convey the Property to the Developer.

Section 2.4 Building Permit.

No later than the date set forth in the Development Schedule, the Developer shall apply for a building permit allowing for the construction of the Improvements consistent with the Subsequent Approvals. After submitting an application for a building permit, the Developer shall diligently pursue and obtain a building permit for the Improvements, no later than the date set forth in the Development Schedule. In the event the Developer intends to use funds disbursed at Close of Escrow to pay for a building permit, the City may convey the land to Developer if Developer has obtained a permit-ready letter in place of a building permit; provided, however, the Developer shall provide evidence and assurances reasonably satisfactory to the City that Developer will pull the permit concurrently with or immediately following Close

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of Escrow. The City shall render all reasonable assistance (at no additional cost or expense to the City) to the Developer to obtain the building permit.

ARTICLE 3.
CONVEYANCE OF PROPERTY

Section 3.1 Conveyance.

Provided the pre-disposition requirements set forth in Article 2 have been satisfied in the manner set forth above and by the dates set forth in the Development Schedule, the City shall convey to the Developer, and the Developer shall acquire from the City, the Property pursuant to the terms, covenants, and conditions of this Agreement at no cost to the Developer.

Section 3.2 Opening Escrow.

To accomplish the conveyance of the Property from the City to the Developer, the Parties shall establish the escrow with the Title Company. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, which instructions shall be consistent with this Agreement.

Section 3.3 Close of Escrow.

The Close of Escrow shall occur no later than the date set forth in the Development Schedule, and only in the event that all conditions precedent to conveyance set forth in Article 2 have been satisfied or waived by the City. In addition to the conditions precedent set forth in Article 2, the following conditions shall be satisfied prior to or concurrently with, and as conditions of, the Close of Escrow:

- (a) The Developer shall provide the City with copies of the Developer's organizational documents, a certified copy of a Developer's authorizing resolution, approving the transactions contemplated pursuant to this Agreement.
- (b) The Developer shall have executed and delivered to the City the Regulatory Agreement and the Grant Deed, and all other documents and instruments required to be executed and delivered, all in form and substance satisfactory to the City.
- (c) The Grant Deed and the Regulatory Agreement shall have been recorded against the Property.
- (d) There shall exist no condition, event or act which would constitute a breach or default under this Agreement, or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default.
- (e) All representations and warranties of the Developer contained in this Agreement shall be true and correct as of the Close of Escrow.

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Section 3.4 Condition of Title.

Upon the Close of Escrow, the Developer shall have insurable title to the Property which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (a) applicable building and zoning laws and regulations;
- (b) the Memorandum of Conveyance Agreement and the Regulatory Agreement;
- (c) the Grant Deed;
- (d) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed;
- (e) exceptions numbered _____ in the Title Report; and
- (f) the liens of any financing approved by the City.

Section 3.5 Condition of Property.

(a) In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), the City hereby represents and warrants that it has no knowledge, and has no reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the City to the Developer.

(b) **"AS IS" PURCHASE. PRIOR TO THE EFFECTIVE DATE, THE DEVELOPER WAS PROVIDED THE OPPORTUNITY TO INVESTIGATE THE PROPERTY, AND HAS APPROVED THE PHYSICAL CONDITION OF THE PROPERTY. THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS SELLING AND THE DEVELOPER IS BUYING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR**

ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (F) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, AND (H) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR CITY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR CITY.

(c) Survival. The terms and conditions of this Section 3.5 shall expressly survive the Close of Escrow, shall not merge with the provisions of the Grant Deed, or any other closing documents and shall be deemed to be incorporated by reference into the Grant Deed. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

(d) Acknowledgment. The Developer acknowledges and agrees that: (i) to the extent required to be operative, the disclaimers of warranties contained in Section 3.5 hereof are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement and that the City would not have agreed to convey the Property to the Developer without the disclaimers and other agreements set forth in this Section.

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(e) Developer's Release of the City. The Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City and its elected and appointed officials, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (ii) any presence of Hazardous Materials; and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(f) Scope of Release. The release set forth in Section 3.5(e) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Developer's Initials:_____

Section 3.6 Costs of City Parcel Escrow and Closing.

Ad valorem taxes, if any, shall be prorated as of the date of conveyance of the Property from the City to the Developer. The Developer shall pay the cost of title insurance, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, and any additional costs to close the escrow.

ARTICLE 4.
CONSTRUCTION OF IMPROVEMENTS

Section 4.1 Preliminary Development Notice.

(a) Developer is required to coordinate construction of the Improvements with the construction of the Project Infrastructure applicable to the Property, including the Deferred Project Infrastructure, which is to be constructed by NRP. Developer agrees to cooperate and to take all acts necessary to reduce conflicts between the construction of the Improvements and the construction of the Project Infrastructure and the development of other portions of the Development Area by NRP.

(b) The Developer shall provide NRP with a Preliminary Development Notice at the earlier of (i) eighteen (18) months prior to its targeted date for commencement of construction of the Improvements, or (ii) the date that Developer submits its first application for tax credit financing to the California Tax Credit Allocation Committee. The Preliminary Development Notice shall include to the extent available, and if not then available, as soon thereafter as such information becomes available, all of the following: information reasonably required to prepare and coordinate approval of improvement plans, permits and agreements, including the Developer's anticipated construction start date; preliminary construction schedule, including the anticipated dates for completion of the Improvements and when Deferred Project Infrastructure, including utility hookups and public access, will be required; and description of the general location of buildings, parking areas, site access, schematic utility design, power loads, wet utility demands and sanitary discharge loads. The Developer shall update the Preliminary Development Notice on regular intervals, but not less frequently than every three months.

(c) The Developer shall notify NRP if at any time, or from time to time, its development plans, or changes thereto, are likely to require changes to the Project Infrastructure or Deferred Project Infrastructure, or to the noticed completion dates thereof. As provided in the Affordable Housing Plan, the Developer and NRP shall agree to negotiate in good faith with respect to any amendments to such construction schedule as may be necessary or appropriate from time to time to enable NRP to prepare and obtain approval of necessary improvement plans, and to obtain required permits and authorizations for any Project Infrastructure changes.

Section 4.2 Construction Pursuant to Plans.

The Improvements shall be constructed substantially in accordance with the Subsequent Approvals.

Section 4.3 Commencement of Improvements.

The Developer shall commence construction of the Improvements no later than the date set forth in the Development Schedule.

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Section 4.4 Completion of the Improvements.

Subject to Section 9.3 below, the Developer shall diligently prosecute to completion the construction of the Improvements no later than the date set forth in the Development Schedule.

Section 4.5 Coordination of Construction and Deferred Project Infrastructure.

(a) The Affordable Housing Plan requires NRP to construct the Project Infrastructure serving the Property, including the Deferred Project Infrastructure, or to pay to the Developer or the City, the Deferred Infrastructure Liquidation Amount. If NRP has not constructed the Project Infrastructure or any portion thereof or paid the Deferred Infrastructure Liquidation Amount for the portion of the Project Infrastructure not completed at the time that the Developer commences construction of the Improvements, the Developer shall provide NRP with all access needed to complete the Project Infrastructure on the Property. In accordance with the Affordable Housing Plan, NRP is required to coordinate the construction of the Deferred Project Infrastructure with the construction of the Improvements to ensure that (i) the Deferred Project Infrastructure (other than utility laterals serving the Property) is completed at or before completion of the Improvements, (ii) the utility laterals serving the Property are completed in coordination with the construction of the Improvements, and (iii) NRP's work does not interfere with or obstruct the Developer's work during such construction to the maximum extent reasonably feasible and that the Developer's work similarly does not interfere with NRP's work.

(b) If NRP has paid the Deferred Infrastructure Liquidation Amount to the Developer prior to the Developer commencing construction of the Improvements, the Developer shall be responsible for construction of the portion of the Deferred Project Infrastructure covered by the Deferred Infrastructure Liquidation Amount and all costs associated with the construction of such Deferred Project Infrastructure. If NRP paid the Deferred Infrastructure Liquidation Amount to the City prior to conveyance of the Property to the Developer, upon conveyance of the Property to the Developer in accordance with Article 3, the City shall transfer the Deferred Infrastructure Liquidation Amount to the Developer and the Developer shall be responsible for the construction of the Deferred Project Infrastructure covered by the Deferred Infrastructure Liquidation Amount and all costs associated with the construction of such Deferred Project Infrastructure.

(c) The provisions of Sections 3.6 and 3.7 of the Affordable Housing Plan are incorporated into this Agreement by this reference.

Section 4.6 Equal Opportunity.

During the construction of the Improvements, the Developer, and its successors, assigns and Subcontractors shall not discriminate against any employee or applicant for employment in connection with the construction of the Improvements because of race, color, religion, ethnic group identification, sex, sexual preference, marital status, ancestry or national origin. Each of the following activities shall be conducted in a non-discriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rate of pay and other forms of compensation; and selection for training including apprenticeship.

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Section 4.7 Construction Pursuant to Laws.

(a) The Developer shall cause all work performed in connection with the Development to be performed in compliance with: (i) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter; and (ii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Development.

(b) To the extent required by law, the Developer shall and shall cause the Subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR") and comply with the other applicable provisions of Labor Code Sections 1720 et seq., including but not limited to the hiring of apprentices as required by Labor Code Sections 1775 et seq., and the implementing regulations of the DIR. The Developer shall and shall cause the Subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of the City provide to the City such records and other documentation reasonably requested by the City. Copies of the currently applicable per diem prevailing wages are available on the DIR website. During the construction of the Improvements the Developer shall post at the Property the applicable prevailing rates of per diem wages. The Developer shall indemnify, hold harmless and defend (with counsel reasonably selected by the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, or its Subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with construction of the Improvements or any other work undertaken or in connection with the Property. The provisions of this Section 4.7(b) shall survive termination of this Agreement.

Section 4.8 Progress Report.

Until such time as the Developer has completed construction of the Improvements, as evidenced by the Certificate of Completion, the Developer shall provide the City with copies of all draw requests for use of all funds set forth on the approved Project Financing Plan and quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the development budget as set forth in the Project Financing Plan (as it may be amended and modified).

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Section 4.9 Construction Responsibilities.

(a) It shall be the responsibility of the Developer to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with this Agreement.

(b) The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Development, including (but not limited to) the quality and suitability of the construction documents, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, Subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Development is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

Section 4.10 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or the Improvements or a stop notice is served on any lender or other third party in connection with the Development, then the Developer shall, within twenty (20) days after such filing or service, either pay and fully discharge or cause the Developer's contractor to pay and fully discharge, the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond from a surety reasonably acceptable to the City in sufficient form and amount, or provide the City with other assurance reasonably satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

(b) If the Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Developer's expense. Alternatively, the City may require the Developer to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against the Developer.

(c) The Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property and/or Improvements. The Developer authorizes the City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Development and Property.

Section 4.11 Inspections.

The Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the City and by public authorities

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during reasonable business hours for the purposes of determining compliance with this Agreement.

Section 4.12 Financing; Revisions to Plan.

The Developer shall promptly submit any proposed material amendments to the approved Project Financing Plan, including but not limited to any material amendments or modifications to the development budget, or the commitment letter from any other lender, to the City. Written consent of the City shall be required to amend the Project Financing Plan; provided that the City shall consent to any amendment of the Project Financing Plan that increases the cost of the construction of the Improvements if such amendment also demonstrates that there is financing available to pay for such increases. The City shall utilize best efforts to approve or disapprove requested amendments to the Project Financing Plan within five (5) working days of receipt of a request for approval.

Section 4.13 Information.

The Developer shall provide any information reasonably requested by the City in connection with the Development.

Section 4.14 Certificate of Completion.

Promptly after completion of the Improvements in accordance with those provisions of this Agreement relating solely to the obligations of Developer to construct the Improvements (including the dates for beginning and completion thereof), the City will provide a Certificate of Completion so certifying. Such certification shall be conclusive determination that certain covenants in this Agreement with respect to the obligations of the Developer to construct the Improvements (excluding the Developer's compliance with Section 4.7) and the dates for the beginning and completion thereof have been met. Such certification shall be in such form as will enable it to be recorded among the Official Records. Such certification and determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer: (i) to any holder of deed of trust securing money loaned to finance the Improvements or any part thereof; (ii) to pay prevailing wages; (iii) compliance with the Regulatory Agreement; and (iv) shall not be deemed a notice of completion under the California Civil Code.

ARTICLE 5.
ONGOING DEVELOPER OBLIGATIONS

Section 5.1 Applicability.

The conditions and obligations set forth in this Article 5 shall apply from the Effective Date of this Agreement until expiration of the Regulatory Agreement term unless a different period of applicability is specified for a particular condition or obligation.

Section 5.2 Use.

The Developer hereby agrees that, for the entire term of the Regulatory Agreement that the Development will be used only for uses consistent with the Regulatory Agreement and

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Developer will manage and operate the Low Income Homes consistent with the requirements of the Affordable Housing Plan.

Section 5.3 Taxes and Assessments.

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

Section 5.4 Hazardous Materials.

(a) Developer shall keep and maintain the Property (including but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and may not cause or permit the Property to be in violation of any Hazardous Materials Law. Developer may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of any Hazardous Materials, except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

(b) Developer shall immediately advise the City in writing if at any time it receives written notice of any Hazardous Materials Claims, and Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The City has the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to the City (or counsel of its own choice if a conflict exists with Developer) in any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer.

(d) Developer shall indemnify and hold harmless the City and its elected and appointed officials, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property). Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of

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any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the City in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify will survive termination of this Agreement and will not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by the City of Hazardous Materials.

Section 5.5 Notice of Litigation.

Developer shall promptly notify the City in writing of any litigation materially affecting Developer or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 5.6 Waiver of Rights to Remonstrate.

The Developer hereby waives and forever releases any rights to remonstrate against any pending or future annexation of the Property to the City of Napa. This waiver shall be a covenant running with the Property and shall be binding on upon all transferees, successor and assigns and shall be required in all residential leases for the Low Income Homes.

ARTICLE 6.
ASSIGNMENT AND TRANSFERS

Section 6.1 Definitions.

As used in this Article 6, the term "Transfer" means:

- (a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Development or any part thereof or any interest therein or any contract or agreement to do any of the same; or
- (b) Any total or partial sale, assignment or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer, or any contract or agreement to do any of the same; or
- (c) Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer; or

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(d) The leasing of part or all of the Property or the Improvements thereon, provided, however, that leases of the units included within the Improvements to tenant occupants shall not be deemed a "Transfer" for purposes of this Article 7.

Section 6.2 Purpose of Restrictions on Transfer.

This Agreement is entered into solely for the purpose of the development and operation of the Development and its subsequent use in accordance with the terms hereof. The Developer recognizes that the qualifications and identity of Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The land acquisition assistance and other public aids that have been made available by law and by the government for the purpose of making such redevelopment possible; and

(c) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property; and

(d) The fact that a change in ownership or control of the Developer as owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degree thereof is for practical purposes a transfer or disposition of the Property; and

(e) The fact that the Property is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with the Agreement; and

(f) The importance to the City and the community of the standards of use, operation and maintenance of the Property.

The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 6.3 Prohibited Transfers.

The limitations on Transfers set forth in this Article shall apply throughout the term of the Regulatory Agreement. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the City.

Any Transfer made in contravention of this Section 6.3 shall be void and shall be deemed to be a default under this Agreement whether or not the Developer knew of or participated in such Transfer.

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Section 6.4 Permitted Transfers.

Notwithstanding the provisions of Section 6.3, the following Transfers shall be permitted and are hereby approved by the City:

(a) Any Transfer creating a Security Financing Interest permitted pursuant to the approved Project Financing Plan; and

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under Article 8.

(c) Any Transfer of easement interest to utility providers to facilitate the delivery of utilities to the Development.

(d) Any Transfer to a limited partnership formed by the Developer for the purpose of securing Tax Credit Funds in which the general partner is the Developer or an entity wholly controlled by the Developer, provided, Developer submits to the City for its approval and obtains the City's approval of any limited partnership agreement prior to any such Transfer.

(e) The initial Transfer of the limited partnership interest in the Developer in connection with the syndication of the low income housing tax credits that will be generated by the Development, which syndication will require the transfer of limited partnership interests in the Developer.

(f) Any Transfer of the limited partner interest provided that: (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the amended partnership agreement approved by the City; and (ii) in subsequent Transfers, a wholly owned affiliate of the initial limited partner retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner. The limited partner may Transfer its interest in Developer to a non-affiliated entity, subject to the prior written consent of the City, which consent shall not be unreasonably withheld.

(g) Any Transfer of the general partner interest in Developer to a nonprofit affiliate of Developer, controlled by the Developer.

(h) Any Transfer of the Property from the Developer to a non-profit affiliate of Developer at, before, or after the end of the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986 (26 U.S.C. Section 42 (i)(1)), pursuant to an option agreement as described in Developer's partnership agreement (the "Partnership Option Agreement"), provided that the transferee expressly assumes the obligations of the Developer under the Regulatory Agreement, utilizing a form of assignment and assumption agreement acceptable to the City.

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(i) Any Transfer of the limited partner interest in the Developer to MidPen Housing or a non-profit affiliate of MidPen Housing pursuant to the Partnership Option Agreement.

(j) In the event the general partner of Developer is removed by the limited partner of Developer for cause following default under the Developer's partnership agreement, any Transfer of the general partner interest to a 501(c)(3) tax exempt nonprofit corporation selected by the limited partner and approved by the City, which approval shall not be withheld unreasonably.

Section 6.5 Effectuation of Certain Permitted Transfers.

(a) No Transfer of this Agreement permitted pursuant to Section 6.4 shall be effective unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing prepared by the City and in form recordable among the Official Records, shall expressly assume the obligations of the Developer under this Agreement and shall agree to be subject to the conditions and restrictions to which the Developer is subject arising during the term of this Agreement, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer. Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest shall have been acquired by, through or under a Security Financing Interest or shall have been derived immediately from any holder thereof shall not be required to give to City such written assumption until such holder or other person is in possession of the Property or entitled to possession thereof pursuant to enforcement of the Security Financing Interest.

(b) In the absence of specific written agreement by the City, no such Transfer, assignment or approval by the City shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

Section 6.6 Other Transfers with City Consent.

The City may, in its sole discretion, approve in writing other Transfers as requested by the Developer. In connection with such request, there shall be submitted to the City for review all instruments and other legal documents proposed to effect any such Transfer. If a requested Transfer is approved by the City such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the City within thirty (30) days of receipt by the City of Developer's request for approval of a Transfer.

ARTICLE 7.
DEFAULT AND REMEDIES

Section 7.1 General Applicability.

The provisions of this Article 7 shall govern the parties' remedies for breach or failure of this Agreement.

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Section 7.2 No Fault of Parties.

The following events constitute a basis for a party to terminate this Agreement without the fault of the other:

- (a) The City, despite good faith and diligent efforts, is unable to convey the Property to the Developer and the Developer is otherwise entitled to such conveyance.
- (b) The Developer, despite good faith and diligent efforts, is unable to obtain the City's approval of the Project Financing Plan, provide evidence of the availability of the financing, or obtain the Subsequent Approvals necessary to develop the Improvements.

Upon the happening of an above-described event and at the election of either party, this Agreement may be terminated by written notice to the other party. After such termination of this Agreement, neither party shall have any rights against or liability to the other under this Agreement, except that the indemnification provisions of this Agreement shall survive such termination and remain in full force and effect.

Section 7.3 Fault of City.

Except as to the events constituting a basis for termination under Section 7.2, the following events each constitute a City Event of Default and a basis for the Developer to take action against the City:

- (a) The City, without good cause, fails to convey the Property to the Developer within the time and in the manner set forth in Article 3 and the Developer is otherwise entitled by this Agreement to such conveyance; or
- (b) The City breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the City does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the City fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the Developer shall be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating in writing this Agreement (provided, however, that the indemnification provisions of this Agreement shall survive such termination); and (2) prosecuting an action for damages or specific performance.

Section 7.4 Fault of Developer.

The following events each constitute a Developer Event of Default and a basis for the City to take action against the Developer:

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(a) The Developer fails to exercise good faith and diligent efforts to satisfy, within the time and in the manner set forth in Article 2, one or more of the conditions precedent to the City's obligation to convey the Property to the Developer; or

(b) The Developer refuses to accept conveyance from the City of the Property within the time periods and under the terms set forth in Article 3; or

(c) The Developer constructs or attempts to construct the Improvements in violation of Article 4; or

(d) The Developer has not satisfied all preconditions set forth in this Agreement to commencement of construction of the Improvements by the date set forth in the Development Schedule, or fails to commence or complete construction of the Improvements by the date set forth in the Development Schedule, or abandons or suspends construction of the Improvements prior to completion of all construction for a period of sixty (60) days after written notice by the City of such abandonment or suspension; or

(e) The Developer fails to comply with any obligation or requirement set forth in the Regulatory Agreement; or

(f) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 6; or

(g) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made; or

(h) A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer, or seeking any arrangement for the Developer, under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer, in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (h) as well; or the Developer, shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive; or

(i) The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall

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apply under this subsection (i) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution; or

(j) The Developer shall have voluntarily suspended its business or, the Developer shall have been dissolved or terminated; or

(k) There shall occur any default declared by any lender under any loan document related to any loans secured by a deed of trust on the Development, after the expiration of applicable cure periods; or

(l) The Developer breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the City shall first notify the Developer in writing of its purported breach, failure or act above described, giving the Developer forty-five (45) days from receipt of such notice to cure, or, if cure cannot be accomplished within said forty-five (45) days, to commence to cure such breach, failure, or act. In the event the Developer fails to cure within said forty-five (45) days, or if such breach is of a nature that it cannot be cured within forty-five (45) days, Developer fails to commence to cure within said forty-five (45) days and diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days (or such longer period as the City in its sole discretion may allow), then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies:

(1) Termination of this Agreement by written notice to the Developer; provided, however, that the City's remedies pursuant to this Article 7 and the indemnification provisions of this Agreement shall survive termination.

(2) Prosecuting an action for damages or specific performance; and

(3) Any of the remedies specified in Sections 7.5, 7.6, 7.7, or 7.8.

Notwithstanding the notice and cure periods set forth above, with respect to an Event of Default described in subsection (h), (i), or (j) above, the City may initiate enforcement action, without the provision of any notice, or the passage of any cure period.

Section 7.5 Right of Reverter.

(a) In the event that, following the Close of Escrow, this Agreement is terminated pursuant to Section 7.4 and such termination occurs prior to issuance of a Certificate of Completion for the Improvements, then the City shall have the right to reenter and take possession of the Property and all improvements thereon and to revest in the City the estate of the Developer in the Property.

(b) Such right of reverter, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(1) Any Approved Security Interest permitted by this Agreement; or

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(2) Any rights or interest provided in this Agreement for the protection of the holder of such Approved Security Interests.

(c) Upon vesting or revesting in the City of title to the Property, the City shall promptly use its best efforts to resell the Property consistent with the Affordable Housing Plan. Upon sale the proceeds shall be applied as follows:

(1) First, to reimburse the City for any costs it incurs in managing or selling the Property (after exercising its right of reverter), including but not limited to amounts to discharge or prevent liens or encumbrances arising from any acts or omissions of the Developer;

(2) Second, to reimburse the City for damages to which it is entitled under this Agreement by reason of the Developer's default;

(3) Third, to the Developer up to the reasonable cost of the Improvements the Developer has placed on the Property and such other reasonable costs Developer has incurred directly in connection with development of the Property that were not financed by the City; and

(4) Fourth, any balance to the City.

(d) If the City exercises its right of reverter and the Developer has accepted a Deferred Infrastructure Liquidation Amount but has not installed the Deferred Project Infrastructure prior to the exercise of the right of reverter, the Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the City at time of transfer of title to the City. The City shall also be entitled to an assignment of all plans, studies and other materials prepared by the Developer related to the development of the Improvements, provided that the City and the Developer are able to reach agreement on compensation to the Developer for the costs incurred for the preparation of such plans and studies.

Section 7.6 Option to Repurchase, Reenter and Repossess.

(a) The City shall have the additional right at its option to repurchase, reenter and take possession of the Property or any portion thereof owned by the Developer with all improvements thereon, if after conveyance of title to any portion of the Property and prior to the issuance of the Certificate of Completion for the Improvements, there is a Developer Event of Default pursuant to Section 7.4.

(b) Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(1) Any Approved Security Interest permitted by this Agreement; or

(2) Any rights or interest provided in this Agreement for the protection of the holder of such Approved Security Interests.

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(c) To exercise its right to repurchase, reenter and take possession with respect to the Property owned by the Developer, the City shall pay to the Developer in cash an amount equal to:

(1) The fair market value of the improvements existing on the applicable portion of the Property at the time of the repurchase, reentry and repossession; less

(2) Any gains or income withdrawn or made by the Developer from the applicable portion of the Property or the improvements thereon; less

(3) The value of any unpaid liens or encumbrances on the applicable portion of the Property which the City assumes or takes subject to said encumbrances.

(d) If the City exercises its option and the Developer has accepted a Deferred Infrastructure Liquidation Amount but has not installed the Deferred Project Infrastructure prior to the exercise of the right of reverter, the Developer will be required to pay the Deferred Infrastructure Liquidation Amount to the City at time of transfer of title to the City. The City shall also be entitled to an assignment of all plans, studies and other materials prepared by the Developer related to the development of the Improvements, provided that the City and the Developer are able to reach agreement on compensation to the Developer for the costs incurred for the preparation of such plans and studies.

Section 7.7 Acceleration of Note.

Following occurrence of a Developer Event of Default, the City shall have the right to cause all indebtedness of the Developer to the City, if any, together with any accrued interest thereon, to become immediately due and payable. The Developer waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the any deed of trust. The Developer shall be liable to pay the City on demand all expenses, costs and fees (including, without limitation, attorney's fees and expenses) paid or incurred by the City in connection with the collection of any loan and the preservation, maintenance, protection, sale, or other disposition of the security given for any loan.

Section 7.8 Right to Cure at Developer's Expense.

The City shall have the right to cure any monetary default by the Developer under a loan in connection with the Development. The Developer agrees to reimburse the City for any funds advanced by the City to cure a monetary default by Developer upon demand therefor, together with interest thereon at the lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by law from the date of expenditure until the date of reimbursement.

Section 7.9 Project Documents.

If the Agreement is terminated pursuant to Sections 7.2 or 7.4, the Developer, at no cost to the City, shall deliver to the City copies of any plans and specifications and studies in the

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Developer's possession or to which Developer is entitled related to development of the Improvements on the Property.

Section 7.10 Rights of Mortgagees.

Any rights of the City under this Article 7 shall not defeat, limit or render invalid any Security Financing Interest permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of Security Financing Interests. Any conveyance or reverter of the Property to the City pursuant to this Article 7 shall be subject to Security Financing Interests permitted by this Agreement.

Section 7.11 Remedies Cumulative.

No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 8.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 8.1 No Encumbrances Except for Development Purposes.

Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Property, but only for the purpose of securing loans approved by the City pursuant to the approved Project Financing Plan. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the City pursuant to the approved Project Financing Plan are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 8.2 Holder Not Obligated to Construct.

The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in conveyances from the City to the Developer evidencing the realty comprising the Property or any part thereof be construed so to obligate such holder. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

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Section 8.3 Notice of Default and Right to Cure.

Whenever the City pursuant to its rights set forth in Article 7 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Property or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the City and recordable among the Official Records (the "Security Financing Interest Assignment"). The holder in that event must agree to complete, in the manner provided in this Agreement (or as may be amended by the Security Financing Interest Assignment; provided, however, the City is under no obligation to extend the dates for performance set forth in this Agreement), the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon written request made to the City, to a Certificate of Completion from the City.

Section 8.4 Failure of Holder to Complete Improvements.

In any case where six (6) months after default by the Developer in completion of construction of the Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct pursuant to the Security Financing Interest Assignment, has not proceeded diligently with construction (as reasonably determined by the City), the City shall be afforded those rights against such holder it would otherwise have against Developer under this Agreement.

Section 8.5 Right of City to Cure.

In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of the Improvements, and the holder has not exercised its option to complete the Improvements on the Property, the City may cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Property or any portion thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by Developer to effect such subordination.

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Section 8.6 Right of City to Satisfy Other Liens.

After the conveyance of title to the Property or any portion thereof and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property or any portion thereof, the City shall have the right to satisfy any such lien or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 8.7 Holder to be Notified.

To the extent deemed necessary by the City, Developer shall insert each term contained in this Article 8 into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

ARTICLE 9.
GENERAL PROVISIONS

Section 9.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by reputable overnight delivery service, or delivered personally, to the principal office of the City and the Developer as follows:

City: City of Napa
 955 School Street
 Napa, CA 94559
 Attention: City Manager

with a copy to:

Office of the City Attorney
City of Napa
955 School Street
Napa, CA 94559
Attention: City Attorney

Developer: MidPen Housing Corporation
 303 Vintage Park Drive, Suite 250
 Foster City, CA 94404
 Attention: President

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 9.1.

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Section 9.2 Non-Liability of City Officials, Employees and Agents.

No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 9.3 Forced Delay.

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God, or other deities; acts of terrorism or the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); acts of the other party; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the City); or any other causes (other than Developer's inability to obtain financing for the Improvements) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the date the party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other party within ten (10) days of receipt of the notice. Times of performance under this Agreement may also be extended in writing by the City and the Developer. In no event shall the cumulative delays exceed one hundred twenty (120) days, unless otherwise agreed to by the Parties in writing.

Section 9.4 Inspection of Books and Records.

Upon request, the Developer shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement.

Section 9.5 Provision Not Merged with Deed.

None of the provisions of this Agreement are intended to or shall be merged by any grant deed transferring title to any real property which is the subject of this Agreement from City to Developer or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 9.6 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

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Section 9.7 General Indemnification.

The Developer shall indemnify, defend (with counsel reasonably selected by the City) and hold the City, and its elected and appointed officials, officers, agents and employees (collectively, the "Indemnified Parties") harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against all or any of the Indemnified Parties, and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement or the Regulatory Agreement, including but not limited to the conveyance of the Property, development of the Improvements, and the rental of the Low Income Homes, except to the extent such claim arises from the grossly negligent or willful misconduct of the City as applicable. The provisions of this Section shall survive both the issuance of a Certificate of Completion by the City and termination of this Agreement.

Section 9.8 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 9.9 No Brokers.

Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's reasonable attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 9.10 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 9.11 Legal Actions and Attorneys' Fees.

Any legal action commenced to interpret or to enforce the terms of this Agreement shall be filed in the Superior Court of Napa County. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorney's fees and costs incurred in such action.

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Section 9.12 Binding Upon Successors.

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by any of the Parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

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

Section 9.13 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 9.14 Discretion Retained by City.

The City's execution of this Agreement does not constitute approval by the City of any Subsequent Approvals and in no way limits the discretion of the City in the permit and approval process in connection with development of the Improvements.

Section 9.15 Time of the Essence.

In all matters under this Agreement, the Parties agree that time is of the essence.

Section 9.16 Action by the City.

Except as may be otherwise specifically provided in this Agreement, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to the Developer by the City Manager, without further approval by the City Council. Any such action shall be in writing.

Section 9.17 Representation and Warranties of Developer.

The Developer hereby represents and warrants to the City as follows:

(a) Organization. The Developer is a duly organized, validly existing California corporation, and is in good standing under the laws of the State of California and has the power to own its property and carry on its business as now being conducted.

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(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Improvements.

(h) Title to Property. Upon recordation of the Grant Deed, the Developer will not record or permit any mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the City, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the City or approved in writing by the City.

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(i) Financial Statements. The financial statements of the Developer, and other financial data and information furnished by, or on behalf of the Developer, to the City fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of the Developer from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Upon the acquisition of the Property the Developer will hold sufficient funds or binding commitments for sufficient funds to obtain the Property, and complete the construction of the Improvements in accordance with this Agreement.

Section 9.18 Entry by the City.

The Developer shall permit the City, through its officers, agents, or employees, at all reasonable times to enter into the Development (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement, and (b), following completion of construction to inspect the ongoing management of the Development (or portion thereof then owned by Developer) during normal business hours or upon twenty-four hours notice, to determine that the same is in conformance with the requirements of this Agreement. The Developer acknowledges that the City is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the City therefor. Any inspection by the City during the construction is entirely for its purposes in determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

Section 9.19 Entire Understanding of the Parties.

This Agreement constitutes the entire understanding and agreement of the parties. All prior discussions, understandings and written agreements are superseded by this Agreement. The Developer and the Developer's counsel have read and reviewed this Agreement and agree that any rule of construction (including, but not limited to Civil Code Section 1654, as may be amended from time to time) to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

Section 9.20 Operating Memoranda; Implementation Agreements.

(a) The parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the parties under this Agreement. The parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the parties find that refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements approved by the parties which, after execution shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not

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all, of the circumstances in which the preparation and execution of operating memoranda or implementation agreements may be appropriate.

(b) Operating memoranda or implementation agreements may be executed on the City's behalf by the City Manager, or his or her designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 9.21 and must be approved by the City Council.

Section 9.21 Amendments.

The parties can amend this Agreement only by means of a writing executed by the Developer and the City.

Section 9.22 Counterparts; Multiple Originals.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

[Signatures on following page.]

[Remainder of page intentionally blank.]

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

DEVELOPER:

MIDPEN HOUSING CORPORATION, a
California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

CITY:

CITY OF NAPA, a California charter city and
municipal corporation

By: _____
_____, City Manager

ATTEST:

_____, City Clerk

COUNTERSIGNED:

_____, City Auditor

APPROVED AS TO FORM:

By: _____
_____, City Attorney

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Note: Section 3.5 Requires the Developer's Initials

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT "A"
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EXHIBIT B
INITIAL FINANCING PLAN

EXHIBIT "A"
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EXHIBIT C

DEVELOPMENT SCHEDULE

| Obligation | Section | Schedule |
|---|---------|---|
| Developer shall apply for, and exercise diligent good faith efforts to obtain, all Subsequent Approvals necessary for development of the Improvements | 2.2 | Not later than _____. |
| Developer shall submit a Project Financing Plan | 2.3 | Not later than _____. |
| | | |
| Close of Escrow | 3.3 | Not later than _____. |
| Developer obtain a building permit for the Improvements | 2.4 | Not later than _____. |
| Developer to commence construction of the Improvements | 4.2 | Thirty (30) days following close of escrow and in no event later than _____. |
| Developer to complete construction of the Improvements | 4.4 | _____ (24) months after the commencement of construction, and in no event later than _____. |
| | | |

ATTACHMENT C: Form of Affordable Homes Regulatory Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Napa
955 School Street
Napa, CA 94559
Attention: _____

No fee for recording pursuant to
Government Code Section 27383

**CITY REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

Napa Pipe

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of _____, by and between the City of Napa, a California charter city and municipal corporation ("City"), and MidPen Housing Corporation, a California nonprofit public benefit corporation ("Developer"), with reference to the following facts.

RECITALS

A. The City and Developer have entered into a Conveyance Agreement ("Conveyance Agreement"), pursuant to which the City has agreed to convey to the Developer certain Property more particularly described in Exhibit A attached hereto (the "Property"). The Developer intends to construct an approximately _____ unit housing development on the Property, of which the City will restrict _____ units as affordable to households earning up to 80% of area median income as determined by the United States Department of Housing and Urban Development for a _____ year period (the "Development," as further defined below in Section 1.1(j)). This Agreement, in conjunction with any other regulatory agreements between the Developer and providers of the Approved Financing, will ensure the Development's continuing affordability. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Conveyance Agreement.

B. On _____, the City Council (the "Council") adopted Resolution _____, authorizing the Conveyance Agreement with the Developer on certain terms and conditions and authorizing the City's City Manager (the "City Manager") to execute all necessary documents to effect the regulatory requirements as approved by the City Attorney and further authorizing the City Manager to sign all necessary related transaction documents as required for ongoing future maintenance and monitoring responsibilities as approved as to form by the City Attorney.

THEREFORE, the City and the Developer hereby agree as follows.

ARTICLE 1
DEFINITIONS

1.1 Definitions.

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

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

(b) "Agreement" is this Regulatory Agreement and Declaration of Restrictive Covenants.

(c) "Area Median Income" or "AMI" is the area the median income for households in Napa County, as established and periodically amended by HUD pursuant to Section 8 of the United States Housing Act of 1937, with adjustments for Actual Household Size or Assumed Household Size as specified in this Agreement.

(d) "Assumed Household Size" shall have the meaning set forth in Section 2.2(c) below.

(e) [intentionally omitted]

(f) [intentionally omitted]

(g) [intentionally omitted]

(h) "City" is as defined in the first paragraph of this Agreement.

(i) "Developer" is as defined in the first paragraph of this Agreement.

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

(k) "HUD" is the United States Department of Housing and Urban Development.

(l) "Low Income Household" shall mean a household with an annual income which does not exceed eighty percent (80%) of Area Median Income, adjusted for Actual Household Size.

(m) "Low Income Rent" shall mean the maximum allowable rent for a Low Income Unit pursuant to Section 2.2(b) below.

(n) "Low Income Unit" shall mean the Units which, pursuant to Section 2.1 below, are required to be occupied by Low Income Households.

(o) [intentionally omitted]

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

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

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

(s) "Term" shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the _____ anniversary of the date of issuance of the last certificate of occupancy or equivalent certification for the Units. *[minimum 55-year term]*

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

(u) "Very Low Income Household" shall mean a household with an annual income which does not exceed fifty percent (50%) of Area Median Income, adjusted for Actual Household Size.

(v) "Very Low Income Rent" shall mean the maximum allowable Rent for a Very Low Income Unit pursuant to Section 2.2(a) below.

(w) "Very Low Income Units" shall mean the Units which, pursuant to Section 2.1 below, are required to be occupied by Very Low Income Households.

1.2 Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Affordability Schedule

ARTICLE 2
AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirements.

The Units listed in the "City Restricted Units" column of the Affordability Schedule (the "Affordability Schedule", attached as Exhibit B hereto) shall be occupied by Tenants meeting the income requirements listed in the Affordability Schedule and summarized as follows:

(a) Very Low Income Units. _____ of the Units in the Development, shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

(b) Low Income Units. _____ Units in the Development, shall be rented to and occupied by or, if vacant, available for occupancy by Low Income Households.

2.2 Allowable Rent.

(a) Very Low Income Rent. Subject to the provisions of Section 2.3 below, the maximum Rent (including utility allowance) charged to Tenants of the Very Low Income Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for Assumed Household Size.

(b) Low Income Rent. Subject to the provisions of Section 2.3 below, the maximum Rent (including utility allowance) charged to Tenants of the Low Income Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of Area Median Income, adjusted for Assumed Household Size.

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

| <u>Number of Bedrooms</u> | <u>Assumed Household Size</u> |
|---------------------------|-------------------------------|
| Studio | 1 |
| One | 1.5 |
| Two | 3 |
| Three | 4.5 |

(d) City Approval of Rents. Initial rents for all Units shall be approved by the City prior to occupancy. All rent increases shall also be subject to City approval. The City shall provide the Developer with a schedule of maximum permissible rents for the Units annually. The Developer shall not charge any fee other than Rent to any Tenant of Units for any housing or other services provided by Developer.

(e) In the event that income determinations are no longer published by HUD, or are not updated for a period of at least eighteen (18) months, the City shall provide the Developer with other income and Rent determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD.

2.3 Increased Income of Tenants.

(a) Increase from Very Low Income to at or below Low Income. If, upon recertification of a Tenant's income, the Developer determines that a former Very Low Income Household's income has increased and exceeds the qualifying income for a Very Low Income Household, but does not exceed the qualifying limit for a Low Income Household, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Rent may be increased to one-twelfth ($1/12^{\text{th}}$) of thirty percent (30%) of sixty percent (60%) of Area Median Income, adjusted for Assumed Household Size, upon ninety (90) days written notice to the Tenant; and

(2) The Developer shall rent the next available Unit to a Very Low Income Household at a Rent not exceeding the maximum Rent specified in Section 2.2(a), as applicable.

(b) Increase from Very Low and Low Income to at or below One Hundred Twenty Percent (120%) of Area Median Income. If, upon recertification of a Tenant's income, the Developer determines that a former Very Low Income Household or Low Income Household's income has increased and exceeds the qualifying income for a Low Income Household, but does not exceed one hundred twenty percent (120%) of Area Median Income adjusted for Actual Household Size, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Rent may be increased to one-twelfth ($1/12^{\text{th}}$) of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income, adjusted for Assumed Household Size, upon ninety (90) days written notice to the Tenant; and

(2) The Developer shall rent the next available Unit to a Very Low Income Household or Low Income Household as applicable, at a Rent not exceeding the maximum Rent specified in Section 2.2(a) or 2.2(b), as applicable.

(c) Non-Qualifying Household. If, upon recertification of a Tenant's income, the Developer determines that a Tenant has an Adjusted Income exceeding one hundred twenty percent (120%) of Area Median Income, adjusted for Actual Household Size, such Tenant shall be permitted to continue to occupy the Unit and such Tenant's Rent may be increased to one-twelfth of thirty percent (30%) of the household's actual income, adjusted for Assumed Household Size, upon ninety (90) days written notice to the Tenant, and the Developer shall rent the next available Unit to a Very Low Income Household or Low Income Household as applicable, at a Rent not exceeding the maximum Rent specified in Section 2.2(a) or 2.2(b), as applicable.

2.4 Termination of Occupancy.

Upon termination of occupancy of an Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Very Low Income Household or Low Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of the Unit (e.g., Very Low Income Unit or Low Income Unit) shall be re-determined. In any event, Developer shall maintain the occupancy requirements set forth in Section 2.1 above, except as may be modified by Section 2.3.

2.5 Section 8 Voucher and Certificate Holders.

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

2.6 Lease Provisions.

The Developer shall use a form of Tenant lease approved by the City for the Units. The form of Tenant lease shall also comply with all requirements of any financing, and shall, among other matters:

(a) provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the Developer to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy of the Units in accordance with the standards set forth in this Agreement, or (2) to qualify as an Very Low Income Household or Low Income Household, as the case may be, as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification;

(b) be for an initial term of not less than one (1) year. After the initial year of tenancy, the lease may be month to month by mutual agreement of the Developer and the Tenant, however the Rent may not be raised more often than once every twelve (12) months after such initial year. The Developer will provide each Tenant with at least sixty (60) days' written notice of any increase in Rent applicable to such Tenant, and with such further notice as may be required by Section 2.3 above;

(c) prohibit subleasing of the Unit, contain nondiscrimination provisions, and include the Tenant's obligation to inform the Developer of any need for maintenance or repair;

(d) include reasonable rules of conduct consistent with California law; and

(e) allow termination of the tenancy by Developer only for good cause, including serious or repeated violation of the terms and conditions of the rental agreement, violations of applicable federal, state, or local law; or other good cause.

2.7 Security Deposits

Any security deposits collected by Developer or Developer's agent shall be kept separate and apart from all other funds in a trust account with a depository insured by the Federal Deposit Insurance Corporation or other comparable federal deposit insurance program and shall be held and disbursed in accordance with California law. The balance in the trust account shall at all times equal or exceed the aggregate of all outstanding obligations, plus accrued interest thereon.

ARTICLE 3 INCOME CERTIFICATION AND REPORTING

3.1 Tenant Selection Plan.

(a) Marketing Plan. Ninety (90) days before leasing the Development, the Developer shall provide the City, for its review and approval, the Developer's written tenant selection and affirmative marketing plan consistent with subsection (b) below. Upon receipt of the marketing plan, the City shall promptly review the marketing plan and shall approve or disapprove it within thirty (30) days after submission. If the marketing plan is not approved, the Developer shall submit a revised marketing plan within thirty (30) days. The Developer's marketing materials shall identify the City as a source of funding for the Units.

(b) Local Worker Preference. To the extent consistent with the requirements of other funding sources and state and federal law, households with a member who is employed in Napa County shall be given preference for occupancy of the Units.

3.2 Income Certification.

The Developer will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications for each Tenant renting any of the Units. Developer shall make a good faith effort to verify that the income statement provided by an applicant or Tenant is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (b) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (c) obtain the three (3) most current savings and checking account bank statements; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be made available to the City upon request.

3.3 Annual Report to City.

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

- (1) evidence of payment of property taxes or property tax exemption for the Development, as applicable;
- (2) audited financial statements for the Development;
- (3) an occupancy report including: (i) the verified income of each tenant or household, (ii) the number of tenants in each household; (iii) the current rents charged each tenant or household and whether these rents include utilities, (iv) the date tenancy commenced for each Unit, and (v) the percentage of Units occupied by farmworker households, persons employed within ten (10) miles of the Development, and persons employed within Napa City;
- (4) certifications of eligibility for all Tenants of Units at the time of initial occupancy and upon the yearly anniversary of their continuing tenancies. Such certification shall include verified income statements. Developer shall retain in the Tenant's file all verifications of Tenant's income (tax returns, W-2 forms, paycheck stubs, etc.);
- (5) a management report detailing the activities of the management agent;
- (6) audited financial statements for the Developer's general partner(s), limited partner(s), and, if applicable, sponsor;
- (7) A list of any substantial physical defects in the Units, including a description of any major repair or maintenance work undertaken or needed in the previous year and measures taken to maintain the Units in a safe and sanitary condition in accordance with applicable codes;
- (8) the operating reserve balance;
- (9) the replacement reserve balance;
- (10) the proposed annual operating budget for the subsequent fiscal year; and
- (11) the proposed annual replacement budget for the subsequent fiscal year.

(b) Within fifteen (15) days after receipt of a written request, Developer shall provide any other information or completed forms requested by the City to ensure compliance with this Agreement.

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

3.4 Additional Information.

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

3.5 Records.

(a) The Developer shall maintain complete, accurate and current records pertaining to the Units, and shall permit any duly authorized representative of the City to inspect records, including but not limited to records pertaining to income and household size of Tenants and Rent charged Tenants, upon reasonable prior notice during normal business hours. All Tenant lists, applications and waiting lists relating to the Units shall at all times be kept separate and identifiable from any other business of the Developer and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Developer shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

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

3.6 On-site Inspection.

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

ARTICLE 4
OPERATION OF THE DEVELOPMENT

4.1 Residential Use.

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

4.2 Taxes and Assessments

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

4.3 Compliance with City Underwriting Guidelines.

The Developer shall develop and operate the Development in compliance with the City's Multifamily Rental Housing Transaction Underwriting Guidelines.

ARTICLE 5
PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities.

The Developer is responsible for all management functions with respect to the Units, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Units. The Developer shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required at all times.

5.2 Management.

The Development shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Developer shall submit for the City's approval the identity of any proposed Management Agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent

meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Developer in writing. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. The City hereby approves Napa Valley Community Housing or MidPen Housing as the initial Management Agent.

5.3 Performance Review.

The City reserves the right to conduct an annual (or more frequently, if deemed necessary by the City) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Developer shall cooperate with the City in such reviews.

5.4 Replacement of Management Agent.

If, as a result of a periodic review, the City determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Developer of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Developer of such written notice, City staff and the Developer shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, City staff recommends in writing the replacement of the Management Agent, Developer shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by the City pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Developer shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute Default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Section 6.7 below.

5.5 Approval of Management Policies.

The Developer shall submit its written management policies with respect to the Units to the City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

5.6 Property Maintenance.

(a) The Developer agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable

laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

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

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

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

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

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

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

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

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

(C) broken windows;

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

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

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

(5) Fencing. Prior to completion of construction, the Developer shall maintain the Property in a safe and orderly condition, including by fencing as required to prevent entry by the public.

(b) The City places prime importance on quality maintenance to protect its investment and to ensure that all City-assisted affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Units

will be acceptable to the City assuming the Developer agrees to provide all necessary improvements to assure the Units are maintained in good condition. The Developer shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

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

5.7 Safety Conditions.

(a) The Developer acknowledges that the City places a prime importance on the security of City assisted projects and the safety of the residents and surrounding community. The Developer agrees to implement and maintain throughout the Term the following security measures in the Development:

(1) to the extent feasible employ defensible space design principles and crime prevention measures in the operation of the Development including but not limited to maintaining adequate lighting in parking areas and pathways;

(2) use its best efforts to work with the City Police Department, as applicable, to implement and operate an effective neighborhood watch program; and

(3) provide added security including dead-bolt locks for every entry door, and where entry doors are damaged, replace them with solid-core doors.

(b) The City shall have the right to enter on the Property and/or contact the City Police Department if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the Tenants and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition.

ARTICLE 6 MISCELLANEOUS

6.1 Nondiscrimination.

(a) Developer herein covenants by and for itself, its subcontractors, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, nor denial of the benefits of this Agreement to, any

person or group of persons, on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS) or political affiliation or belief, nor any unlawful discrimination against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. Developer shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, Developer shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to Developer services or works required of City by the State of California pursuant to agreement between City and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and Developer and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) The provisions of paragraph (a) shall further apply to the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Development, and Developer and any person claiming under or through the Developer, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the Development.

(c) Notwithstanding paragraph (a), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

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

6.2 Term.

The provisions of this Agreement shall apply to the Property for the entire Term. This Agreement shall bind any successor, heir or assign of the Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly

released by the City. The City conveyed the Property to the Developer on the condition, and in consideration of, this provision, and would not do so otherwise.

6.3 Notice of Expiration of Term.

At least six (6) months prior to the expiration of the Term the Developer shall provide by first-class mail, postage prepaid, a notice to all Tenants in Units containing (a) the anticipated date of the expiration of the Term, (b) any anticipated Rent increase upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to the City, and (d) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The Developer shall also file a copy of the above-described notice with the City Manager. In addition, Developer shall comply with all requirements set forth in California Government Code Sections 65863.10 and 65863.11 or successor provisions and all other requirements of State and federal law.

6.4 Effect of Other Financing Programs.

The Development may be subject to the terms of other governmental subsidy programs. This Agreement and the agreements entered into by the Developer pursuant to these subsidy programs independently regulate Units in the Development. If any provision of another regulatory agreement is found in conflict or in contradiction with the terms of this Agreement in relation to the Units, the most restrictive requirement, providing the greatest affordability to the most Tenants for the longest term, shall apply to those Units, except as otherwise specified.

6.5 Covenants to Run With the Land.

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

6.6 Indemnification

(a) To the full extent permitted by law, the Developer shall indemnify, defend at its own expense, and hold the City and its elected and appointed officials, officers, employees and agents in their official capacity (collectively "Indemnitees") harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the City or Indemnitees. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition

of any claim arising out of the activities under this Agreement, provided that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege or attorney work product privilege.

(b) The provisions of this Section shall survive the expiration of the Term, the reconveyance of the Deed of Trust, and any release of part or all of the Property from the burdens of this Agreement.

6.7 Enforcement by the City.

Any partners of the Developer shall have the right to cure any Default. The City agrees that any cure of a Default by any partners of the Developer shall be deemed to be a cure by the Developer, and shall be accepted or rejected on the same basis as if made or tendered by the Developer. If the Developer fails to perform any obligation under this Agreement, and fails to cure the Default within thirty (30) days after the City has notified the Developer in writing of the Default or, if the Default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, or such longer period as approved by the City, in writing, the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law.

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

6.8 Attorneys' Fees and Costs.

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

6.9 Recording and Filing.

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

6.10 Governing Law and Venue.

This Agreement shall be governed by the laws of the State of California. Venue shall be Napa County.

6.11 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

6.12 Waiver of Requirements.

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

6.13 Amendments.

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

6.14 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

DEVELOPER: MidPen Housing Corporation,

Attention:

CITY: City of Napa
955 School Street
Napa, CA 94559

Attention:

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

6.15 Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.16 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[Signatures on following page.]

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the City and the DEVELOPER have executed this Agreement by duly authorized representatives, all on the date first written above.

CITY:

CITY OF NAPA, a California charter city and
municipal corporation

By:

_____, Mayor

ATTEST:

_____, City Clerk

COUNTERSIGNED:

_____, City Auditor

APPROVED AS TO FORM BY CITY ATTORNEY

_____, City Attorney

DEVELOPER:

MIDPEN HOUSING CORPORATION, a California
nonprofit public benefit corporation

By: _____

Its:

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

State of California)
 County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"
LEGAL DESCRIPTION

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

EXHIBIT "B"
AFFORDABILITY SCHEDULE

Exhibit C

Napa Pipe Intersection Improvement Plan



MEMORANDUM

Date: October 22, 2014

To: Rick Marshall, County of Napa

From: Steve Crosley

Subject: *Napa Pipe Intersection Improvement Plan*

SF06-0290.12

Fehr & Peers submitted a memo in June 2013 (*Napa Pipe Transportation Analysis Sensitivity Test*) that summarized impacts, mitigation, and fair share contribution at all 34 study intersections included in the EIR analysis for the Napa Pipe project (Costco Alternative or project).

The information contained in this memo describes mitigation improvements that are (1) the sole responsibility of land owner (herein referred to as Napa Redevelopment Partners or NRP) and (2) financial obligations for mitigation improvements where NRP is partially responsible based on a fair share contribution analysis (including per square foot cost allocation by land use type). The intent of this memo is to provide the County of Napa, City of Napa, and NRP with physical and financial obligation information that can be incorporated into the project's development agreement (DA or Agreement).

NAPA PIPE MITIGATION SUMMARY

The impacted locations and feasible mitigation measures are summarized in **Table 1**.

| TABLE 1: NAPA PIPE MITIGATION SUMMARY | | |
|---------------------------------------|----------------------------------|--|
| # | Intersection | Mitigation Description |
| 1 | Lincoln Avenue/ Soscol Avenue | Construct an additional left-turn lane on both the northbound and southbound approaches. |

TABLE 1: NAPA PIPE MITIGATION SUMMARY

| # | Intersection | Mitigation Description |
|----|--------------------------------------|--|
| 12 | Imola Avenue (SR 121)/ Soscol Avenue | Construct an additional left-turn lane on the eastbound approach and an exclusive right-turn lane on the westbound approach. |
| 13 | SR 221 / Streblow Drive | Construct an additional northbound left-turn lane on SR 221 (Napa-Vallejo Highway) and a receiving lane on Streblow Drive. The operations of this intersection should be monitored prior to implementing this improvement to confirm the need. Construction of the improvement shall be at the discretion of the City of Napa. |
| 16 | Kaiser Road / Enterprise Way | Restripe the southbound approach to provide dedicated left- and right-turn lanes and include a peak hour left-turn restriction on the southbound approach in the form of signage, forcing motorists to turn right from Enterprise Way onto westbound Kaiser Road and make a U-turn at Kaiser Road/Napa Valley Corporate Drive in lieu of the left-turn egress from Enterprise Way. |
| 17 | SR 221 / Kaiser Road | <p>Extend the turn pocket in the northbound left turn lane on SR 221 to 500 feet from its current length of approximately 280 feet or create a dual left turn the length of the current turn lane to adequately store the expected queues. In addition, construct the following improvements:</p> <ul style="list-style-type: none"> • Northbound: a third through lane and a second left turn lane • Southbound: a third through lane and free right turn lane • Eastbound: a second and third left turn lane and a free right turn lane <p>As modified by that Fehr & Peers memorandum to Napa County dated August 3, 2015 and entitled "Supplement to Napa Pipe Intersection Improvement Plan – SR 221/Kaiser Road," which is attached and incorporated herein as <u>Attachment C-1</u>.</p> |

TABLE 1: NAPA PIPE MITIGATION SUMMARY

| # | Intersection | Mitigation Description |
|----|---|--|
| 20 | Napa Valley Corp. Way / SR 221 | Construct third through lanes in both the northbound and southbound approaches and construct a second left-turn lane on the northbound approach. Note that the second left-turn lane on the northbound approach has already been constructed. |
| 22 | Napa Valley Corporate Drive/Anselmo Court | Install a single-lane roundabout with a bypass lane installed on the southbound and eastbound approaches of the intersection. |
| 23 | SR 12 - SR 121 / SR 29 | Construct third through lanes in both the northbound and southbound approaches and construct the following improvements: <ul style="list-style-type: none"> Eastbound: a second right-turn lane |
| 25 | Devlin Road Soscol Ferry Road | Install a traffic signal and a median treatment on Soscol Ferry Road that essentially controls all movements except for the westbound through movement on Soscol Ferry Road. |
| 26 | SR 12 - SR 29 / SR 221 | Construct flyover ramp for the traffic traveling from southbound SR 221 (Napa-Vallejo Highway) to southbound SR 12/SR 29. This improvement has been contemplated previously by the County and Caltrans, and would be needed with or without development of the project. |
| 27 | Airport Boulevard/ SR 29 - SR 12 | Construct grade-separated interchange as proposed in the Napa County General Plan. This improvement has been contemplated previously by the County and Caltrans, and would be needed with or without development of the project. |
| 28 | SR 29 / South Kelly Road | Construct third through lanes in both the northbound and southbound approaches and construct a second northbound left-turn lane. |
| 29 | SR 29 / Napa Junction Road | The Napa County General Plan calls for widening of SR 29 from the SR 221 (Napa-Vallejo Highway) interchange to the southern County Line. In order to mitigate the project's significant impact, the additional through lane on SR 29 in the northbound and southbound directions should be |

TABLE 1: NAPA PIPE MITIGATION SUMMARY

| # | Intersection | Mitigation Description |
|----|------------------------------|--|
| | | constructed at this intersection, as is currently proposed. This improvement has been contemplated previously by the County and Caltrans, and would be needed with or without development of the project. |
| 30 | SR 29 / Donaldson Way | The Napa County General Plan calls for widening of SR 29 from the SR 221 (Napa-Vallejo Highway) interchange to the southern County Line. In order to mitigate the project's significant impact, the additional through lane on SR 29 in the northbound and southbound directions should be constructed at this intersection, as is currently proposed. This improvement has been contemplated previously by the County and Caltrans, and would be needed with or without development of the project. |
| 31 | SR 29 / American Canyon Road | The Napa County General Plan calls for widening of SR 29 from the SR 221 (Napa-Vallejo Highway) interchange to the southern County Line. In order to mitigate the project's significant impact, the additional through lane on SR 29 in the northbound and southbound directions should be constructed at this intersection, as is currently proposed. This improvement has been contemplated previously by the County and Caltrans, and would be needed with or without development of the project. |

COST ESTIMATES

The cost estimates for each mitigation measure were based on the following assumptions:

- Costs assume minimal earthwork (except for interchange projects)
- Costs include a 25% contingency factor
- Costs include a 25% factor for planning and design services
- Costs **do not** include right-of-way acquisition (with the exception of intersections #1 & #12 in accordance with a request by the City of Napa)

Rick Marshall
October 22, 2014

It is important to note that these are rough cost estimates, based on an aerial photo evaluation of distances and constraints, and applying average unit costs for materials and labor. No surveying or mapping was conducted as a part of this effort; a relatively high contingency factor has been applied to account for the lack of precision in the estimates.

OPENING DAY MITIGATION - PROJECT RESPONSIBILITY

Under Existing Plus Project conditions, the project would result in significant impacts at nine intersections. Mitigation measures (described in the June 2013 memo) would be required at following five intersections (shown in **Table 2**), while the remaining four impacted intersections would require mitigation even without development of the project and large scale improvements are planned for those locations. NRP would be responsible for:

- 100% of the cost of three (3) improvements;
- Be partially responsible for two (2) improvements; and
- Pay a fair share contribution for future improvements at the remaining four (5) impacted intersections (which is described in the following section: Fair Share Contribution - Future Improvements).

| TABLE 2: OPENING DAY IMPACTS, RESPONSIBILITY & COSTS | | | | |
|--|--|--------------------------|--------------------|------------------------|
| # | Impacted Intersection | Napa Pipe Responsibility | Total Cost | Napa Pipe Cost |
| 12 | Imola Ave (SR 121) /Soscol Ave ¹ | 19.1% | \$1,128,000 | \$215,000 |
| 13 | SR 221 (Napa-Vallejo Highway)/Streblow Dr | 100% | \$1,500,000 | \$1,500,000 |
| 22 | Napa Valley Corporate Dr/Anselmo Ct ² | 100% | \$500,000 | \$500,000 ³ |
| 25 | Soscol Ferry Rd/Devlin Rd | 100% | \$270,000 | \$270,000 ³ |
| 31 | SR 29 / American Canyon Road ⁴ | 2.8% | \$1,800,000 | \$50,000 |
| Totals | | | \$5,198,000 | \$2,535,000 |

¹Pursuant to phone call with City of Napa on May 9, 2014 cost includes estimated 3,500 square sf of right-of-way @ \$8 sf.

²Cost shown for roundabout (preferred mitigation). Estimated cost of signalization is \$584,000.

³NRP responsible for construction of Intersections 22 & 25 at its cost; amounts shown are estimates.

⁴Mitigation includes 1,000 feet of lane addition north and south of the intersection.

Fehr & Peers, 2014.

Project Solely (100%) Responsible

- **Intersection 13 - SR 221 (Napa-Vallejo Highway)/Streblow Dr.** - NRP is responsible for 100% of mitigation cost based on project degrading LOS from acceptable to unacceptable conditions. Mitigation is to construct additional

northbound left-turn lane on SR 221 and a receiving lane on Streblow Dr. This improvement is subject to prior monitoring to determine need and constriction is at discretion of City of Napa. Payment to City of Napa prior to issuance of building permits will constitute meeting of obligation for mitigation under the development agreement.

- **Intersection 22 - Napa Valley Corporate Dr./Anselmo Ct.** - NRP is responsible for implementation of this mitigation measure at its sole cost based on the project degrading LOS from acceptable to unacceptable conditions. Mitigation is to install a single-lane roundabout (preferred mitigation) with a bypass lane installed on the southbound and eastbound approaches of the intersection. NRP will construct this improvement prior to issuance of building permits and must be completed and certified by the engineer prior to occupancy.
- **Intersection 25 - Soscol Ferry Rd./Devlin Rd.** - NRP is responsible for implementation of this mitigation measure at its sole cost the project degrading LOS from acceptable to unacceptable conditions. Mitigation is to install traffic signal and median treatment on Soscol Ferry Rd. NRP will construct this improvement prior to issuance of building permits and must be completed and certified by the engineer prior to occupancy.

Project Partially Responsible

The intersection of Imola Ave. (SR 121)/Soscol Ave. is already operating at LOS F conditions; therefore the project is only responsible for the fair share contribution to mitigation based on its contribution to LOS F conditions. This mitigation is needed at opening and the City of Napa has agreed to be responsible for its implementation.

- **Intersection 12 - Imola Ave. (SR 121) /Soscol Ave.** - NRP is responsible for 19.1% of mitigation cost based on project contribution (percent of total peak hour trips) to existing LOS F conditions in the PM peak hour. The remainder of funding (80.9%) would come from other sources. Mitigation is to construct an additional left-turn lane on the eastbound approach and an exclusive right-turn lane on the westbound approach. Payment to City of Napa prior to issuance of building permits will constitute meeting of obligation for mitigation under the development agreement.
- **Intersection 31 - SR 29 / American Canyon Rd.** - NRP is responsible for 2.8% of mitigation cost based on project contribution (percent of total peak hour trips) to existing LOS D conditions in the PM peak hour. The remainder of funding (97.2%) would come from other sources. Mitigation is to add an additional through lane on State Route 29 in the northbound and southbound directions at this

intersection, as is currently proposed. Consistent with the project's Mitigation, Monitoring, and Reporting Program (MMRP), fair share fees are due at issuance of the first building permit.

FAIR SHARE CONTRIBUTION - FUTURE IMPROVEMENTS

This section documents the methodology and results of developing a transportation mitigation cost allocation program for the for the Napa Pipe project under future conditions. The basic technical information used in this cost allocation program is consistent with that presented in the Napa Pipe EIR. Consistent with the project's MMRP, fair share fees are due at issuance of the first building permit.

Fair share contributions are often discussed under the Future plus Project scenario when thresholds of significance are based on comparing Future conditions back to Existing conditions. Simply stated, cumulative impacts are, by definition, caused by the cumulative effect of Project traffic and traffic from other reasonably foreseeable developments; the Project is not solely responsible for causing them. The project's fair share contribution to mitigating cumulative impacts is calculated based on the forecasted traffic growth between existing and future conditions. Fehr & Peers then determined what percentage of this growth was attributable to the project. The contribution varies between the AM and PM peak hours, so the greater of the two was used to identify an impacted intersection's fair share contribution assigned to the project. The fair share contribution percentage for each impacted intersection is presented in **Table 3**.

| TABLE 3: FAIR SHARE CONTRIBUTION PERCENTAGES AND COSTS | | | | |
|--|--|---------------------------------|---------------------|---------------------------|
| # | Impacted Intersection | Napa Pipe Fair Share Percentage | Total Cost | Napa Pipe Fair Share Cost |
| 1 | Lincoln Ave/Soscol Ave ¹ | 3.9% | \$1,352,000 | \$53,000 |
| 16 | Kaiser Rd/Enterprise Way | 66.4% | \$30,000 | \$20,000 |
| 17 | SR 221 (Napa-Vallejo Highway)/Kaiser Rd 2 | 34.0% | \$1,700,000 | \$578,000 |
| 20 | Napa Valley Corp. Way/SR 221 (Napa-Vallejo Hwy) ² | 11.1% | \$1,700,000 | \$189,000 |
| 23 | SR 12-SR 121/SR 29 ² | 5.5% | \$2,000,000 | \$110,000 |
| 26 | SR 12-SR 29/SR 221 (Napa-Vallejo Hwy) | 10.7% | \$30,000,000 | \$3,210,000 |
| 27 | Airport Blvd/SR 29-SR 12 | 7.0% | \$40,000,000 | \$2,800,000 |
| 28 | SR 29/South Kelly Rd ² | 10.2% | \$1,800,000 | \$184,000 |
| 29 | SR 29/Napa Junction Rd ² | 9.8% | \$1,800,000 | \$176,000 |
| 30 | SR 29/Donaldson Way ² | 14.6% | \$1,800,000 | \$263,000 |
| Totals | | | \$82,182,000 | \$7,583,000 |

¹Pursuant to phone call with City of Napa on May 9, 2014 cost includes estimated 6,500 square sf of right-of-way @ \$8 sf.

²Mitigation includes 1,000 feet of lane addition north and south of the intersection.
Fehr & Peers, 2014.

There were two study intersections that have no feasible means of achieving acceptable operations under the Future plus Project scenario:

31. SR 29 / American Canyon Road (also impacted under Existing plus Project conditions; fair share contribution assessed under Opening Day Mitigation - Project Partially Responsible)

34. SR 29 / SR 37 Westbound Off-Ramp

As discussed in more detail in the Napa Pipe EIR, these intersections may theoretically be able to be improved to operate acceptably by constructing large-scale intersection treatments, such as grade separation, continuous flow intersections, or approach realignment. However, these options are not likely to be desirable in the affected communities, and thus these mitigations were considered infeasible. Therefore, no mitigation costs have been included for these intersections in this cost allocation program. The cost estimates that follow are only for those locations where feasible mitigations for Future plus Project scenario impacts were identified in the EIR.

FAIR SHARE CONTRIBUTION ALLOCATION BY LAND USE TYPE

The cost allocation program is based on each land use type associated with the Napa Pipe project. For each land use type, a cost per unit of development was calculated. **Table 4** provides the land use, size, and unit type for Napa Pipe.

| TABLE 4: LAND USE PROGRAM- COSTCO ALTERNATIVE | | |
|---|------|---------|
| Land Use Type | Size | Unit |
| Condo | 945 | du |
| Senior Assisted Living | 150 | bed |
| Hotel | 150 | Room |
| Office | 100 | ksf |
| Industrial/R&D/Warehouse | 75 | ksf |
| Neighborhood Serving Retail & Restaurant | 40 | ksf |
| Elementary School | 282 | student |
| Costco | 154 | ksf |
| 1. du = dwelling unit | | |

2. ksf = thousand square feet
Source: Napa Redevelopment Partners, 2013.

The cost per unit of development for each land use type is based on Napa Pipe's fair share contribution (highest peak hour contribution - AM or PM - was used) to significantly impacted intersections under the Future plus Project scenario. Peak period trip generation of each Costco Alternative land use was compared to overall program trip generation to determine the proportional contribution from each land use. Because one of the primary goals of the Napa Pipe project is to provide housing for people who work in Napa County in a neighborhood setting that promotes walking and bicycling, it is critical that the project site include some neighborhood-serving retail and community-serving uses, so that residents can take advantage of these on-site benefits. One method of supporting the achievement of this goal is to rebalance the cost allocations to reduce the cost burden on the neighborhood-serving retail uses as well as to exclude in entirety the elementary school from fair share cost contributions.

Table 5 summarizes the percent of total trip generation of the Costco Alternative attributable to each land use. A blended approach, based on the sum of AM and PM peak period trip generation numbers, was used to allocate amongst the land use types. Allocation of fair share cost by land use type/unit is based on trip generation developed by Fehr & Peers and is consistent with the methodology used in the EIR and subsequent analyses.

Trip Generation Rates

The trip generation rates published by the Institute of Transportation Engineers (ITE) in *Trip Generation* (8th Edition) were used to calculate trip generation for the proposed project, with the exception of the senior housing/assisted living and Costco land uses. The trip rates used to estimate the traffic associated with the senior housing/assisted living units were based on survey data collected by Fehr & Peers. The trip generation estimates for Costco were based on empirical rates developed by Kittelson Associates (*Napa Costco Trip Generation Estimate*, June 15, 2012).

Internalization/Pass-By

Given the variety of land uses proposed as part of the project, it is likely that there will be some on-site interaction between uses. Trips that do not use the external roadway network, such as trips from the residential to the retail uses on the project site, are designated as internal trips, and they have the potential to reduce the overall trip generation for the individual land uses. Internal capture rates for residential, office, and retail uses are provided in the ITE *Trip Generation Handbook* (2nd Edition). These rates have been used to calculate the internal trips generated by the project using the handbook's recommended procedures. The rates for Costco include pass-by trip reductions to account for trips by members that are traveling on the surrounding street network for some other primary purpose (such as a trip from work to home)

and make a stop at the site en route during their normal travel from origin to ultimate destination.

TABLE 5: PERCENTAGE ALLOCATION OF TRIPS BY LAND USE TYPE

| | AM Peak Vehicle Trips | | | PM Peak Vehicle Trips | | | AM+ PM Peak Trips | % Allocation |
|--|-----------------------|--------------|--------------|-----------------------|--------------|--------------|-------------------------|-----------------|
| Land Use | Subtotal | Internalized | Total | Subtotal | Internalized | Total | | |
| Condo | 417 | 0 | 417 | 493 | -23 | 470 | 887 | 33% |
| Senior Assisted Living | 32 | 0 | 32 | 68 | -3 | 65 | 97 | 4% |
| Hotel | 85 | 0 | 85 | 89 | 0 | 89 | 174 | 6% |
| Office | 189 | 0 | 189 | 192 | -5 | 187 | 376 | 14% |
| Industrial/ R&D/ Warehouse | 105 | 0 | 105 | 104 | -3 | 101 | 206 | 8% |
| Neighborhood Serving Retail & Restaurant | 117 | 0 | 117 | 221 | -27 | 194 | 310 | 11% |
| Costco | 260 | -90 | 170 | 1,075 | -640 | 435 | 605 | 22% |
| Elementary School | 128 | -83 | 45 | 43 | -28 | 15 | 60 | 2% |
| Total | 1,333 | -173 | 1,160 | 2,285 | -730 | 1,555 | 2,715 | 100% |

Fehr & Peers, 2013.

Impact Cost Calculations

These allocation percentages were then used to calculate the total cost by land use type per impacted intersection. Finally, the land use detail in **Table 4** was used to translate from total cost to cost by unit per impacted intersection. **Table 6** presents the preferred option for rebalancing, in which the total cost attributed to neighborhood-serving retail and restaurant uses was reduced to \$300,000, the cost attributed to the elementary school was reduced to \$0, and the remaining balance was split between the hotel, office, industrial, and Costco uses.

TABLE 6: FAIR SHARE COST SUMMARY WITH REBALANCING

| | Napa Pipe Fair Share Cost | Condo | Senior Assisted Living | Hotel | Office | Industrial | Neighborhood- Serving Retail | Costco | Elementary School |
|----------------------|---------------------------------|--------------|------------------------------|----------------|---------------|--------------|------------------------------------|----------------|----------------------|
| Size | | 945 du | 150 du | 150 rm | 100 ksf | 75 ksf | 40 ksf | 154 ksf | 282 student |
| % Allocation | | 33% | 4% | 8% | 17% | 9% | 4% | 27% | 0% |
| Total | \$7,583,000 | \$2,502,390 | \$303,320 | \$606,640 | \$1,213,280 | \$682,470 | \$300,000 | \$1,971,580 | \$0 |
| Cost per Unit | | \$2,648 / du | \$2,022 / du | \$4,044 / room | \$12,133/ ksf | \$9,099/ ksf | \$7,500/ ksf | N/A - Lump Sum | \$0 |

Fehr & Peers, 2014.

Exhibit C-1**Fehr & Peers memorandum to Napa County dated August 3, 2015 and entitled
"Supplement to Napa Pipe Intersection Improvement Plan – SR 221/Kaiser Road"**

MEMORANDUM

Date: August 3, 2015
To: Rick Marshall, County of Napa
From: Chris Mitchell, PE, Fehr & Peers
Subject: **Supplement to Napa Pipe Intersection Improvement Plan – SR 221/Kaiser Road**

SF06-0290

Fehr & Peers submitted a memo dated October 22, 2014 (*Napa Pipe Intersection Improvement Plan*, i.e. *NPIIP*) that provided the County of Napa, City of Napa, and the Napa Pipe Project Sponsor (Napa Redevelopment Partners, i.e. NRP) with physical and financial obligation information related to the project's transportation impacts. These obligations can be incorporated into the Napa Pipe project's Development Agreement (DA).

The previous memo identified that NRP would be required to pay a specific dollar amount (calculated based on their percentage trip contribution) which represented a portion of the total cost of a larger suite of improvements at the intersection of SR 221/Kaiser Road. Since that draft, the County, the City, and NRP have reached agreement to revise the fair share mitigation. This revised approach would require NRP to construct a specific portion of the improvements in the near term that all parties agree represents the full extent of NRP's fair share contribution to the larger suite of improvements at the intersection. Specifically, the required mitigation for the project's contribution to cumulative impacts for the intersection should be revised to be the following:

Kaiser Road/State Route 221 Intersection Improvements. Landowner shall construct dual left-turn lanes on northbound SR 221 that are equal in length to the existing two hundred eighty (280) foot single left turn lane. Construction shall be completed as follows:

- (A) If the first building permit issued for a structure on the Property is for a Membership Warehouse Store on Block F, construction shall be completed before the issuance of any other building permits for any other structures on the Property;

Exhibit C-1

(continued)

(B) If the first building permit issued for a structure on the Property is not for a Membership Warehouse Store on Block F, construction shall be completed before either one (but not both) of the following occurs:

- i. a building permit is issued for the structure that will contain the three hundredth (300th) residential unit on the Property; or
- ii. a Certificate of Occupancy is issued for a Membership Warehouse Store on Block F.

By constructing the turn-lane improvements required by this Section 4.4, the City acknowledges that NRP has fully satisfied its obligation to mitigate the Project's contribution to a cumulative impact at Intersection #17 pursuant to the MMRP, the NPIIP (Napa Pipe Intersection Improvement Plan) and the DA. To the extent construction of any other improvements at Intersection #17 are or become necessary to satisfy the requirements of the MMRP and DA, the funding or completion of those other improvements shall not be the responsibility of NRP. Rather, NRP's responsibility for providing fair share payments for improvements at Intersection #17 and for any other improvements at Intersection #17 shall have been fully and completely addressed by the construction of the turn-lane improvements required by this Section 4.4 in lieu of a fair share contribution.

With the changes proposed above, the revised mitigation measure satisfies NRP's obligation toward a fair-share contribution toward mitigating cumulative impacts at the subject intersection.

EXHIBIT D**Phasing Plan****1. Phasing - Generally**

1.1 **Phased Infrastructure Generally.** Throughout development of the Project, construction of Project Infrastructure, Affordable Housing and other Development Agreement obligations will be phased in accordance with the terms and conditions of the Development Agreement, including, without limitation, this Phasing Plan, the Affordable Housing Plan, and the MMRP. Landowner will provide certain Open Space, Affordable Housing, and traffic mitigation improvements in connection with certain levels of development and/or as a pre requisite for commencement of a subsequent Phase or a particular residential or commercial building block or project building within a Phase or sub-Phase, as described herein. Phasing of other Project Infrastructure, including access and utilities (including storm water controls) improvements necessary to accommodate development of a Phase or sub-Phase shall be provided on the basis of adjacency and as-needed, as described in Section 2 below. Approval and construction of Project Infrastructure in connection with each Phase or sub-Phase is intended to maintain a level of flexibility in determining Infrastructure requirements while providing services appropriate for development.

1.2 **City Approval of Phased Infrastructure.** The Subdivision Procedures attached as Exhibit I to this Agreement require Landowner to submit with each subdivision map for each Phase identified on the Phasing Plan Diagrams attached hereto as Attachment 1 (each, a “**Phase**”) (or if a subdivision map is submitted for less than an entire phase (each, a “**sub-Phase**”), for each sub-Phase), a description of the applicable Project Infrastructure and Open Space to be included within that Phase or sub-Phase (in each case, the “Phase Infrastructure”). City shall approve or disapprove the Phase Infrastructure based on consistency with the requirements and standards set forth in this Agreement (including as provided in Section 2 below) and the other Project Approvals (including, without limitation, the Development Plan and Master Map), the Subdivision Map Act, and Napa Municipal Code Title 16 (Subdivisions) , as modified by the Subdivision Procedures and Development Plan, and Existing City Land Use Regulations.

1.3 **City Approval of Illustrative Phasing Plan.** Project Phases described herein are shown on the illustrative Phasing Plan diagrams attached hereto as Attachment 1. In the event of any discrepancy between Attachment 1 and the Agreement, including the text of this Phasing Plan, the Agreement and the text of this Phasing Plan shall control.

2. Adjacency and As-Needed

The primary principles of the Project's Infrastructure phasing are "adjacency" and "as needed," unless otherwise specifically provided in the Development Plan and this Agreement, including, without limitation, this Phasing Plan, the Affordable Housing Plan, the NPIIP and MMRP. When development of a residential or commercial project(s) occurs within a Phase or sub-Phase, “Adjacent Infrastructure” and other Project Infrastructure needed to provide for adequate access and utilities service for such project will be constructed. These include, for

example, streets (and improvements therein and thereon), curbs, gutters, sidewalks, street lights and other streetscape improvements, joint utility trench, utility corridors and related facilities, storm water, wastewater, potable and other water facilities. "Adjacent Infrastructure" means Infrastructure which is near to and may share a common border or end point with a building project or sub-Phase within one of the four identified Phases. Where it is determined by City and Landowner to be feasible and sufficient to meet the needs of a project or sub-Phase, half-streets may be constructed. Project Infrastructure will be constructed in accordance with this adjacency and as needed principles unless other specific criteria is provided. In all cases, Project Infrastructure must be designed so as to connect with Project Infrastructure previously approved or installed.

3. Open Space Phasing

3.1 Open Space Development. Open Space and associated community facilities and improvements shall be designated in connection with each Phased Final Map and improvement plans approved therewith (unless earlier included in separate improvement plans) consistent with the schedule for construction of open space described in Section 3.2 below. City, in its sole discretion, may defer Open Space requirements to subsequent project maps, Phases or sub-Phases as it deems it appropriate.

3.2 Schedule for Construction of Open Space. Open Space (as each is more particularly described in the Development Plan) shall be Substantially Completed consistent with the following schedule of performance:

| Open Space | Trigger |
|-----------------------|---|
| P1 | Prior to issuance of a Certificate of Occupancy for the hotel on Block E |
| P2 & Riverfront Trail | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Blocks 4, 5, and 6 |
| P4 | Prior to the issuance of the final Certificate of Occupancy in Phase 1 ¹ |
| P5 | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Blocks 13, 15, 16, 19, and 20 |
| P6 | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Blocks 10 and 11 |

¹ Substantial Completion of Open Space P4 and P5 will, however, at Landowner's request, be deferred during and for the period of any upgrade or replacement of sanitary sewer lines and associated facilities by the Napa Sanitation District in Open Space P4 or P5 , or until completion of such work if scheduled by Napa Sanitation district after Substantial Completion would otherwise be required.

| Open Space | Trigger |
|--|--|
| P7 | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Blocks 8 and 9 |
| P8A | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Block 1 and 2 |
| P8B | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Block 4 |
| P9A | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units in Phase 1 |
| P9B | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total entitled residential units |
| P10 | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Block 11 |
| P11 | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Blocks 13, 14, 15, 16, and 17 |
| P12a | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Block 22 |
| P12b | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Block 21 |
| Dry Docks | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Blocks 8, 9, 10, 11, and 12 |
| Easement (only) for Ped/bike Connection to Kennedy Park | Prior to issuance of a Certificate of Occupancy for the first residential unit in the Project, secure (from property owner, Syar Properties), a public access easement (anticipated to be dedicated for use and maintenance to Napa County Regional Park and Open Space District as part of the Vine Trail), for an approximately __ foot trail between the southern boundary of Kennedy Park and the Property's boundary. |
| Interim Bike/Pedestrian Trail on the Property & connection to Kennedy Park | Prior to issuance of a Certificate of Occupancy for the unit representing 75% of the total units on Blocks 13, 14, 15, 18, and 19, and subject to (i) the conditions for construction of Open Space P5, and (ii) approval of the railroad crossing |

| Open Space | Trigger |
|------------|---|
| | between Open Space P4 and P5 by Union Pacific) ² |

4. Transportation Infrastructure

As described in the Napa Pipe Intersection Improvement Plan, in addition to Landowner's obligation to pay its fair share and other costs for transportation-related Project Infrastructure, Landowner must also construct specific Project Infrastructure improvements, regardless of adjacency, as follows:

4.1 Napa Valley Corporate Drive / Anselmo Court. Landowner shall construct a single lane round-about on the southbound and eastbound approaches to the intersection, including the bridge improvements to Anselmo Court and Anselmo Court/Corporate Drive, such that all access roads are at flood elevation of 12 feet NGVD29, as referenced in Section 3 of the Napa Pipe Zoning Code. Landowner shall also endeavor to secure the right of way for a possible by-pass lane, to be constructed, if needed, by others. If the right of way for a roundabout cannot be reasonably and timely obtained, then a traffic signal may be installed as an alternative. Regardless of whether this intersection is improved with the roundabout or with the traffic signal, Landowner shall complete the improvements required by this Section 4.1 prior to the issuance of a Certificate of Occupancy for the Membership Warehouse Store or the first residential unit in the Project, whichever is issued first.

4.2 Soscol Ferry Road / Devlin Road. Landowner shall install median treatment improvements on Soscol Ferry Road that control all movements except for the westbound through movement on Soscol Ferry Road, and shall widen Soscol Ferry Road to the west of its intersection with Devlin Road to allow for merging of the two lanes. The merge distance shall be in accordance with City standard roadway design criteria for lane merges. Landowner shall complete such improvement prior to the issuance of a Certificate of Occupancy for the Membership Warehouse Store or the first residential unit in the Project, whichever is issued first.

4.3 Kaiser Road Landscape Median Improvements. Landowner shall design and construct a landscape median on Kaiser Road between State Route 221 and Syar Road (**"Kaiser Road Landscape Median Improvements"**), including any roadway improvements such as restriping necessary to accommodate the installation of the Kaiser Road Landscape Median Improvements. Construction shall be completed before issuance of a Certificate of Occupancy for the 351st residential unit. Kaiser Road Landscape Median Improvements shall be subject to the review and approval of the City. The Kaiser Road Landscape Median Improvements shall fit within a roadway configuration that includes a minimum 6' westbound bike lane, 12' westbound travel lane, 14' westbound travel lane, 14' eastbound travel lane, 12' eastbound travel lane and 6' eastbound bike lane.

² Interim trail on the Property to Kennedy Park connection would be located on the west side of the railroad tracks and cross-over to the east side at the juncture of Open Space Parcels P4 and P5, as shown on the Phasing Plan diagram for Phase One.

4.4 Kaiser Road/State Route 221 Intersection Improvements. Landowner shall construct dual left-turn lanes on northbound SR 221 that are equal in length to the existing two hundred eighty (280) foot single left turn lane. Construction shall be completed as follows:

(A) If the first building permit issued for a structure on the Property is for a Membership Warehouse Store on Block F, construction shall be completed before the issuance of any other certificate of occupancy for any other structures on the Property;

(B) If the first building permit issued for a structure on the Property is not for a Membership Warehouse Store on Block F, construction shall be completed before either one (but not both) of the following occurs:

- i. a certificate of occupancy is issued for the structure that will contain the three hundredth (300th) residential unit on the Property; or
- ii. a Certificate of Occupancy is issued for a Membership Warehouse Store on Block F.

By constructing the turn-lane improvements required by this Section 4.4, the City acknowledges that NRP has fully satisfied its obligation to mitigate the Project's contribution to a cumulative impact at Intersection #17 pursuant to the MMRP, the NPIIP (Napa Pipe Intersection Improvement Plan) and the Development Agreement. To the extent construction of any other improvements at Intersection #17 are or become necessary to satisfy the requirements of the MMRP and Development Agreement, the funding or completion of those other improvements shall not be the responsibility of NRP. Rather, NRP's responsibility for providing fair share payments for improvements at Intersection #17 and for any other improvements at Intersection #17 shall have been fully and completely addressed by the construction of the turn-lane improvements required by this Section 4.4 in lieu of a fair share contribution.

5. Stormwater

An erosion and sediment control plan ("**ESCP**") shall be submitted for review and approval with the applicable map or improvement permit prior to issuance of grading permits and improvement plans for each residential or commercial development project. The ESCP shall address interim or permanent facilities or control measures, such as straw bale barriers, straw mulching, straw wattles, silt fencing, and temporary sediment ponds, needed to handle storm water overland flow and manage erosion and sediment, control and treat increased stormwater runoff associated with the increase in the amount of impervious surfaces and promote infiltration of runoff from new impervious services as project development occurs in each Phase or Sub-Phase. Streets will most often provide the drainage corridors needed for these flows, but it is also possible that temporary or permanent drainage pipes, basins or swale corridors (and provision of corresponding access) will be needed in various locations until the final or ultimate drainage systems are completed.

6. Community Facilities Space

Landowner shall provide the Community Facilities space described in Section IV.5 of the Development Plan and Section 15.2.5 of the Agreement.

7. Affordable Housing

The phasing requirements associated with development of Affordable Housing are described in the Affordable Housing Plan, Exhibit B to the Agreement.

8. Site Remediation and Grading

Soil remediation for the Property has been completed consistent with the Remedial Design and Implementation Plan attached to the 2011 Supplemental Draft Environmental Impact Report for the Napa Pipe project. Grading and filling shall be performed as needed for development of each Phase or sub-Phase and as described in Development Plan.

9. Membership Warehouse Store and Hotel

9.1 Generally.

Phase One includes a Membership Warehouse Store to be located on Block F, as described in the Development Plan. Landowner entered into a binding agreement, as such agreement may have been or may be amended, for purchase and sale of the Membership Warehouse Store site, as shown on the Land Use Plan, and for development of a Membership Warehouse Store by such purchaser thereon (the "**Purchase Agreement**"). Landowner shall continue to use diligent and good faith efforts to maintain a Purchase Agreement but shall nonetheless be entitled to obtain building permits for residential or commercial development in Phase One and any other or subsequent Phases in accordance with this Agreement and all applicable laws, subject to compliance with the deposit and payment requirements described below, as and to the extent applicable.

9.2 Landowner's Deposit.

Immediately upon the issuance of a Certificate of Occupancy for a Membership Warehouse Store on Block F or a hotel on Block E, Landowner's obligations to maintain Landowner's Deposit and make the annual payments under Subsections 9.2 and 9.3 below, shall terminate, and the City shall be entitled to retain all previously-made payments. If Landowner remains in full compliance with its deposit and payment obligations under this Section 9 at the time of such termination, then the full remaining balance of Landowner's Deposit shall be released and returned to Landowner, and no further payments shall be required.

Landowner shall provide and maintain a cash deposit, or a letter of credit in such form as is reasonably approved by the City, as provided below ("**Landowner's Deposit**"). If requested by Landowner, the City may, in its sole discretion, accept a bond, guaranty, or other form of security:

(A) Landowner's First Deposit. If a Certificate of Occupancy has not been issued for a Membership Warehouse Store on Block F, or for a hotel on Block E, at the time Landowner applies for the building permit for the structure that will contain the first (1st) residential unit on the Property, then Landowner shall provide to the City a cash deposit, or a letter of credit in such form as is reasonably approved by the City, in the amount of Seven Hundred Thousand Dollars (\$700,000) (the "**First Deposit**"), before Indexing.

For purposes of this Section 9, “**Indexing**” means adding to the amount of the deposit or payment stated in this Section 9 the product of the deposit or payment multiplied by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers (base years 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics from the first day of the month that is two years after the Effective Date of the Second Amendment to the first day of the most recent month for which the Index is available at any given time.

The City shall not issue the building permit for the structure that will contain the first residential unit on the Property, but excluding therefrom any building permit for an Affordable Home, unless and until Landowner has made the First Deposit as required herein.

(B) Landowner’s Second Deposit. If a Certificate of Occupancy has not been issued for a Membership Warehouse Store on Block F, or for a hotel on Block E, at the time Landowner applies for the building permit for the structure that will contain the seven hundred first (701st) residential unit on the Property, but excluding therefrom any building permit for an Affordable Home, then Landowner shall provide to the City a second cash deposit, or letter of credit in such form as is reasonably approved by the City, in the amount of Two Hundred Thirty One Thousand Five Hundred Dollars (\$231,500), before Indexing (the “**Second Deposit**”). This Second Deposit shall be in addition to the First Deposit provided by Landowner pursuant to Section 9.2(A) above, bringing the total amount of Landowner’s Deposit with the City to Nine Hundred Thirty One Thousand Five Hundred Dollars (\$931,500), before Indexing. The City shall not issue the building permit for the structure that will contain the 701st residential unit on the Property, but excluding therefrom any building permit for an Affordable Home, unless and until Landowner has made the Second Deposit as required herein.

9.3 Landowner’s Payments.

(A) First Annual Payment. Concurrent with Landowner’s First Deposit, and on each anniversary date thereafter, Landowner shall pay to the City the amount of Three Hundred Fifty Thousand Dollars (\$350,000), before Indexing (the “First Annual Payments”);

(B) Second Annual Payment. On the date that the City issues the building permit for the structure that will contain the 176th residential unit within the Property, but excluding therefrom any building permit for an Affordable Home, and prior to the issuance of such building permit, and on each anniversary date thereafter, Landowner shall pay to the City the amount of Three Hundred Fifty Thousand Dollars (\$350,000), before Indexing (the “**Second Annual Payments**”). Upon commencing the Second Annual Payments, the total amount of Landowner’s annual payment obligations under this Section 9.3 shall be Seven Hundred Thousand Dollars (\$700,000), before Indexing.

(C) Third Annual Payment. Concurrent with Landowner’s Second Deposit pursuant to Section 9.2(B) above, and on each anniversary date thereafter, Landowner shall pay to the City the amount of One Hundred Fifteen Thousand Seven Hundred Fifty Dollars (\$115,750), before Indexing (the “**Third Annual Payments**”). Upon commencing the Third Annual Payments, the total amount of Landowner’s annual payment obligations under this Section 9.3

shall be Eight Hundred Fifteen Thousand Seven Hundred Fifty Dollars (\$815,750), before Indexing.

(D) Fourth Annual Payment. On the date that the City issues the building permit for the structure that will contain the 805th residential unit within the Property, but excluding therefrom any building permit for an Affordable Home, and prior to the issuance of such building permit, and on each anniversary date thereafter, Landowner shall make pay to the City the amount of One Hundred Fifteen Thousand Seven Hundred Fifty Dollars (\$115,750), before Indexing (the “**Fourth Annual Payments**”). Upon commencing the Fourth Annual Payments, the total amount of Landowner’s annual payment obligations under this Section 9.3 shall be Nine Hundred Thirty One Thousand Five Hundred Dollars (\$931,500), before Indexing.

If Landowner fails to timely make a payment required under this Section 9.3, the City shall be entitled to draw on Landowner’s Deposit in any amount up to and including the full amount of Landowner’s delinquent payment(s). If the City draws on Landowner’s Deposit as provided herein, Landowner shall, within five (5) business days of City’s draw, replenish Landowner’s Deposit to bring the balance up to the balance amount immediately preceding the City’s draw. If Landowner fails to timely replenish Landowner’s Deposit as required herein, the City shall withhold the issuance of building permits for the Project until such time as Landowner’s Deposit has been fully replenished as required herein.

9.4 Hotel Development. Landowner may develop the hotel in either Phase Two or Phase Three. Hotel development is not a prerequisite for any Phase or other development.

10. Floodgates.

Two floodgates shall be constructed as shown in the Development Plan, one located at the north end of the Property and the other located south of the most southerly railroad crossing. The floodgates shall be dedicated to and operated and maintained by the Flood Control District. The floodgates shall be installed prior to issuance of the first Certificate of Occupancy for any occupiable building structure (residential or non-residential) west of the railroad tracks.

11. Phases – Generally

11.1 Generally. This Section 11 is intended to clarify and explain the descriptions and requirements of the Phasing Plan, including the preceding Phasing Plan provisions. [To the extent that this Section 11 is inconsistent with or conflicts with any of the provisions or requirements of the preceding Sections 1 through 10 or the Phasing Plan Diagrams, the provisions of those preceding Sections 1 through 10 or Phasing Diagram shall control and govern the implementation and phasing of the Project.]

Development may occur in the Industrial Zoning District, located in the south eastern quadrant of the Property, on both sides of the Block P9A wetland restoration area, subject to all applicable City requirements for that zone, for up to ninety thousand (90,000) gsf of office space and seventy-five thousand (75,000) gsf of warehouse/R&D development. Development within the Industrial Zoning District is not tied to any Phase, and is subject only to completion of applicable site grading.

A Continuing Care Retirement Center may be developed on any of Blocks 2 through 12 in Phase Two or Phase Three, or on Block C [use on Block C subject to amendment to MP:NP-IBP:W:AC permitting such use and approval of the Napa County Airport Land Use Commission].

Grading and filling shall be performed as needed for development of each Phase or sub-Phase and as described in Development Plan.

Open space will be provided as described in Section 3 above.

11.2 Phase One. Membership Warehouse Store, Residential and Commercial Development, Open Space and Fill Activities. The elements of Phase One, including the development of a Membership Warehouse Store use on Land Use Block F and associated gas station, residential and commercial development and Open Space are described in the Phase One Phasing Plan Diagram, Attachment 1 to this Exhibit D.

11.3 Phase Two. Residential and Commercial Development, hotel (subject to Section 9.4), possible Continuing Care Retirement Center, and Open Space. The elements of Phase Two are described in the Phase Two Phasing Plan Diagram, Attachment 1 to this Exhibit D.

The railroad crossing shown in the Phase Two Phasing Plan Diagram, and as further described in the Development Plan, shall be completed prior to issuance of a Certificate of Occupancy for the first residential project in Phase Two. Approvals for a second and third railroad crossing should also be obtained at this time.

11.4 Phase Three. Residential and Commercial Development, Open Space and third railroad crossing at Kaiser Road. The elements of Phase Three are described in the Phase Three Phasing Plan Diagram, Attachment 1 to this Exhibit D.

11.5 Phasing Flexibility. Subject to the prerequisites for development of each Phase as identified in this Phasing Plan and Attachment 1 hereto, Development in another Phase may proceed prior to completion of the Project Infrastructure and Open Space identified for a prior Phase, provided that development of Project Infrastructure and Open Space remains consistent with the principles outlined herein, and that for each building project or sub-Phase previously initiated Landowner has committed in an associated Improvement Agreement to provide the as-needed or Adjacent Infrastructure and required Open Space and is otherwise proceeding in compliance with the requirements of the Affordable Housing Plan.

PHASE 1
PROJECT COMPONENTS

ONSITE INFRASTRUCTURE

- Demolish and place fill on site, as needed
- Construct backbone roads, utilities, and streetscape to serve the Phase including one crossing over the wetland and one across the Bedford Slough
- Construct P4, P5, P9A, P11, P12a and P12b, (per Section 3 of Phasing Plan)
- Construct first railroad crossing approximately midway through Property, where P4 and P5 meet, which will serve as crossing for interim bike/pedestrian trail in Phase 1
- Interim Bike/Pedestrian Connection from Kennedy Park through the Property

OFFSITE INFRASTRUCTURE (PER SECTION 4 PHASING PLAN)

- Napa Valley Corporate Drive / Anselmo Court improvements
- Kaiser Road/SR 221 Intersection improvements
- Kaiser Road/Syar Road Roundabout improvements
- Soscol Ferry Road/ Devlin Road improvements
- Bike/Pedestrian Connection from southern property line of Kennedy Park to the Property

DEVELOPMENT

- Membership Warehouse Store, including Gas Station
- Approximately 70 low and very-low Affordable Housing units, per the Affordable Housing Plan
- Up to approximately 350 market-rate and moderate-income residential units consistent with Design Guidelines
- Up to 90,000sf Office and 75,000sf warehouse/R&D in Industrial Zoning District (see Section 11, phasing flexibility)



PHASE 2

PROJECT PREREQUISITES

OFFSITE INFRASTRUCTURE

- Napa Valley Corporate Drive/Anselmo Court improvements
- Kaiser Road/SR 221 Intersection improvements
- Kaiser Road/Syar Road Roundabout improvements
- Soscol Ferry Road/ Devlin Road improvements

DEVELOPMENT

- Membership Warehouse requirements per Phasing Plan Section 9.
- Developer's compliance with its obligations under the Affordable Housing Plan
- Moderate-income homes in prior phase constructed proportionate to market rate units constructed in prior phase. (6% of total market rate and moderate-income units)

PROJECT COMPONENTS

ONSITE INFRASTRUCTURE

- Demolish and place fill on site , as needed.
- Construct backbone roads, utilities , and streetscape to serve the Phase
- Construct railroad crossing at southern end of Property
- Construct P1, P2, P8A and P8B per Phasing Plan Section 3
- Construct 2 flood gates at railroad tracks

DEVELOPMENT

- Approximately 270 market rate and moderate-income residential units consistent with Design Guidelines, including a portion of up to 40,000 sf of ground floor neighborhood serving retail, restaurants, and office
- Approximately 70 low and very-low Affordable Housing units, per the Affordable Housing Plan
- 150-unit hotel on Parcel E
- 10,000 SF of commercial space on Parcels C and D



PHASE 3
PROJECT PREREQUISITIES

- DEVELOPMENT
- Developer's compliance with its obligations under the Affordable Housing Plan
 - Moderate-income homes in prior phase constructed proportionate to market rate units constructed in prior phase. (6% of total market rate and moderate-income units)

PROJECT COMPONENTS

- ONSITE INFRASTRUCTURE
- Demolish and place of fill on site, as needed
 - Construct backbone roads, utilities, and streetscape to serve the Phase
 - Construct railroad crossing at Kaiser Road
 - Construct Dry Dock improvements
 - Construct community facilities in old dry dock area
 - Rehabilitate existing crane structures
 - Construct P6, P7, and P10, and complete riverfront trail to be designated as "Vine Trail"

- DEVELOPMENT
- Remaining market rate and moderate-income residential units consistent with Design Guidelines (805 du less all market rate and moderate du constructed in Phases 1 and 2). Ground floor neighborhood serving retail, restaurants, and office, up to a maximum of 40,000 sf total in phases 2 and 3



Exhibit E:
NAPA PIPE MITIGATION MONITORING AND REPORTING PROGRAM

Note: for purposes of this MMRP, unless otherwise indicated the term "Project Applicant" shall mean the project applicant and successors in interest or other persons assuming responsibility for implementation of the mitigation measures under the Development Plan, Applicable Permits, or transfer documents.

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
|---|---|---|---|--|
| <p>TRAFFIC AND TRANSPORTATION</p> <p>TRA-1b: To lessen the severity of significant peak hour traffic impacts at all studied intersections (and potentially reduce impacts to less than significant at the intersections of First St/Soscol Ave; Third St/Silverado Tr.(SR 121)/East Ave/Coombsville Rd; SR 29 Northbound Ramps/Imola Ave, Imola Ave (SR 121)/Jefferson St, SR 221 (Napa-Vallejo Hwy)/Kaiser Road, the project applicant shall establish a transportation demand management (TDM) program which shall be funded and administered by the property owners association with the goal of reducing the forecasted auto trip generation from the project by 15 percent. The TDM program shall include certain required (immediate, long term) measures, as follows.</p> <p>Required TDM Measures</p> <ul style="list-style-type: none"> Establish a full-time, paid TDM coordinator to implement required TDM measures, monitor their effectiveness and implement additional measures as needed to meet the 15 percent goal. The coordinator shall also monitor volumes and delays at intersections where traffic mitigation measures have been called for. Implement peak period shuttle service to key employment centers (e.g. hospital, downtown) or provide funding to allow relocation of the nearby VINE route to serve the site, with added service in peak periods. Implement a parking management program to establish and monitor compliance with parking restrictions. <p>The effectiveness of these required measures shall be monitored on a biannual basis, and traffic counts will be conducted to determine if the 15 percent reduction of forecasted traffic levels is being achieved. If additional measures are necessary to achieve the 15 percent reduction, the TDM coordinator shall implement other measures to enhance the TDM program.</p> <p>Below is a selection of additional measures that may be considered to achieve a reduction in auto traffic:</p> <ul style="list-style-type: none"> Develop incentives for employer programs Guaranteed Ride Home Program Information kiosk w/brochures Newsletter articles Advertised carpool information phone number Annual promotional events Car-share program Shuttles to regional transit like the Vallejo ferry Transit Subsidies | <p>Project Applicant and Property Owners Assoc. are responsible for implementing this mitigation measure as stated.</p> | <p>Dept. of Public Works; City Attorney</p> | <p>TDM Program shall be established and set forth in conjunction with Conditions, Covenants and Restrictions of the Homeowners/Property Owners Association prior to issuance of Certificates of Occupancy (CC&R's to be reviewed and approved by City Attorney)</p> | |

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
|--|---|---|---|--|
| <ul style="list-style-type: none"> • Water taxis • On-site Ticket Sales (some level also included in existing, initial, moderate) • Carpool/Vanpool Subsidies (Start up, empty seat subsidies) • Employer-owned/sponsored Vanpools • Fleet Vehicles for mid-day trips • On-site circulator shuttle or golf-carts and/or campus bicycles • Aggressive flextime/telecommute programs | | | | |
| <p><u>TRA-5:</u> At the intersection of Imola Avenue/Soscol Avenue, prior to issuance of building permits, the project applicant shall pay its fair share toward construction of an additional through lane and left-turn lane on the eastbound approach, an exclusive right-turn lane on the westbound approach, and an additional through lane on Soscol Avenue in both directions. Provide protected phasing for the eastbound and westbound left-turn movements.</p> | <p>Project Applicant or Property Owners Assoc. pays fair share to Napa Pipe Traffic Mitigation Fee Program prior to issuance of building permits.</p> | <p>TDM program manager; Dept. of Public Works.</p> | <p>City shall establish, based on studies funded by Project Applicant, a Napa Pipe Traffic Mitigation Fee Program. Fair share payment as determined by that Program shall be paid to Program prior to issuance of building permits, and dispersed for construction of improvement if and when improvement is constructed.</p> | |
| <p><u>TRA-6:</u> At the intersection of State Route 221 (Napa-Vallejo Highway)/Streblov Drive, construct an additional northbound left-turn lane on State Route 221 (Napa-Vallejo Highway) and a receiving lane on Streblov Drive pursuant to Caltrans standards prior to the occupancy of the project. The TDM program manager shall monitor project-generated traffic and operations of this intersection on an annual basis with the City's oversight after permits are issued for the project. Monitoring shall be used to determine if and when the required improvement is warranted by project generated traffic at the intersection. If warranted, the property owners association shall be responsible for implementing the required improvement to the intersection.</p> | <p>Property Owners Assoc. and TDM program manager to implement measure as stated. Owners Association shall work with City of Napa and Caltrans to obtain consent to construct improvement if warranted.</p> | <p>TDM program manager and Property Owners Assoc.; Dept. of Public Works.</p> | <p>Intersection monitored by TDM program manager on annual basis, and when traffic flows warrant, Owners Assoc. to work with City of Napa/Caltrans to obtain consent to construct improvement.</p> | |
| <p><u>TRA-8:</u> At the intersection of Soscol Ferry Road/Devlin Road, forecasted volumes warrant a traffic signal; however, the intersection's close proximity to an adjacent signalized intersection renders a standard signalized intersection infeasible. Construct a median treatment on Soscol Ferry Road that essentially controls all movements except for the westbound through movement on Soscol Ferry Road. Widen Soscol Ferry Road to the west of its intersection with Devlin Road to allow for merging of the two lanes. The merge distance shall be in accordance with the</p> | <p>Project applicant to pay County costs associated with making the identified improvements and construction.</p> | <p>Planning Dept. and Dept. of Public Works</p> | <p>Department of Public Works shall verify construction of improvement prior to issuance of</p> | |

EXHIBIT "A"

ATTACHMENT 2

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
|--|--|---|--|--|
| standard roadway design criteria for lane merges. Please see the figure presented in the Traffic Impact Analysis in Appendix E of the Napa Pipe 2009 DEIR. This improvement shall be constructed prior to the occupancy of the project. | | | Certificates of Occupancy. | |
| <u>TRA-9:</u> At juncture of SR 12-SR 29/SR 221 (Napa-Vallejo Highway), prior to issuance of building permits the project applicant shall pay its pro-rated fair share toward the construction a flyover ramp for the traffic traveling from southbound State Route 221 (Napa-Vallejo Highway) to southbound State Route 12/State Route 29. | Project Applicant or Property Owners Assoc. pays fair share to Napa Pipe Traffic Mitigation Fee Program prior to issuance of building permits. | Planning Dept. and Dept. of Public Works. | City shall establish, based on studies funded by Project Applicant, a Napa Pipe Traffic Mitigation Fee Program. Fair share payment as determined by that Program shall be paid into Program prior to issuance of building permits, and dispersed for construction of improvement if and when improvement is constructed. | |
| <u>TRA-10:</u> At juncture of SR 12/Airport Boulevard/SR 29, prior to issuance of building permits the project applicant shall pay its pro-rated fair share toward the construction of a grade-separated interchange as proposed in the Napa County General Plan. This improvement has been contemplated previously by the County and Caltrans, and is likely to be needed with or without development of the project. | Project Applicant or Property Owners Assoc. pays fair share to Napa Pipe Traffic Mitigation Fee Program prior to issuance of building permits. | Planning Dept. and Dept. of Public Works | City shall establish, based on studies funded by Project Applicant, a Napa Pipe Traffic Mitigation Fee Program. Fair share payment as determined by that Program shall be paid to Program prior to issuance of building permits, and dispersed for construction of improvement if and when improvement is constructed. | |
| <u>TRA-11:</u> State Route 29/Napa Junction Road intersection: The Napa County General Plan calls for widening of State Route 29 from the State Route 221 (Napa-Vallejo Highway) interchange to the southern County Line. In order to mitigate the project's significant impact based on the criteria described earlier in the FEIR, the additional through lane on State Route 29 in the | Project Applicant or Property Owners Assoc. pays fair share to Napa Pipe Traffic Mitigation | Dept. of Public Works. | City shall establish, based on studies funded by Project Applicant, a Napa | |

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
|---|--|---------------------------|--|--|
| northbound and southbound directions shall be constructed at this intersection, as is currently proposed. This improvement has been contemplated previously by the County and Caltrans, and is likely to be needed with or without development of the project. For this reason, the project applicant shall pay its fair share to the construction of this project prior to issuance of building permits to avoid a significant impact. With the widening of State Route 29, this intersection would improve to acceptable LOS C in the AM and PM peak hours. | Fee Program prior to issuance of building permits. | | Pipe Traffic Mitigation Fee Program. Fair share payment as determined by that Program shall be paid to Program prior to issuance of building permits, and dispersed for construction of improvement if and when improvement is constructed. | |
| <u>TRA-12</u> : State Route 29/Donaldson Way intersection: The Napa County General Plan calls for widening of State Route 29 from the State Route 221 (Napa-Vallejo Highway) interchange to the southern County Line. In order to mitigate the project's significant impact based on the criteria described in the FEIR, the additional through lane on State Route 29 in the northbound and southbound directions shall be constructed at this intersection, as is currently proposed. For this reason, the project applicant shall pay its fair share to the construction of this project prior to issuance of building permits to avoid a significant impact. With the widening of State Route 29, this intersection would improve to acceptable LOS B in both the AM and PM peak hours. | Project Applicant or Property Owners Assoc. pays fair share to Napa Pipe Traffic Mitigation Fee Program prior to issuance of building permits. | Dept. of Public Works. | City shall establish, based on studies funded by Project Applicant, a Napa Pipe Traffic Mitigation Fee Program. Fair share payment as determined by that Program shall be paid to Program prior to issuance of building permits, and dispersed for construction of improvement if and when improvement is constructed. | |
| <u>TRA-13</u> : State Route 29/American Canyon intersection: The City of American Canyon's General Plan recognizes that this intersection will likely operate at LOS E conditions during peak periods. The Napa County General Plan also calls for widening of State Route 29 from the State Route 221 (Napa-Vallejo Highway) interchange to the southern County Line. In order to mitigate the project's significant impact based on the criteria described in the FEIR, the additional through lane on State Route 29 in the northbound and southbound directions shall be constructed at this intersection, as is currently proposed. For this reason, the project applicant shall pay its fair share to the construction of this project prior to issuance of building permits to avoid a significant impact. With the widening of State Route 29, this intersection would continue to operate at LOS F in the AM peak hour (primarily due to the extremely heavy | Project Applicant or Property Owners Assoc. pays fair share to Napa Pipe Traffic Mitigation Fee Program prior to issuance of building permits. | Dept. of Public Works. | City shall establish, based on studies funded by Project Applicant, a Napa Pipe Traffic Mitigation Fee Program. Fair share payment as determined by that Program shall be paid to Program prior to | |

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
|--|---|---------------------------|--|--|
| westbound right turn to northbound State Route 29), but would operate better than Existing conditions without the project. The intersection would improve to LOS D in the PM peak hour. | | | issuance of building permits, and dispersed for construction of improvement if and when improvement is constructed. | |
| <p><u>TRA-14:</u> The Project Applicant shall develop and implement a Construction Traffic Management Program ("CMP") to minimize impacts of the Project and its contribution to cumulative impacts related to both on and off-site construction and remediation activities and traffic. The program shall provide necessary information to various contractors and agencies as to how to maximize the opportunities for complementing construction management measures and to minimize the possibility of conflicting impacts on the roadway system, while safely accommodating the traveling public in the area. The program shall supplement and expand, rather than modify or supersede any manual, regulations, or provisions set forth by City of Napa departments and agencies.</p> <p>Preparation of the Construction Management Program shall be the responsibility of the Project Applicant, and shall be reviewed and approved by City staff prior to initiation of construction. The program shall:</p> <ul style="list-style-type: none"> Identify construction traffic management practices in the City of Napa, as well as other jurisdictions that could provide useful guidance for a project of this size and characteristic. Describe procedures required by different departments and/or agencies in the City for implementation of a construction management plan, such as reviewing agencies, approval process, and estimated timelines. Identify construction traffic management strategies and other elements for the Project, and present a cohesive program of operational and demand management strategies designed to maintain acceptable traffic operations during periods of construction activities in the Project area. These could include construction strategies, demand management strategies, alternate route strategies, and public information strategies. Coordinate with other projects in construction in the immediate vicinity (i.e. Syar), so that they can take an integrated approach to construction-related traffic impacts. Identify barge routes to access the project site and other information as required by City of Napa in the event soil import may be serviced by barge via the Napa River. Ensure that adequate pedestrian circulation is maintained when the-existing sidewalks must be closed or obstructed for construction purposes. Ensure that adequate bicycle facilities are maintained, including detour signs for then-existing bicycle routes. Ensure that construction-truck traffic follows established truck routes, where designated. | Project Applicant is responsible for developing and obtaining approval of the CMP. Actual implementation of CMP measures is the responsibility of Project Applicant and its construction contractors. | Dept. of Public Works. | <p>Prior to commencement of grading/construction activities and issuance of any related permits, Project Applicant shall submit CMP to Dept. of Public Works for approval. Project Applicant shall require adherence to CMP measures as a contractual condition with all construction contractors.</p> <p>During construction, Dept. of Public Works shall conduct periodic inspections to determine compliance with CMP measures.</p> | |

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
|--|--|---|--|--|
| <ul style="list-style-type: none"> Ensure that transit facilities, including stops, locations and associated amenities, such as shelters, etc., are maintained, or that acceptable temporary facilities are established. <p>Implementation of the CMP would help reduce the Proposed Project's construction- related traffic impacts. Given the magnitude of the proposed development and the duration of the construction period, some disruptions and increased delays could still occur even with implementation of the CMP, although these disruptions would not be considered a significant impact because they would be intermittent over the course of the construction period.</p> | | | | |
| <p><u>TRA-15:</u> To mitigate potential adverse effects on roadway pavement conditions, prior to beginning construction on the proposed project, survey road conditions for proposed trucking routes on the following roadways:</p> <ul style="list-style-type: none"> ◆ Kaiser Road ◆ Napa Valley Corporate Drive ◆ Napa Valley Corporate Way ◆ Bordeaux Way ◆ Anselmo Court ◆ Soscol Ferry Road <p>This shall include roadway pavement and other surfaces that construction traffic may cross. The project applicant shall return roadway conditions to their pre-construction conditions (or better) following the remediation and grading phase of the project.</p> <p>For subsequent construction phasing, truck traffic to/from the project shall be monitored on the identified roadways to determine project's construction traffic contribution to over- all truck traffic. Project applicant shall pay a fair share contribution to return roadway conditions to their pre-construction conditions following each phase of construction.</p> | Project Applicant shall retain qualified consultant (approved by the City) to conduct the road survey and implement mitigation measure as stated. | Dept. of Public Works. | Schedule shall be as stated in mitigation measure. | |
| <p><u>TRA-16:</u> The design of the public promenade along the waterfront portion of the project shall minimize pedestrian and bicycle conflicts through means such as channelizing pedestrians to discrete crossing points of the trail, widening the trail through areas where higher pedestrian volumes are expected, and where necessary, separating pedestrian and bicycle travel.</p> | Project Applicant submits Site Plan for public promenade area to Planning Dept. and Dept. of Public Works for approval. | Planning Dept. and Dept. of Public Works. | Prior to any construction and permitting of the public promenade area. | |
| <p><u>TRA-17:</u> To promote transit use, reroute the VINE #10 bus route through the project site to serve the proposed transit center as proposed in the project site plan and ensure that all development proposed would be within a reasonable walking distance to transit (less than ½-mile).</p> <p>The revised bus route through Napa Pipe could either be a loop, in which case existing stops along Napa Valley Corporate Drive would remain, or the route could be relocated. Under the latter option, the existing bus stop at Latour Court would be moved 450 feet to the north to Kaiser Road, the stop at Bordeaux Way would be moved 600 feet to the south to Anselmo Court, and the stop at Napa Valley Corporate Way would be eliminated. Stops at Napa Valley Corporate Drive's intersections with Kaiser Road and Anselmo Court will help maintain current</p> | City and Project Applicant shall work with NCTPA to obtain approval of the bus rerouting. Project Applicant shall provide shuttle service as stated if rerouting does not occur. | Planning Dept. and TDM program manager. | Negotiations shall occur, and if necessary shuttle instituted, prior to issuance of Certificates of Occupancy. | |

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| <p>patrons. Current ridership is expected to be maintained or surpassed by routing through the project. However, it should also be noted that the extension into the Napa Pipe site will lengthen the travel time from the City of Napa to the City of American Canyon, which may discourage current commuters.</p> <p>If the extension of the VINE #10 bus route is not feasible, the Project Applicant shall include peak period shuttle service as included in Mitigation Measure TRA-1b.</p> | | | | |
| <p><u>TRA-18:</u> To address issues associated with off-street parking supply, the project applicant shall collaborate with City Staff to develop a parking monitoring plan that assesses the utilization of available parking, to be included in the development plan. Alternatively, implementation of a parking management program, a component presented in Mitigation Measure TRA-1b, could be implemented to monitor parking demand and carry out parking reduction strategies when needed.</p> | <p>Project Applicant shall address parking issues, with approval of City , in development plan.</p> | <p>Planning Dept.</p> | <p>Adequacy of parking shall be determined by Planning Dept. prior to commencement of construction in accordance with zoning regulations, or in approved development plan.</p> | |
| <p><u>TRA-19:</u> To address project contribution to cumulative deterioration on roadway and intersection level of service operations, in addition to Mitigation Measures TRA-1 through TRA-13 (as applicable), the project applicant shall pay a fair share contribution to other long-term planned roadway improvements in the Regional Transportation Plan (assumed under the Cumulative Planned roadway network) at locations where the proposed project would contribute to cumulatively significant traffic impacts. The following improvements have been identified under this plan:</p> <ul style="list-style-type: none"> ◆ Realignment of Silverado Trail at Soscol Avenue to match alignment of proposed Gasser Drive extension ◆ Widening of State Route 29 to six lanes between Airport Boulevard and southern Napa County line ◆ Extension of Devlin Road south to Green Island Road <p>Each of these roadway improvements would improve intersection operations and general roadway circulation in the project study area under Cumulative conditions; however, most intersections would continue to operate unacceptably.</p> <p>A comprehensive list of roadway improvements that would be required to achieve acceptable intersection level of service under cumulative conditions has been developed and is presented in the Transportation Impact Analysis (Appendix E) of the 2009 DEIR. (See also, September 7, 2012 "Napa Pipe Impact Comparison-Costco Alternative/Proposed Project" Memorandum prepared by Fehr & Peers identifying the mitigation measures from the TIA that are applicable to the Developers Revised Proposal.) Many of these improvements would require major roadway widening in a fashion that may not be consistent with the stated desires of many communities, through their General Plan documents, to maintain Napa County's rural atmosphere and promote pedestrian, bicycle, and transit as successful transportation modes. Many of the cumulative impacts would occur even without the project.</p> | <p>Project Applicant or Property Owners Assoc. pays fair share to Napa Pipe Traffic Mitigation Fee Program prior to issuance of building permits.</p> | <p>Dept. of Public Works and Planning Dept.</p> | <p>City shall establish, based on studies funded by Project Applicant, a Napa Pipe Traffic Mitigation Fee Program. Fair share payment as determined by that Program shall be paid to Program prior to issuance of building permits, and dispersed for construction of improvement if and when improvement is constructed.</p> | |

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| BIOLOGICAL RESOURCES | | | | |
| BIO-1: In the event that pre-construction confirmation surveys conducted in accordance with the Biological Resource Assessment ("BRA") protocols identify any federally- or State-listed plant species that have become established along shoreline areas proposed for bank work, the applicant shall obtain all necessary permits and/or authorizations from the CDFG and USFWS as required by federal and State law for incidental take of those species. If CNPS 1B plants are found in the area of proposed disturbance and cannot be avoided, a salvage/relocation plan shall be developed and approved by CDFG prior to initiation of bridge construction and other improvements in marshland habitat. Evidence that the applicant has secured any required authorization from these agencies shall be submitted to the City of Napa Planning Dept. prior to issuance of any grading or building permits for the project. | Project Applicant retains qualified biologist (subject to City approval) to conduct confirmation survey, and is responsible for implementing mitigation measure as stated. | Planning Dept. | Survey conducted, and any necessary State or Federal permits/authorizations obtained, prior to issuance by City of any grading or building permits. | |
| BIO-2: If project improvements affecting or adjacent to brackish marsh habitat are not initiated until after 2010, supplemental confirmation surveys conducted in accordance with the Biological Resource Assessment ("BRA") protocols shall be conducted to determine whether Mason's lilaopsis, Delta tule pea, and other marsh associated special-status plant species have become established at the Bedford Slough bridge crossing and shoreline of the Napa River where the bridge over Asylum Slough is proposed. The surveys shall be conducted by a qualified botanist in the year prior to the anticipated start of construction, and shall be appropriately-timed to allow for detection of all species of concern (typically between April and November). | Project Applicant retains qualified biologist (subject to City approval) to conduct supplemental confirmation survey and implements mitigation measure as stated. If plant species detected, Project Applicant to obtain and necessary CDFG and USFWS permits/authorizations; implement <i>Avoidance/Minimization Measures During Construction</i> set forth in the Biological Resource Assessment (BRA). | Planning Dept. | Survey conducted, and any necessary State or Federal permits/authorizations obtained, prior to issuance by City of any grading or building permits. Project Applicant implements applicable BRA requirements. | |
| BIO-3(a): To avoid the potential for disturbance of nesting birds associated with marsh habitat on or near the site, schedule any construction activities that encroach within 300 feet of the brackish marsh, diagonal drainage, and Bedford Slough for the period of August 16 through February 14. If construction work cannot be scheduled during this period, a qualified biologist shall conduct pre-construction surveys for nesting birds in the wetland habitats. The surveys shall be conducted no later than 14 days prior to the start of work and shall focus on determining whether San Pablo song sparrow, saltmarsh common yellowthroat and/or tricolored blackbird are nesting in these areas. If these or other birds protected under the Migratory Bird Treaty Act or CDFG Code 3503 are found nesting, then appropriate construction buffers shall be established to avoid disturbance of the nests until such time that the young have fledged. The size of the nest buffer shall be determined by the biologist in consultation with CDFG, and shall | Project Applicant implements mitigation measure as stated. Retention of qualified biologist if necessary is subject to City approval. | Planning Dept. | Planning Dept. shall monitor construction timing; If needed, qualified biologist to consult with CDFG, provide periodic monitoring of construction, and report result to Planning Dept. | |

EXHIBIT "A"

ATTACHMENT 2

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| be based on the nesting species, its sensitivity to disturbance, and expected types of disturbance. Typically, these buffers range from 150 to 250 feet from the nest site. Nesting activities shall be monitored periodically by a qualified biologist to determine when construction activities in the buffer area can resume. The nest buffer shall remain in effect and the nest protected until the young have fledged and the nest is no longer in active use, as determined by the qualified biologist. | | | | |
| <u>BIO-3(b)</u> : Tree and brush removal on the remainder of the project site (those areas not subject to BIO-3(a)), shall take place during the period of August 16 through February 14 to the maximum extent possible to avoid possible disturbance to nesting birds. If tree and brush removal cannot take place outside of this timeframe, a qualified biologist shall conduct pre-construction surveys for nesting birds in the trees and brush to be removed no later than 14 days prior to the start of work. If active nests of raptors or other birds protected under the Migratory Bird Treaty Act or CDFG Code 3503 are located in trees or brush to be removed, then appropriate construction buffers shall be established to avoid disturbance of the nests until such time that the young have fledged and the nest is no longer active, as determined by a qualified biologist. The size of the buffer shall be determined by the biologist in consultation with CDFG, and shall be based on the nesting species, its sensitivity to disturbance, and expected types of disturbance. | Project Applicant implements mitigation measure as stated. Retention of qualified biologist if necessary is subject to City approval. | Planning Dept. | Planning Dept. shall monitor construction timing; If needed, qualified biologist to consult with CDFG, provide periodic monitoring of construction, and report results to Planning Dept. | |
| <u>BIO-3(c)</u> : A qualified biologist shall conduct pre-construction surveys in the annual grassland and ruderal brushland habitats on the site to confirm that there are no burrowing owls or northern harriers nesting in these areas. The surveys shall be conducted no later than 30 days prior to the start of ground disturbing activities in these areas. If construction is initiated in these areas during the period of August 31 through January 31, then preconstruction surveys are not required. If active nests of either species are discovered in the proposed area of disturbance or within 300 feet of this area, the biologist shall consult with CDFG to determine the appropriate construction buffer. Once the biologist determines that the nests are no longer active, then construction activities can resume within the buffer area. | Project Applicant implements mitigation measure as stated. Retention of qualified biologist if necessary is subject to City approval. | Planning Dept. | Planning Dept. shall monitor construction timing; If needed, qualified biologist to consult with CDFG, provide periodic monitoring of construction, and report results to Planning Dept. | |
| <u>BIO-4(a)</u> : In the event that work is required below the Ordinary High Water Mark in the Napa River, Asylum Slough or Bedford Slough, the applicant shall obtain all necessary authorizations from the CDFG and NOAA Fisheries as required by federal and State law for potential harm to special-status fish species. Such authorization would be obtained as a result of interagency coordination through USACE and/or Coast Guard permit(s) and the CDFG Streambed Alteration process (see Mitigation Measure BIO-5 below). Evidence that the applicant has secured any required authorization from these agencies shall be submitted to the City of Napa Planning Dept. prior to issuance of any grading or building permits for the project. | Project Applicant implements mitigation measure as stated, and obtains all necessary state and federal authorizations. | Planning Dept. | Evidence of obtaining necessary authorizations submitted to Planning Dept. prior to issuance of any grading or building permit. | |
| <u>BIO-4(b)</u> : To avoid potential impacts to Central California steelhead that may be in the Napa River, in-water construction in Asylum Slough or Bedford Slough shall not occur between January through April. | Project Applicant implements mitigation measure as stated | Planning Dept. | Planning Dept. periodically monitors construction activity during prohibited times. | |

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| <u>BIO-4(c)</u> : To avoid potential impacts to Delta smelt or Sacramento splittail that may be in the Napa River, in-water construction in Asylum Slough or Bedford Slough shall not occur between February through May. During the summer months, it is unlikely for these species to be in this area of the river due to increased salinity. | Project Applicant implements mitigation measure as stated. | Planning Dept. | Planning Dept. periodically monitors construction activity during prohibited times. | |
| <u>BIO-4(d)</u> : To avoid potential impacts to chum salmon that may be in the Napa River, in-water construction in Asylum Slough or Bedford Slough shall not occur between February through May. | Project Applicant implements mitigation measure as stated. | Planning Dept. | Planning Dept. periodically monitors construction activity during prohibited times. | |
| <p><u>BIO-5</u>: With respect to fill in jurisdictional wetlands and waters, the <i>Avoidance/Minimization Measures During Construction</i> called for in the BRA along with the following additional measures shall be implemented.</p> <ul style="list-style-type: none"> ◆ Where verified waters of the United States are present and cannot be avoided, authorization for modifications to these features shall be obtained from the USACE through the Section 404 permitting process. Similarly, a Section 401 Certification shall be obtained from the RWQCB where waters of the United States are directly affected by the project. All conditions required as part of the authorizations by the USACE and RWQCB shall be implemented as part of the project. ◆ A CDFG Stream Bed Alteration Agreement shall also be required where proposed project activities would affect the bed or banks of Bedford Slough, Asylum Slough and other regulated drainages on the site. The applicant shall submit a notification form to the CDFG, shall obtain all legally-required agreements, and implement any conditions contained within that agreement. ◆ Consultation or incidental take permitting may be required under the California and federal Endangered Species Acts (as discussed above under Mitigation Measures BIO-I and BIO-3). The applicant shall obtain all legally required permits or other authorizations from the USFWS, NOAA Fisheries, and CDFG for the potential "take" of protected species under the Endangered Species Acts. ◆ Install orange construction fencing around the boundary of all wetland areas to be preserved so that they are not disturbed during construction. The fencing shall be placed a minimum of 25 feet out from the boundary of the wetland but may need to be adjusted if restoration activities are to be conducted within this area. Grading, trail construction and restoration work within the 50-foot wetland buffer zones shall be conducted in a way that avoids or minimizes disturbance of existing wetlands. In some cases (e.g. at the connection point of the new swale with the diagonal drainage), this may mean use of smaller equipment such as a Bobcat. | Project Applicant implements mitigation measure as stated, retaining a biologist/restoration specialist subject to City approval. | Planning Dept. | Project Applicant provides evidence of necessary state and federal authorizations prior to issuance of grading and building permits. Planning Dept. and retained biologist/restoration specialist periodically monitors construction activity during prohibited times. | |

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| <p>◆ A biologist/restoration specialist shall be available during construction to provide situation-specific wetland avoidance measures or planting recommendation, as needed.</p> | | | | |
| NOISE | | | | |
| <p>NOISE-1: In accordance with 2010 California Building Code (Chapter 12, Appendix Section 1207.11.2), sound-rated building construction shall be used to achieve acceptable indoor noise levels (45 dBA L_{dn}) in residential units along the east and north perimeters of the site. Building sound insulation treatments include, but are not limited to sound retardant windows and doors, resilient wall constructions, heavy siding and roofing materials (e.g. stucco, Hardi-plank), ventilation silencers, and gasketing. The specification of these treatments shall be developed during the architectural design of the buildings. All residential units in the project shall require mechanical ventilation to allow for air circulation while windows are closed for noise control. Through application of the design guidelines, residential outdoor use areas shall be shielded from traffic and industrial noise by locating buildings between these sources and the outdoor areas. Noise barriers would be utilized where additional shielding is required to achieve compatible noise levels in order to meet the requirements set forth in the Napa County Noise Ordinance, Section 8.16.070, Exterior Noise Limits.</p> | <p>Required mitigations shall be contained in the Design Guidelines and building plans submitted by Project Applicant to City for approval.</p> | <p>Building Dept.</p> | <p>Inclusion of identified measures in Development Plan and building plan submittals shall be confirmed by City prior to issuance of any building permit.</p> | |
| <p>NOISE-2: Locate proposed residential land uses no closer than 100 feet from the railroad tracks or require that railroad train vibration levels be confirmed by an analysis conducted by an expert in rail vibration during the detailed design phase of the project. Vibration levels shall not exceed the screening level threshold of 80 VdB or the detailed vibration impact criteria of 78 VdB during the day or 72 VdB at night at the proposed setback of residential units adjoining the tracks. The noise expert would recommend design level measures to mitigate any excessive vibration levels. Residential buildings shall not be constructed within 100 feet of active railroad tracks unless design measures that mitigate excessive vibration to levels below FTA impact thresholds are included in the project.</p> | <p>Project Applicant implements mitigation measure as stated. Retention of qualified vibration specialist subject to City approval. Location restrictions from vibration levels shall be confirmed in analysis and incorporated into Design Guidelines, site plan, and building submittal approvals.</p> | <p>Planning Dept.; Building Dept.</p> | <p>City shall confirm compliance with stated mitigations prior to issuance of building permits.</p> | |
| AIR QUALITY | | | | |
| <p>AQ-2: The following is a list of feasible control measures that the BAAQMD recommends to limit construction emissions of PM₁₀, PM_{2.5}, and NO_x. These mitigation measures shall be implemented for all areas (both on-site and off-site) where construction activities would occur. Even with mitigation measures imposed, this impact remains significant and unavoidable.</p> <p><u>Measures to Reduce Fugitive Particulate Matter (PM₁₀ and PM_{2.5}) Emissions</u></p> <p>All untreated exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.</p> <p>◆ Limit traffic speeds on any unpaved roads to 15 mph.</p> | <p>Project Applicant and its contractors shall implement the mitigation measure as stated. Identified measures shall be a contractual condition of construction contracts. City to be informed of</p> | <p>Planning Dept., Dept. of Public Works.</p> | <p>Plans and inventory of construction vehicle equipment to be used, and method of importing fill, shall be approved by Planning Dept. and/or Dept. of Public Works prior to issuance of grading</p> | |

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| <ul style="list-style-type: none"> ◆ Suspend construction activities that cause visible dust plumes to extend beyond construction sites, especially during windy conditions. ◆ Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established. ◆ Prohibit the visible tracking of mud, dirt, or material on to public streets. If necessary, all trucks and equipment, including their tires, shall be washed off prior to leaving the site. Any visible mud or dirt tracked on to public roadways shall be removed using wet power vacuum sweepers at least once per day. ◆ During remediation and grading/fill import phases, site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel. ◆ Sandbags or other erosion control measures shall be installed to prevent silt run-off to public roadways from sites with a slope greater than one percent. ◆ During renovation and demolition activities, removal or disturbance of any materials containing asbestos or other hazardous pollutants will be conducted in accordance with the BAAQMD rules and regulations. ◆ Remediation activities will be conducted in accordance with BAAQMD rules and regulations. <p><u>Mitigation to Reduce NOx Emissions</u></p> <ul style="list-style-type: none"> ◆ The project shall develop a plan for approval by the City or BAAQMD demonstrating that the heavy-duty (>50 horsepower) off-road vehicles to be used in the construction project, including owned, leased and subcontractor vehicles, will achieve a project wide fleet-average 20 percent NOx reduction and 45 percent particulate reduction compared to the most recent CARB fleet average for the year 2010. ◆ At least 80-percent of the equipment that will be used on site for 40 hours or greater shall meet current Tier 3 engine standards. ◆ The project applicant shall require the project developer or contractor to submit to the City or BAAQMD a comprehensive inventory of all off-road construction equipment, equal to or greater than 50 horsepower, that will be used an aggregate of 40 or more hours during any portion of the construction project. The inventory shall include the horsepower rating, engine production year, and projected hours of use or fuel throughput for each piece of equipment. The inventory shall be updated and submitted monthly throughout the duration of the remediation and grading (fill import and grading) phase of the project, except that an inventory shall not be required for any 30-day period in which little or no construction activity occurs. ◆ Opacity is an indicator of exhaust particulate emissions from off-road diesel powered equipment. The project shall ensure that emissions from all construction | designated Disturbance Coordinator. | | and building permits. During construction, Building Dept. and/or Dept. of Public Works shall conduct periodic inspections to determine compliance with BAAQMD measures. | |

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| <p>diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.</p> <ul style="list-style-type: none"> ◆ Diesel equipment standing idle for more than three minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were on-site and away from any residences. Clear signage indicating such idling restrictions shall be posted at construction site access points. ◆ Consider alternative sites and methods to import fill material to the site to reduce NOx emissions. Alternative methods could include use of tug boats or trucks with newer engines that meet recent EPA emissions standards that result in lower emissions. The applicant shall provide an analysis of such alternatives, along with a calculation of emissions for each method. The analysis shall demonstrate that NOx emissions from remediation activities under Option C shall not exceed 15 tons/year. The City shall use this information to determine the acceptable method for importing fill material to the site. This may include a mix of methods and fill sites. ◆ Planned construction activities on Spare the Air days shall be reduced to lower emissions. An attempt to reduce emissions, possibly below 54 pounds per day, would be made for each day that the BAAQMD forecasts a "Spare the Air Day" at least 24 hours prior. The City shall be provided a record of attempts to reduce NOx emissions when Spare the Air Days were forecasted at least 24 hours prior. ◆ Designate a Disturbance Coordinator during construction activities. This coordinator will ensure that all air quality mitigation measures are enforced. In addition, the Disturbance Coordinator will respond to complaints from the public regarding air quality issues (e.g. dust and odors) within 48 hours. The contact information for this Coordinator shall be posted in plain view at the project site. A phone number for the Air District shall also be posted to ensure compliance with applicable regulations. <p>Implementation of Mitigation Measure TRA-14 would require a construction management plan to avoid traffic congestion and specify truck routes.</p> | | | | |
| <p><u>AQ-3</u>: The project applicant shall reduce air pollutant ROG, NOx, PM₁₀, and PM_{2.5} emissions from both traffic trips and area sources through the measures listed below.</p> <ul style="list-style-type: none"> ◆ Bicycle amenities shall be provided for the project. This would include secure bicycle parking for retail employees, bicycle racks for retail customers, bicycle lockers, and bike lane connections. This vehicle trip reduction measure could reduce emissions by an additional 0.5 percent. ◆ Pedestrian facilities shall include easy access and signage to bus stops and roadways that serve the major site uses (e.g. retail and residential uses). This may reduce emissions by an additional 0.5 percent. | Project Applicant is responsible for implementing this mitigation measure as stated. | Planning Dept. | Planning Dept. approves site plan incorporating mitigation measures as stated prior to issuance of residential building permits. | |

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| <ul style="list-style-type: none"> ◆ Project site employers shall be required to promote transit use by providing transit information and incentives to employees. This measure may reduce emissions by about 0.5 percent. ◆ Provide exterior electrical outlets to encourage use of electrical landscape equipment at retail and residential uses. ◆ Prohibit idling of trucks at loading docks for more than five minutes and include signage indicating such a prohibition. ◆ Provide 110- and 220-volt electrical outlets at loading docks. ◆ Implement a landscape plan that provides shade trees along pedestrian pathways. ◆ Obtain LEED certification or achieve equivalent energy efficiency for new residential and commercial buildings, which would reduce the future energy demand caused by the project. ◆ Implementation of Mitigation Measure TRA-1b would require that the project applicant establish a transportation demand management (TDM) program which shall be funded and administered by the property owners association with the goal of reducing the forecasted auto trip generation from the project by 15 percent. ◆ The effectiveness of these required measures shall be monitored on a biannual basis, and traffic counts will be conducted to determine if the 15 percent reduction of forecasted traffic levels is being achieved. If additional measures are necessary to achieve the 15 percent reduction, the TDM coordinator shall implement other measures to enhance the TOM program. ◆ Implementation of Mitigation Measure TRA-17 would reroute the VINE Route #10 bus so that it would serve the proposed project's transit center. ◆ The Napa County Regional Park and Open Space District is in the process of obtaining permits for a 4,000-plus linear foot segment of trail completing the connection between the project site and the City of American Canyon. This segment of the trail is not on the project site. The cost of constructing this segment is estimated to be \$350,000. Prior to occupancy of the project, the applicant shall contribute its fair share towards the cost of constructing this segment of the trail. Even with mitigation measures imposed, this impact remains significant and un- avoidable. | | | | |
| <p><u>AQ-4</u>: To lessen air quality nuisances from exposure to adjacent heavy industrial uses, the following measures shall be implemented prior to construction of new residences near barge loading/unloading areas:</p> <ul style="list-style-type: none"> ◆ Prior to occupation of the project by sensitive receptors (e.g. residents), the applicant will develop a detailed site plan that includes features to reduce dust nuisance exposures to future project residences located near industrial activities. These features shall include the following: ◆ Wind break in the form of mature trees with sufficient density to reduce wind flow. BAAQMD recommends consideration of tiered plantings of trees such as redwood, deodar cedar, and live oak to reduce TAC and PM exposure. | Project Applicant is responsible for implementing this mitigation measure as stated. | Planning Dept. | Planning Dept. approves site plan incorporating mitigation measures as stated prior to issuance of residential building permits. | |

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| <ul style="list-style-type: none"> ◆ Buffers to avoid placement of residences near or adjacent to active or planned active industrial uses. Adequate buffers shall be determined through site-specific studies that take into account designs for new residences and anticipated future industrial activities or establish a 200-foot buffer. ◆ Install and maintain air filtration systems of fresh air supply either on an individual unit-by-unit basis, with individual air intake and exhaust ducts ventilating each unit separately, or through a centralized building ventilation system. The ventilation system should be certified to achieve a certain effectiveness, for ex- ample, to remove at least 80 percent of ambient PM25 concentrations from in- door areas. The air intake for these units shall be located away from areas producing the air pollution (i.e. toward the south). ◆ Require rerouting of nearby heavy-duty truck routes. ◆ Enforce illegal parking and/or idling of heavy-duty diesel trucks in the vicinity. | | | | |
| <u>AQ-5:</u> The City shall review plans for new restaurants in neighborhoods with residences to ensure that these uses install kitchen exhaust vents in accordance with accepted engineering practice, and shall install exhaust filtration systems or other accepted methods of odor reduction. | Project applicant or successors in interest to implement mitigation measure as stated. | Planning Dept. | Measures to be confirmed prior to issuance of restaurant building permits. | |
| GREENHOUSE GAS EMISSIONS | | | | |
| <u>GHG-1a:</u> To lessen GHG emissions associated with the project, as part of phase one the applicant shall construct and lease retail space to an on-site market that also sells fresh, locally grown produce. The applicant shall provide for rental subsidies if needed to ensure long term tenancy of a market providing on-site access to fresh food, thereby reducing VMT for project site residents and from food distributors. Even with mitigation measures imposed, this impact remains significant and unavoidable. | Project applicant is responsible for implementing mitigation measure as stated. | Planning Dept. | Prior to issuance of Certificates of Occupancy for Phase 1. | |
| <u>GHG-1b:</u> The applicant shall provide long term funding for marketing proposed housing units to members of the local workforce and shall market units to businesses in the project vicinity (for employee housing). Both marketing programs shall include a monitoring component to measure their effectiveness and shall be adjusted as needed to maximize the sale and lease of housing units to members of the local workforce for a period of time to be determined by the City and developer. | Project Applicant is responsible for implementing mitigation measure as stated. | City of Napa Housing Division | City to approve funding and marketing program prior to issuance of Certificates of Occupancy for each Phase. | |
| <u>GHG-1c:</u> As a means of reducing global warming related impacts of a project, the project applicant shall incorporate additional measures to reduce the project's contribution to the countywide GHG emissions associated with development assumed under the County's General Plan. Such measures shall include the following additional items from the California Attorney General's Office (2008) list of suggested measures for reducing global warming related impacts of a project: <i>Energy Efficiency</i> <ul style="list-style-type: none"> ◆ Design buildings to meet LEED certification requirements applicable as of the project approval date. ◆ Install light colored "cool" roofs and cool pavements. | Project Applicant implements mitigation measures as stated. Requirements to be contained in Design Guidelines, Building Plans, Site Plan and Subdivision Maps, and Association Conditions, Covenants and | Planning Dept.; Dept. of Public Works; City Attorney. | Required measures shall be included in referenced documents prior to approvals by listed departments, and confirmed during required inspections. | |

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
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| <ul style="list-style-type: none"> ◆ Install efficient lighting in all buildings (including residential). Also install lighting control systems, where practical. Use daylight as an integral part of lighting systems in all buildings. ◆ Install light emitting diodes (LEDs) or other high efficiency lighting for traffic, street and other outdoor lighting. ◆ Limit the hours of operation or provide minimally acceptable light intensities for outdoor lighting. <p><i>Water Conservation and Efficiency</i></p> <ul style="list-style-type: none"> ◆ Design buildings and lots to be water-efficient. Only install water-efficient fixtures and appliances. ◆ Restrict watering methods (e.g., prohibit systems that apply water to non-vegetated surfaces) and control runoff. Prohibit businesses from using pressure washers for cleaning driveways, parking lots, sidewalks, and street surfaces unless required to mitigate health and safety concerns. These restrictions shall be included in the Covenants, Conditions, and Restrictions of the community. <p><i>Solid Waste Measures</i></p> <ul style="list-style-type: none"> ◆ Reuse and recycle construction and demolition waste (including, but not limited to, soil, vegetation, concrete, lumber, metal, and cardboard). ◆ Provide interior and exterior storage areas for recyclables and green waste at all buildings. ◆ Provide adequate recycling containers in public areas, including parks, school grounds, paseos, and pedestrian zones in areas of mixed-use development. <p><i>Transportation and Motor Vehicles</i></p> <ul style="list-style-type: none"> ◆ Promote ride sharing programs at employment centers (e.g., by designating a certain percentage of parking spaces for ride sharing vehicles, designating adequate passenger loading and unloading zones and waiting areas for ride share vehicles, and providing a web site or message board for coordinating ride sharing). ◆ At commercial land uses, all forklifts, "yard trucks," or vehicles that are predominately used on-site at non-residential land uses shall be electric-powered or powered by biofuels (such as biodiesel [B100]) that are produced from waste products, or shall use other technologies that do not rely on direct fossil fuel consumption. ◆ At commercial land uses, limit idling time for commercial vehicles, including delivery and construction vehicles. ◆ Promote the use of alternative fuel vehicles and neighborhood electric vehicle programs through prioritized parking within new commercial and retail areas for electric vehicles, hybrid vehicles, and alternative fuel vehicles. ◆ Provide shuttle service from mixed-use and employment areas to public transit. | Restrictions as appropriate. | | | |

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
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| <ul style="list-style-type: none"> ◆ Provide information on all options for individuals and businesses to reduce transportation-related emissions, including education and information about public transportation. ◆ Provide bicycle parking near building entrances to promote cyclist safety, security and convenience. ◆ Provide secure bicycle storage at public garage parking facilities. ◆ Locate facilities and infrastructure in all land use types to encourage the use of low or zero emission vehicles (e.g. electric vehicle charging facilities and conveniently located alternative fueling stations). <p><i>Performance Standard</i></p> <ul style="list-style-type: none"> ◆ Demonstrate that, by implementation of the measures set forth above, the project achieves a reduction of greenhouse gas emissions, as compared to "Business As Usual," consistent with the target stipulated in the County's Climate Change Action Plan as adopted by the BOS on or before approval of the project. Incorporate additional measures, such as the installation of solar power or other renewable energy systems, if necessary to ensure this target is achieved. | | | | |
| HAZARDS AND HAZARDOUS MATERIALS | | | | |
| <p><u>HAZ-1:</u> To lessen the risk of exposure related to accidental release of hazardous materials during cleanup, construction and operation phases of the project, the project applicant shall fully implement the provisions of the RAP and RDIP including but not limited to the soil risk management protocols in the RDIP that address discovery of new or different contamination during earth-working and subsurface construction activities. As outlined in the RAP, such implementation would include multiple dust control strategies that would be employed during remediation. A water mist would be applied to the excavation and soil handling area and all truck haul routes, while the soil itself would be wetted, to reduce airborne dust generation. In addition, intermittent air monitoring would be conducted in accordance with local air quality management regulations, and equipment used to excavate, transport and manage soil would be decontaminated through a process of brushing and washing in a central decontamination area. In conjunction with amending the Site 1 WDRs, prepare and record a deed restriction acceptable to the RWQCB that ensures that no buildings are constructed on the WMU in a fashion that impairs access or functioning of the collection trench and drainage system, and that provides access for inspections and maintenance of a collection trench/drainage system sufficient to comply with the Site 1 WDRs.</p> | Project Applicant is responsible for implementing mitigation measure as stated. | Planning Dept.; City Attorney re Deed Restriction | Planning Dept. confirms measures as stated. | |
| <p><u>HAZ-2:</u> The applicant shall carry out the provisions set forth in the RAP and clean up the site to levels below the levels protective of human health and the environment agreed to by the RWQCB. Following full implementation, the applicant shall prepare and submit a report to the San Francisco Bay RWQCB for review and approval. The report shall document cleanup activities performed, quantities of soil reused on-site and disposed of off- site, facilities that received exported material, soil gas sample analytical results, and verification that the targeted cleanup levels have been achieved.</p> | Project Applicant is responsible for implementing mitigation measure as stated. | Planning Dept. | Planning Dept. confirms in conjunction with required approvals and inspections. | |

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
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| <u>HAZ-3</u> : To allow for the successful assessment and remediation of any previously un- known soil contaminants hazardous to the public and/or environment encountered during project construction, implement the protocols documented in the soil risk management plan portion of the RDIP in the event that such contaminants are encountered, and record in the deed records for the site a notice of the existence of the soil risk management protocols from the RDIP (including a full copy of those protocols) so that all owners of portions of the site have advanced notice of both the existence of the soil risk management plan and its terms and provisions. | Project Applicant is responsible for implementing mitigation measure as stated. | Dept. of Public Works; City Attorney | City Attorney to review and approve deeds prior to recordation to ensure notice of required protocols; Dept. of Public Works to ensure compliance during grading inspections. | |
| GEOLOGY, SOILS, AND SEISMICITY | | | | |
| <u>GEO-1</u> : To lessen potential damage from strong or violent ground shaking, prior to the issuance of permits for the construction of infrastructure, buildings and bridges, the applicant's geotechnical engineer shall prepare and submit to the City for review geotechnical reports incorporating the specific mitigation of seismic hazards pursuant to State law, as detailed in the California Building Code, and as required by the City of Napa to ensure that structures and infrastructure can withstand ground accelerations expected from seismic activity. The improvement plans shall incorporate all design and construction criteria specified in the report(s). The geotechnical engineer shall sign the improvement plans and approve them as conforming to their recommendations prior to parcel/final map approval. The project geotechnical engineer shall provide geotechnical observation during the construction, which will allow the geotechnical engineer to compare the actual with the anticipated soil conditions and to check that the contractor's work conforms to the geotechnical aspects of the plans and specifications. The geotechnical engineer of record will prepare letters and as-built documents, to be submitted to the City, to document their observances during construction and to document that the work performed is in accordance with the project plans and specifications. | Project Applicant is responsible for implementing mitigation measure as stated. Retention of geotechnical engineer is subject to City approval. | Dept. of public Works, Planning Dept. | Confirmation of recommendations in improvement plans by Dept. of Public Works prior to parcel/final map approval, and in building plans prior to approval by Planning Dept. Conformance to recommendations and engineers reports to occur during required City inspections. | |
| <u>GEO-2</u> : To lessen potential damage from liquefaction, the recommendations for both special foundations and other geotechnical engineering measures specified in the applicant's geotechnical reports (prepared by T&R, dated January 23, 2007 and May 21, 2007) shall be implemented during design and construction. These measures include engineering and compaction of new fills, removal or improvement of potentially liquefiable soils and compressible soils, and use of deep foundations. Documentation of the methods used shall be provided in the required design-level geotechnical report(s). | Project Applicant is responsible for implementing mitigation measure as stated. | Dept. of Public Works, Planning Dept. | Confirmation of inclusion of recommendations prior to issuance of grading/building permits. Conformance to recommendations and engineers reports to occur during required City inspections. | |
| <u>GEO-3</u> : Lateral spreading during potential future earthquakes shall be mitigated by correcting the liquefaction hazard to which it is related. Corrective measures, which shall be included in the required design-level geotechnical report(s), shall include: ◆ Engineering and compaction of new fills. | Project Applicant is responsible for implementing | Dept. of Public Works, Planning Dept. | Confirmation of inclusion of recommendations prior to issuance of | |

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| <ul style="list-style-type: none"> ◆ Removal or densification of liquefiable soils. ◆ Use of relatively rigid foundations. | mitigation measure as stated. | | grading/building permits. Conformance to recommendations and engineers reports to occur during required City inspections. | |
| GEO-4: To avoid excessive settlement that could cause damage to foundations and pavements, poorly compacted fills shall be mitigated by excavation and/or additional compaction. Options to mitigate these effects include implementing a surcharge program, supporting structures with deep foundations that include drilled or driven piles and installing flexible connections for utilities. The geotechnical recommendations for mitigation of existing and proposed fills, and for settlement of native soils, that are contained in the applicant's geotechnical reports shall be implemented. These measures include removal and recompaction of pre-existing loose fills, and proper engineering and compaction of all new fills. | Project Applicant is responsible for implementing mitigation measure as stated. | Dept. of Public Works. | Confirmation of inclusion of recommendations prior to issuance of grading. Conformance to recommendations and engineers reports to occur during required City inspections. | |
| GEO-5: As a part of final design, the project geotechnical engineer shall make specific recommendations to minimize or eliminate expansive soils under pavements and structures. Such measures for buildings may include use of appropriate foundations, by capping expansive soils with a layer of no-expansive fill, or by lime treatment. Such measures for pavements may include special pavement design and/or subexcavation of expansive soils. These recommendations shall be based on testing of the in-site fill materials. The recommendation measures shall be submitted to the City as a part of building and/or paving plan submittal prior to the issuance of building/construction permits. | Project Applicant is responsible for implementing mitigation measure as stated. | Planning Dept. | Confirmation of inclusion of recommendations prior to issuance of building permits. Conformance to recommendations and engineers reports to occur during required City inspections. | |
| HYDROLOGY AND WATER QUALITY | | | | |
| HYDRO-3: Before the approval of grading plans and building permits, the project applicant(s) for all project phases shall submit final drainage plans to the City demonstrating that off-site upstream runoff would be appropriately conveyed through the project site, and that project-related on-site runoff would be appropriately detained to reduce flooding impacts. The plans shall adhere to the guidelines and requirements set forth for drainage in the City of Napa Standard Specifications and Standard Plans. Design of BMPs for flood control shall comply with all regulations and be approved by the City. | Project Applicant shall implement mitigation measure as stated. | Dept. of Public Works. | Final drainage plans to be submitted and approved prior to issuance of any grading/building permits. | |
| HYDRO-4: Prior to approval of grading permits and improvement plans (for each project phase), the project applicant shall prepare and submit an Erosion and Sediment Control Plan (ESCP) for review and approval by the City. The ESCP shall include the locations and descriptions of control measures (BMPs), such as straw bale barriers, straw mulching, straw wattles, silt fencing, and temporary sediment ponds to be used at the project site to control and manage erosion and sediment, control and treat runoff, and promote infiltration of runoff from | Project Applicant shall implement mitigation measure as stated. | Dept. of Public Works. | ESCP, SWPPP, and SRMP shall be reviewed and approved prior to issuance of grading | |

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
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| <p>new impervious surfaces. The Applicant shall also submit a Notice of Intent (NOI) to the State Water Resources Control Board for coverage under the NPDES Construction General Permit and prepare and submit a Storm Water Pollution Prevention Plan (SWPPP) for review and approval by the City prior to issuance of a grading permit. The SWPPP shall incorporate the ESCP and describe construction-phase housekeeping measures, such as spill prevention and cleanup measures, means of waste disposal, and best management practices training for on-site workers. The SWPPP shall incorporate the monitoring requirements and other provisions in the recently updated SWRCB General Permit for Construction Activities (approved September 2, 2009).</p> <p>A Stormwater Runoff Management Plan (SRMP) shall also be prepared for review and approval by the City, as specified in the Napa County Post-Construction Runoff Management Requirements. The SRMP shall include descriptions and designs of the post-construction BMPs to be implemented, such as bioswales, biofiltration features and stormwater retention basins, well as non-structural BMPs, such as street sweeping and covered waste disposal areas. The SRMP shall also prescribe monitoring and maintenance practices for the BMPs to maintain treatment effectiveness. Where applicable, these BMPs shall be designed based on specific criteria from recognized BMP design guidance manuals, such as the California BMP Handbooks (available at www.napastormwater.org).</p> | | | permits for each phase. | |
| <u>HYDRO-5:</u> Prior to beginning of construction of the project, the applicant shall abandon all existing wells on the project site that are not planned for water supply or groundwater monitoring consistent with Napa County Environmental Health standards and the standards described in State of California Bulletin 74-81 (Water Well Standards). | Project Applicant shall implement mitigation measure as stated. | Dept. of Environmental Management. | Prior to issuance of grading/building permits. | |
| <u>HYDRO-6:</u> Prior to approval of the final grading plan, the project shall submit a request for a Conditional Letter of Map Revision (CLOMR) for review and action by FEMA and/or their designated representative in order to remove the elevated parcels from the SFHA. With the approved CLOMR and placement of fill as described, the project shall submit a request for a Letter of Map Revision (LOMR). | Project Applicant shall implement mitigation measure as stated. | Department of Public Works | Dept. of Public Works shall con- firm approved CLOMR prior to approval of grading plans and issuance of grading permits. | |
| <u>HYDRO-7a:</u> The project proponents shall construct floodgates at either end of the railroad ROW as described in the PWA memorandum. Operation and maintenance of the floodgates shall be established in an agreement authorized and approved by the Napa County Office of Emergency Services, (NCOES) and shall be the responsibility of the Home Owners Association (HOA) or such other responsible legal entity as determined in agreement with the NCOES. | Project Applicant shall implement mitigation measure as stated. | Dept. of Public Works, Napa County Office of Emergency Services | Construction of floodgates and approval of operation/maintenance agreement prior to issuance of building permits. | |
| <u>HYDRO-7b:</u> While the floodgates will provide protection for the area between them, the wetland area to the south and the adjacent park areas would remain vulnerable to potential flooding, as would the northwest park area of the project site. The project proponents shall provide adequate public signage in the nature area and wetland, and northwest park warning park patrons of the potential flood hazard. | Project Applicant shall implement mitigation measure as stated. | Dept. of Public Works. | Adequate signage shall be confirmed prior to issuance of Certificates of Occupancy. | |

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
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| CULTURAL RESOURCES | | | | |
| <p>CULT-1a: Prior to the demolition of buildings and structures comprising the Basalt Shipyard District, the District shall be documented to the Historic American Buildings Survey (HABS) documentation level III, as follows: Documentation Level III</p> <ol style="list-style-type: none"> 1. Drawings: sketch plan. 2. Photographs: photographs with large-format negatives of exterior and interior views. 3. Written data: architectural data form. <p>Documentation shall be completed by a qualified architectural historian and shall include large-format photography and historical documentation. These documents shall be provided to the Napa County Historical Society and to the Napa County Library, assuring that the public has access to the record of this historic resource.</p> | Project Applicant shall implement mitigation measure as stated. City to approve qualified architectural historian and report submittal | Planning Dept. | Prior to issuance of demolition permits. | |
| <p>CULT-1b: An interpretive display featuring the shipyard's history shall be incorporated into the project. This display shall be located in an area accessible to the public and shall provide information regarding the historical contributions of the Basalt Shipyard. The display will help to place the dry docks in context for the public.</p> | Project Applicant shall implement mitigation measure as stated. | Planning Dept. | Prior to issuance of certificates of occupancy | |
| <p>CULT-2: To prevent damage to previously identified archaeological resources, prior to any excavation on-site, an archaeologist shall review excavation plans in areas identified as archaeologically/geologically sensitive and shall develop a monitoring plan based on depth of the excavation and data from boring logs. The plan shall include observation of ground disturbing activities (such as grading, trenching and boring) to be focused in areas that are most likely to contain buried resources (see Figure 4.11-1 of 2009 DEIR). The archaeologist shall limit on-site monitoring to only areas where depth of excavation and information from boring logs suggests that sensitive resources may be encountered. In addition, project personnel shall be made aware of the types of materials that denote possible archaeological sites. If archaeological materials are discovered accidentally during the course of construction, all work within 50 feet of the find shall stop while an assessment of the find is made by an archaeologist who is called in. If needed, a treatment plan shall be developed that takes into account the nature and scope of the find. This could range in complexity from a relatively brief investigation of a scatter of lithic materials, to a far more extensive recovery of human remains.</p> | Project Applicant shall implement mitigation measure as stated, and require adherence by contractors. City shall approve of retained archaeologist. | Planning Dept., Public Works Department | Plan to be approved by City prior to issuance of grading permits. Compliance with plan to be monitored during City inspections. | |
| <p>CULT-3: If paleontological deposits are discovered, all work within 50 feet of the find shall stop until a geologist who is called in can determine its significance. Specific recommendations for the treatment of paleontological materials would depend on the nature of the discovery and could range from brief investigation of a limited deposit of invertebrate remains to more extensive exposure and removal of large vertebrate fossils.</p> | Project Applicant shall implement mitigation measure as stated, and require adherence by contractors. | Planning Dept., Dept. of Public Works. | Compliance with mitigation measure to be monitored during City inspections. | |
| <p>CULT-4 : Project personnel shall be briefed in the proper procedures to follow in the event that human remains are encountered during construction and an archaeologist is not on-site. If human remains are discovered by an archaeologist or by project personnel, all work shall stop within 50 feet of the find and the Napa County Coroner shall be notified. If it is determined that the remains are those of a prehistoric Native American, the Coroner shall notify the Native</p> | Project Applicant shall implement mitigation measure as stated, and require adherence by contractors. | Planning Dept., County Coroner. | Compliance with mitigation measure to be monitored during City inspections. | |

| Mitigation Measures | Implementation Procedure | Monitoring Responsibility | Monitoring / Reporting Action and Schedule | Monitoring Compliance Record (Name/Date) |
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| American Heritage Commission, which will identify the Most Likely Descendent to provide tribal recommendations regarding the disposition of the remains. To the extent feasible and reasonable, recommendations of the Most Likely Descendent shall be implemented. | | | | |
| PUBLIC SERVICES AND RECREATION | | | | |
| <p><u>PS-1:</u> In order to ensure adequate law enforcement staff and equipment, the City shall prepare an updated fiscal analysis prior to or concurrent with the approval of design guidelines. If the updated analysis shows a shortfall in revenue on an interim or long-term basis, then:</p> <ol style="list-style-type: none"> 1. Prior to, or concurrent with, the approval of the design guidelines, the City and the applicant shall identify and implement a financing mechanism to supplement expected property tax, sales tax, and other sources of revenues to provide sufficient funding for ongoing costs associated with law enforcement services at the Napa Pipe site. The City shall also require the applicant to provide an adequate level of interim financing for law enforcement services between project approval and when funding becomes available from the financing mechanism, property taxes, sales taxes, and other sources of revenue. 2. Prior to initiation of construction, the City and Project Applicant shall consult with law enforcement personnel within the City of Napa as provided for by General Plan Policy SAF-34, and shall seek to renegotiate the terms of the automatic Mutual Aid Agreement between Napa City Police Department (NCPD) and Napa County Sheriffs' Department (NCSO) to address concerns of each agency regarding potential increases in service calls. | Project Applicant and City implement mitigation measure as stated. | Planning Dept., City of Napa Police Department | If needed, financing mechanism in place prior to, or concurrent with, approval of design guidelines. NCPD and NCSO negotiations re Mutual Aid Agreement to occur prior to initiation of construction. | |
| <p><u>PS-2:</u> In order to ensure adequate staff and equipment for fire services, the City shall prepare an updated fiscal analysis prior to or concurrent with approval of design guidelines. If the updated analysis shows a shortfall in revenue on an interim or long-term basis, then:</p> <ol style="list-style-type: none"> 1. The City and the applicant shall identify and implement a financing mechanism if necessary to supplement expected property tax, sales tax, and other sources of revenues to fund increased fire protection services provided at the Napa Pipe site. The City shall also require the applicant to provide an adequate level of interim financing for fire services between project approval and when funding becomes available from the financing mechanism, property taxes, sales taxes, and other sources of revenue. 2. The City shall seek to renegotiate the terms of the automatic Mutual Aid Agreement between NCFD and the City of Napa Fire Department to address concerns of each agency regarding increases in service calls. | Project Applicant and City implement mitigation measure as stated. | Planning Dept., City of Napa Fire Department. | If needed, financing mechanism in place prior to, or concurrent with, approval of design guidelines. NCFD and City of Napa Fire Department negotiations re Mutual Aid Agreement to occur prior to issuance of certificates of occupancy. | |
| <p><u>PS-4:</u> In order to ensure that adequate library services are provided, the City shall prepare an updated fiscal analysis prior to concurrent with approval of design guidelines. If the updated analysis shows a shortfall in revenue on an interim or long-term basis, then:</p> <ol style="list-style-type: none"> 1. The City and the applicant shall identify and implement a financing mechanism if necessary to supplement expected property tax, sales tax, and other sources of revenues to fund increased library services needed to serve Napa Pipe residents. The City shall also require the applicant to provide an adequate level of interim | City and Applicant shall implement mitigation measure as stated. | Planning Dept. | If needed, financing mechanism in place prior to, or concurrent with, approval of design guidelines. | |

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| financing, if necessary, between project approval and when funding becomes available from the financing mechanism, property taxes, sales taxes, and other sources of revenue | | | | |
| UTILITIES | | | | |
| UTIL-1: The project applicant shall pay connection fees and sewer service charges to the Napa Sanitation District (NSD) in compliance with the NSD's Sewer Use Ordinance in effect at the time the building permit is issued for each structure. Additionally, the project applicant shall be responsible for the costs associated with the planned improvements as described in the 2011 studies by NSD, or as may need to be revised based on the level of approved development. These studies determined the mid-range density alternative project impacts on the District's collection, treatment, and water recycling systems resulting from the additional flow and loading from the portion of the project that exceeds the current County General Plan and are included in FEIR Appendix N. All costs associated with the mitigations of these impacts must be paid for by the project applicant. Before the final map for the project is recorded, the applicant and NSD shall prepare and execute an agreement defining the design and construction schedule, scope and estimated cost of the planned improvements. The applicant shall make payment in a manner such that funds are provided to NSD when they are needed to implement the projects. | Project Applicant implements mitigation measures as stated. | Planning Dept. | Project Applicant provides proof to Planning Dept. of payment of fee at time of building permit issuance. | |
| UTIL-3: If the City of Napa agrees to provide potable water to the project, the applicant shall: <ul style="list-style-type: none"> fund an updated study by the City's Water Department (if needed) to confirm that the storage, treatment, and pumping facilities identified in 2008 are no longer needed and that construction of an expanded pipeline south of the site is the only infrastructure improvement required for service; if it is determined that off-site infrastructure improvements are necessary, construct or fund construction to the City's specifications. | Project Applicant shall work with City of Napa to implement mitigation measure as stated. | Planning Dept. | Project Applicant shall conduct negotiations with City of Napa and determine water provision option prior to recordation of first final subdivision map. | |

EXHIBIT F**Plan Review Procedure****1. Applicability**

All development within the Napa Pipe Zoning District shall be in accordance with the Project Approvals, including the Development Plan and Design Guidelines,

Private building improvements shall be approved ministerially by the City's Community Development Department Director of ("Director") or the Director's designee, upon review of the proposed plans for construction and the determination that the proposal is consistent with the intent and regulations of the Development Plan and the Design Guidelines, as applicable. In case of conflicts, the provisions of the Development Agreement shall take precedence over the Development Plan and Design Guidelines, and the provisions of the Development Plan shall take precedence over the Design Guidelines. Compliance with the California Building Code, when in conflict, shall take precedence over the provisions of the Development Plan and/or Design Guidelines, subject to Section 8.5 of the Development Agreement.

Private development covered by this Plan Review Procedure includes, but is not limited to: any new building, addition to an existing building, alteration of the exterior appearance of an existing building or any on-site improvements, exterior signage, interior signage visible from the street, repainting of exterior surfaces, replastering of existing stucco surfaces, addition or replacement of windows or doors, on-site exterior lighting, on-site landscaping, on-site sidewalks, and on-site parking areas. Private development covered by this Plan Review Procedure does not include Project Infrastructure that is constructed pursuant to an improvement agreement or permit, including under a subdivision improvement agreement under the City's Subdivision Code as modified by the Subdivision Procedures attached as **Exhibit I** to the Agreement.

2. Applications/Review

2.1 Scope of Review. Project applications, including any preliminary concept, schematic and design development submittals, if any, and construction permit documents, shall be reviewed for conformity with the Project Approvals, including in particular the Development Plan and Design Guidelines, and conformity with any prior (or concurrent) Subsequent Approvals. The City shall not disapprove, require changes from or impose conditions inconsistent with the Project Approvals, or Subsequent Approvals it has previously approved, provided that the current submittal is consistent with any matter previously approved.

2.2 Applications/Review. Applications for review hereunder shall be submitted to the Director. The Director will review the application as expeditiously as practicable and advise the applicant in writing that the application is complete or that additional materials or information are required within thirty (30) calendar days of submittal. In the event the Director does not advise the applicant of any deficiencies within said period, the application shall be deemed complete. If the Director determines that the application is not complete and additional materials or information is required, then upon resubmittal of the additional materials and information, the Director shall within fourteen (14) calendar days of the resubmittal review and

advise the applicant in writing that the submittal is complete or whether and what specific additional materials or information is still required. Upon determination that the application is complete, the Director will complete the review and take an action on the application within thirty (30) calendar days. The Director's action may be to approve, approve with conditions not inconsistent with the Agreement, Project Approvals and all prior Subsequent Approvals, deny, or continue the application for redesign, if necessary. If the Director disapproves an application in whole or in part, the reasons for such disapproval shall be provided to the applicant. Any revisions or resubmittals shall be reviewed expeditiously within the time-frames provided above.

2.3 Appeal. The decision of the Director may be appealed to the City Planning Commission by applicant within ten (10) days of the Director's decision. The appeal shall be on a form prescribed by the Director and shall be accompanied by the applicable filing fee and evidence substantiating the claim of error. An action by the City Planning Commission may be appealed to the City Council.

2.4 Referral. These Plan Review Procedures shall apply regardless of City design review procedures under Napa Municipal Code Chapter 17.62, provided that Director may refer any project to the Planning Commission which the Director determines may involve a significant policy issue independent of any consistency determination. The Planning Commission shall then assume authority to approve, approve with modifications or conditions, or deny the project. An action by the City Planning Commission may be appealed to the City Council.

3. Cooperation

The Director may obtain the advice of persons trained in the fields of architecture, landscape architecture, and urban planning to aid in its decision. The Director shall keep the applicant informed of its review and comments, as well as comments from other City departments and other government or public service agencies, and shall provide opportunities for the applicant to consult with City staff before any referral or appeal hearing.

4. Pre-Submission Conference

Prior to filing an application, an applicant may submit to the Director preliminary or proposed maps, plans, design drawings and other data or information concerning the proposed subdivision map, sub-phase or project for a pre-submission conference. Within fourteen (14) days after the receipt of such request and materials, the Director shall offer to meet with the applicant at a mutually-agreeable time to discuss the proposed project and plans.

5. Approval

5.1 Effective. Approval by or on behalf of the Director or City Planning Commission shall, absent an appeal, become effective immediately. Approval by the County Planning Commission is final, and is not subject to appeal to the legislative body. An action by the City's Planning Commission's may be appealed to the City Council.

5.2 Term. The subject approval is granted for 24 months. If construction of the improvement(s) is not commenced within 24 months after the effective date, approvals will automatically expire. An extension of 12 months may be granted by the Director upon written

application by a responsible party prior to the expiration. No more than two 12 month extensions may be granted by the Director. Additional extensions of 12-month increments may be granted by the City Planning Commission (or legislative body) upon the written request of Landowner or its Parties prior to the expiration of the previous extension. Before any extension may be granted, it must be found that there has been no substantial change of circumstances.

6. Submittal Requirements

Applicants shall submit for review by the Director six (6) copies of plans drawn to scale and fully dimensioned (minimum scale 1" = 10'). An alternate scale may be approved depending on plan legibility and area of the site. One paper form reduction at 11" x 17" in size is required for each sheet of plans submitted. Plans shall include, at a minimum, the following:

6.1 **Project Summary.** A project summary, including zoning, square footage, lot size, and parking requirements.

6.2 **Site Plan.** A site plan showing all property boundary lines with dimensions; locations of all existing or proposed structures, with dimensions of all wall lines and distances to nearest property lines noted; existing or proposed adjacent streets and frontage improvements (curbs, sidewalks, edge of paving, sewer and water mains and laterals, etc.), including driveway locations at adjoining properties; driveways; pedestrian walks; off-street parking and loading areas and proposed materials; landscaped planters, fences and walls, trash enclosures; locations, dimensions, and use of any outdoor activity areas. The site plan shall indicate the location of entrances and exits and the direction of traffic flow into and out of parking areas, the location, number and dimensions of parking spaces and loading areas and all vehicular turning and maneuvering areas.

6.3 **Landscape Plan.** A landscape plan showing existing and proposed trees including species, trunk size, location, and grade and whether they are to be retained or removed; any large trees on adjacent properties which are within 50 feet of the project site must also be shown; the location and design of landscaped areas and the varieties of plant material to be planted therein; all proposed parking lot trees demonstrating compliance with shading requirements; relationship of proposed landscaping to any building signage, whether existing or proposed; parking lot and street lighting plans showing coordination with proposed landscaping; and other landscaped features. The landscape plans shall demonstrate compliance with the City Water Efficient Landscape Ordinance Guidelines ("WELO") in effect at the time the application is submitted, as set forth in Section 17.52.520(C) of the Napa Municipal Code, including the alternative compliance option as permitted thereunder.

6.4 **Architectural Drawings.** Architectural drawings showing floor plans; all elevations of each proposed structure or structures, as they will appear upon completion of construction, noting materials, exterior surface treatment, colors, and details, including signage. Cross sections through proposed construction areas and elevations of adjacent structures may be required by the Director. Composite sketches from public vantage points may be required.

6.5 **Detailed Drawings.** Detailed drawings depicting the design of site features and elements, such as fences, benches, light fixtures, retaining walls, special paving features and similar elements.

6.6 **Grading.** Conceptual grading plans, if re-grading is required, including existing and proposed contours.

6.7 **Signs.** Scale drawings of all signs showing size, location, material, color and method of illumination (if proposed).

6.8 **Exterior Colors and Materials.** A sample board with samples exterior siding materials; roof materials (not required for flat roof); paint chips for all exterior painted surfaces; and glazing (if other than clear). Catalog cuts, paint swatches, and small tile samples are sufficient.

6.9 **Fees.** Applicable permit processing fees as may be required.

Submittal requirements may be supplemented, waived or modified by the Director based on the nature of the proposal and the type of review necessary to ensure compliance with the Development Plan and/or Design Guidelines.

7. **Modifications and Amendments**

The Director may, by written decision, approve, with or without conditions, project applications which deviate from the previously approved Project Approvals or Subsequent Approvals, provided that the following determinations are made by the Director: (i) the project approval requested involves a deviation that does not constitute a Substantive Amendment; (ii) the requested project approval will not be detrimental to the public welfare or injurious to the property or improvements in the vicinity of the project; and (iii) the grant of the project approval will be consistent with the general purposes and intent of the Project Approvals.

8. **Project Infrastructure/Subdivision Maps**

The processing, review and approval of subdivision maps under City's Subdivision Code and the Subdivision Procedures (**pursuant to Exhibit I** to the Agreement) may occur concurrently with or independently of a building development project design or building permit review; provided, however, that no approval under these Plan Review Procedures shall occur until City has final approval of a building project's building development plans under the Design Guidelines and construction of such building project shall not occur until City has first approved a Phased Final Map that includes the parcels on which the private building improvements are located.

Exhibit G

Applicable City Exactions

| | DA Section | Fee Type | Amount | Applicability |
|---|------------|--|--------|--|
| 1 | 8.2 | Fire & Paramedic Development Fee | TBD | As provided in Chapter 15.78 of the City of Napa Municipal Code and City Council Resolution No. R2008-73 [see Development Agreement section 15.2.4 for additional provisions]. |
| 2 | 8.2 | Dredging Fee | TBD | Parcels located on west side of UPRR tracks only. If adopted by City on a City-wide basis. Fee to provide funding for Napa River maintenance dredging. |
| 3 | 15.2.4(c) | CCRC Property Tax In-Lieu Fee | TBD | [see Development Agreement Section 15.2.4(c) for additional provisions]. |
| 4 | 8.2 | Public Art | TBD | See Chapter 15.108 of the City of Napa Municipal Code, and subject to Development Agreement Section 15.2.6 . |
| 5 | 8.2 | General Plan Update | TBD | If adopted by City on a City-wide basis; Parcel fee to provide funding for costs of updating City General Plan. |
| 6 | 8.2 | City Public Facilities Fee | TBD | If adopted by City on a City-wide basis; Fee to provide funding for development or re-development of City Hall facilities. |
| 7 | 8.3 | City Non-Residential Affordable Housing Impact Fee | TBD | As provided in Chapter 15.94 of the City of Napa Municipal Code. [Applicable only to a hotel on Parcel E and in accordance with Development Agreement Section 8.3]. |
| 8 | 8.2 | County Residential and Non-Residential Affordable Housing Fees | TBD | [see Development Agreement, Exhibit B, Section 2] |
| 9 | 8.2 | Water Capacity Fee | TBD | As provided in the Water Service Agreement [see Development Agreement, Sections 8.2.1 and 10.2] |

Exhibit H

Land Use Plan

EXHIBIT H

LAND USE PLAN



EXHIBIT I

Subdivision Procedures1. **Introduction**

These Subdivision Procedures are adopted pursuant to the Subdivision Map Act of California, Title 7, Division 2 of the Government Code, commencing with Section 66410 (hereinafter referred to as "**SMA**") and supplement and amend in part the City Subdivision Code as it relates to the Property. Due to the complex nature of the Project and its proposed phased build-out over a period of years under the Agreement, the Parties wish to provide procedures for security and processing of Phased Final Maps and approval of Individual Maps and related final maps during the term of the Agreement that diverge in certain respects from the City Subdivision Code or regulations, but remain consistent with the SMA. Except to the extent provided in the Agreement, Development Plan, or in this **Exhibit I**, all other provisions of the City Subdivision Code and Regulations shall apply to the Project except to the extent of conflicts herewith. Capitalized terms not otherwise defined in this **Exhibit I** shall have the meanings ascribed to them in the Agreement and its Exhibits.

2. **Security**

2.1 The SMA sets forth requirements for improvement security in connection with the performance of a subdivider's acts and obligations under the SMA, and further provides that the City may specify the types and amounts of security required as provided in the SMA. As a condition to the approval of any subdivision improvement agreement approved concurrently with any final or parcel map, Landowner shall provide performance and payment security in accordance with the City's Subdivision Code or such other form as may be reasonably acceptable to City (any of the foregoing, the "**Security**") provided that:

2.2 **Performance Security.** For any subdivision improvement agreements for Phased Final Maps (defined below), or other subsequent final maps associated with Individual Maps, performance Security in a form reasonably acceptable to City to secure performance of obligations under an improvement agreement or permit shall be provided in accordance with City's Subdivision Code based upon the total estimated cost of the construction and installation of the Project Infrastructure improvements under the applicable improvement agreement. The amount required shall be based upon an amount equal to not less than fifty percent nor more than one hundred percent (100%) of the total estimated cost of construction and installation of Project Infrastructure improvements under the applicable improvement agreement as shall be determined by the City, acting by and through the City Community Development Director ("**Director**") or the Director's designee.

2.3 **Payment Security.** For any subdivision improvement agreements for Phased Final Maps or other subsequent final maps associated with Individual Maps, payment Security in a form reasonably acceptable to City to secure payment to the contractor, to its subcontractors, and to persons furnishing labor, materials or equipment to them for construction or installation of Project Infrastructure improvements under an improvement agreement shall be provided in accordance with City's Subdivision Code, provided, however, that in all cases, the amount

required shall be based upon an amount equal to fifty percent (50%) of the total estimated cost of the construction and installation of Project Infrastructure improvements under the applicable improvement agreement.

2.4 Reduction and Release of Performance and Payment Security.

2.4.1 Upon request by subdivider, performance Security shall be released or partially released or reduced upon a determination of partial or final completion of a portion or component of Project Infrastructure in an amount reflecting the cost of such completed portion or component of the work (but not below the greater of the amount required to guaranty completion of the remaining portions of Project Infrastructure or ten percent (10%) of the original amount of such performance Security). The determination of whether a portion or component of Project Infrastructure has been partially or finally completed to allow for a release or partial release of Security shall be made by the Director or the designee of the Director through approval of a notice of completion or, in the case of a partial release, upon notice of partial completion of the Director. There shall be no limit on the number of partial releases granted by the Director, subject to the determination required hereunder. In making a determination to release or partially release performance Security, acceptance of the Project Infrastructure by the City governing body, or its designee, or Commission shall not be required for any such release or completion determination for Project Infrastructure that will not be dedicated and accepted for operation and maintenance by the City. In making a determination to release payment Security, the provisions of City Subdivision Code will apply, and acceptance of the Project Infrastructure by the City shall not be required for any such release or completion determination for Project Infrastructure that will not be dedicated and accepted for operation and maintenance by the City.

3. Subdivision Procedures Supersede Inconsistent Code Provisions

3.1 **Security.** These Subdivision Procedures supersede any inconsistent provisions of the City's Subdivision Code, or any other provisions of City Codes regarding Subdivision security.

3.2 **Application of Maps and Improvement Agreements After Annexation.** The Term of the Master Map and any subsequent Individual Maps is provided in Section 7.5 of the Agreement, which supersedes any inconsistent provisions of the City's Subdivision Code, including, without limitation, Chapter 16.20 of the City's Subdivision Code. It is the intent that the Master Map and subsequent Individual Maps shall continue to be effective for the term described in Section 7.5 of the Agreement, and that: (i) development of the Project proceed consistent with the Project Approvals; (ii) City would be responsible for processing Phased Final Maps, Individual Maps and their associated final maps, and all improvement agreements for annexed Property in accordance with this Agreement and the Project Approvals, including the Master Map and any previously approved Individual Maps.

3.3 **Development Consistent with Development Plan.** As provided in the Agreement, and notwithstanding any contrary provisions of City's Subdivision Code, with respect to application of City rules, regulations or standards, development of the Project and Project Infrastructure shall be governed by the Development Plan, Design Guidelines and other Project Approvals (including the Master Map), except as may be provided therein, including,

without limitation, with respect to provision of water service facilities consistent with City Standards. No waivers, variances, exceptions or other or additional approvals or authorizations under City Codes shall be required for application of such Project Approval standards in lieu of any contrary City standards.

3.4 **City Codes.** Upon annexation of the Property or portion thereof by the City, the following additional provisions shall apply as to such annexed Property:

3.4.1 Notwithstanding the provisions of Section 16.04.160 of the City Subdivision Code, upon annexation of any of the Property, the conditions of approval for Subsequent Approvals, including, without limitation, Individual Maps, shall be limited to those specifically set forth in the approving resolution or ordinance and all contrary or inconsistent provisions of Section 16.04.160 shall not apply to the Project or Property

3.4.2 The Master Map, Development Plan and other Project Approvals, are deemed by the City to satisfy the requirements of Section 16.12.010(C) of the City Subdivision Code regarding preparation and review of a conceptual map and therefore no conceptual map shall be required for any annexed Property or the Project.

4. **Subdivision Review**

City shall use reasonable efforts to expeditiously and with due diligence process the review of each Phased Final Map, Individual Map, other final maps and Project Infrastructure improvement plan submissions, construction inspections and partial and final completion determinations, and acceptances of completed Project Infrastructure. The City shall also use reasonable efforts to cause the timely performance by each department or agency within its jurisdiction of the acts required of it to permit development to proceed as contemplated by the Agreement, including the review of construction, completion determinations and for releases of Security for Project Infrastructure, or portions or components thereof.

5. **Preliminary Compliance Review; Phased Final Maps**

As contemplated by the Master Map , Landowner will file multiple phased Final Maps for the Project (each, a “**Phased Final Map**”). The following provisions provide for a new Preliminary Compliance Review Approval that is to occur prior to the City’s approval of any Phased Final Map. These provisions shall supplement the information required under City Subdivision Code and shall constitute an additional submittal requirement under the City’s Subdivision Code as to each first Phased Final Map submitted for any portion of the Property under the Master Map. No residential or commercial building permit for development on the land use blocks described on the Master Map (but specifically excluding Project Infrastructure that may be separately permitted through a grading, excavation or street improvement permit or other appropriate permit or agreement), shall be issued on any portion of the Property that is included under the Master Map until a Phased Final Map for the applicable portion of the Property has been recorded. Subsequent Individual Maps and associated final maps filed for the Property shall be processed in accordance with the City Subdivision Code as modified by these Subdivision Procedures.

5.1 **Preliminary Compliance Review.** In addition to all other City requirements applicable to the acceptance of a complete application and timely filing of a final map, the first Phased Final Map to be filed on each portion of the Property shall not be approved or forwarded to the City's legislative body for consideration until City has issued a Preliminary Compliance Review Approval (defined below) in accordance with this Section 5.1.1.

5.1.1 Submittals. In connection with each Phased Final Map, Landowner shall submit to the Director for the Director's review and acceptance, solely for purposes of demonstrating conformance with the Agreement and other Project Approvals (the "**Preliminary Compliance Review Approval**"), a Preliminary Compliance Review submittal that contains the information set forth in this Section 5.1.1. If Landowner seeks preliminary approval of a Phased Final Map, then the information required thereunder shall include the submittals required for the Preliminary Compliance Review Approval.

(i) Governing Documents. A general description of the Governing Documents (as more particularly described in Section 16.3 of the Agreement), that are proposed to be recorded against the property shown on such Phased Final Map.

(ii) Affordable Housing Information. Housing information as necessary for City to determine compliance with the Affordable Housing Plan and track compliance with the requirements of the Affordable Housing Plan, as follows:

- A. If the property that is the subject of the Phased Final Map includes an Affordable Housing Parcel, Landowner shall submit the following information:
 - (1) The location and acreage of the Affordable Housing Parcel(s) within the property that is the subject of the Phased Final Map;
 - (2) The name of the Qualified Housing Developer anticipated to develop the Affordable Housing Parcel(s), if any;
 - (3) If known, the number of Low Income Homes and Very Low Income Homes anticipated to be developed by the Qualified Housing Developer on the Affordable Housing Parcel(s);
 - (4) If Landowner proposes a change to the Approved Sites identified in the Affordable Housing Plan, (Parcel 23 (Phase One) and Parcel One (Phase Two), that was not previously approved in accordance with the Affordable Housing Plan, Landowner shall submit the information required under Section 3.3 (Site Selection Process) of the Affordable Housing Plan necessary for City to evaluate the substitute Approved Site;

(5) If the property that is the subject of the Phased Final Map includes any property within Phase Two or Phase Three of the Project (as shown on the Phasing Plan), evidence that Landowner has satisfied all affordable housing pre-requisites to the applicable Phase as identified in the Phasing Plan;

B. As of the date of the application submittal, the cumulative number of Residential Units (including the number of Moderate Income Units) that have been issued building permits, or if construction is complete, actually developed, within the Project;

C. If the property that is the subject of the Phased Final Map includes any property within Phase Two or Phase Three of the Project, evidence that no fewer than 6% of all Residential Units that have been issued building permits, or if construction is complete, that have actually been developed, are, to date, Moderate Income Units within all prior Phases;

D. The anticipated location of each Residential Project within the property that is the subject of the applicable Phased Final Map, and for each Market Rate Project, the number of residential units, and the proposed number and location of Inclusionary Units.

(iii) Phasing Plan Prerequisites. For any Phased Final Map that includes property in Phase Two or Phase Three of the Project, evidence that Landowner is meeting or has met all necessary prerequisites to development in such Phase as provided in Exhibit D (Phasing Plan).

(iv) Open Space. A description of all proposed Open Space that Landowner must construct in connection with the applicable Phased Final Map in accordance with schedule for construction of Open Space set forth in Section 3 of the Phasing Plan and all other Project Approvals.

(v) Conceptual Description of Project Infrastructure. A conceptual level description of all Project Infrastructure that Landowner proposes to construct in connection with the applicable Phased Final Map. Such conceptual plan Project Infrastructure shall be consistent with the Phasing Plan and Project Approvals, and shall include, without limitation, and subject to any subsequently anticipated further subdivision of the Phased Final Map area, all streets, (and improvements therein and thereon), bikeways, curbs, gutters, sidewalks, street lights and other streetscape improvements, joint utility trench, utility corridors and related facilities, flood control improvements, storm water, wastewater, potable and other water facilities and conceptual erosion and sediment control plan, including any interim facilities and control measures, reasonably necessary, as determined by the City, to provide necessary access and

utilities service for development on the subject property or as otherwise required to be constructed in connection with the subject property under the Project Approvals, including, without limitation, the Development Plan and Phasing Plan.

(vi) Other Information. Such other information or materials that may reasonably be required to demonstrate the scope and nature of the map and proposed improvement plan submittals will be in compliance with the Phasing Plan, Affordable Housing Plan and other Project Approvals.

5.1.2 Preliminary Compliance Review Approval. The Director shall within thirty (30) calendar days from the time the materials referenced in subsection 5.1.1 are submitted by Landowner, review the preliminary review submittal and advise the applicant in writing that the submittal is complete or whether and what specific additional materials or information are required. If the Director determines that the submittal is not complete and additional materials or information is required, then upon resubmittal of the additional materials and information, the Director shall within fourteen (14) calendar days of the resubmittal review and advise the applicant in writing that the submittal is complete or whether and what specific additional materials or information is still required. Upon determination that the submittal is complete, the Director will complete the review and provide a Preliminary Compliance Review Approval of the material presented, or return it to Landowner with instructions as to why it cannot be accepted as demonstrating compliance with the Agreement and Project Approvals, within thirty (30) calendar days of the submittal. If the Director rejects a Preliminary Compliance Review submittal in whole or in part, the reasons for such rejection shall be provided to the applicant. The Director's review under this Section 5.1 shall be solely for conformity with this Exhibit I, the applicable standards under the Development Plans, and for conformity with the Project Approvals, including, without limitation, the Phasing Plan, Affordable Housing Plan and MMRP. The decision of the Director may be appealed to the City Planning Commission by applicant within ten (10) days of the Director's decision. The appeal shall be on a form prescribed by the Director and shall be accompanied by the applicable filing fee and evidence substantiating the claim of error. An action by the City Planning Commission may be appealed to the City Council. City shall not reject the Preliminary Compliance Review application for reasons that are inconsistent with the Project Approvals and any Subsequent Approvals previously granted and shall not require changes or impose conditions thereon that are inconsistent with the Project Approvals and any Subsequent Approvals previously granted.

5.1.3 Action on Final Map. Without limiting the right of Landowner to seek preliminary approval of a final map, Landowner shall submit the Preliminary Compliance Review Approval as part of the information required for planning department approval of any Phased Final Map as required under the City Subdivision Code. All information submitted by Landowner with its Phased Final Map application, including approved Governing Documents and improvement drawings, shall be consistent with the City's Preliminary Compliance Review Approval. City shall not disapprove the Phased Final Map for reasons that are inconsistent with the Project Approvals and any Subsequent Approvals previously granted and shall not require changes or impose conditions thereon that are inconsistent with the Project Approvals and any Subsequent Approvals previously granted. The processing, review and approval of subdivision maps may occur concurrently with or independently of a building development project design or building permit review; provided, however, that the Director shall have issued the Preliminary

Compliance Review Approval and the associated Phased Final Map shall have recorded prior to issuance of a building project's building permit and commencement of building project construction.

5.1.4 Costs of Preliminary Compliance Review. All costs incurred by City in connection with completing the Preliminary Compliance Review required under this Section 5.1 shall be borne by Landowner and paid pursuant to the procedures of Section 18.2 of this Agreement.

6. Separate Improvement Plans

Landowner may submit applications for grading, excavation or street improvement permits or other appropriate improvement permit applications separate from or in advance of a subdivision map and subdivision improvement agreement, which may include extensions of public rights of way or utilities, in advance of programmed development, to provide off-site Project Infrastructure, for temporary roads or utility connections, or other Project Infrastructure improvements that are not in conflict with the Project Approvals, including the Development Plan. City shall review and consider for approval such applications and improvement plans for consistency with the Project Approvals. The Director, in its reasonable discretion, may require an improvement agreement or other appropriate authorization in connection therewith.

If determined necessary or desirable by Director in his or her reasonable discretion, Landowner shall provide security for improvement agreements or other grading, excavation or street improvement permit or other appropriate permits separate from subdivision improvement agreements, provided, however, that such security shall be required only to the extent that cumulative amounts of outstanding security are reasonably determined by the Director to be insufficient (in time or amount) to guaranty performance or payment for covered Project Infrastructure, or to the extent that funds for construction of public improvements are reasonably determined by the Director to be insufficient (in time or amount) to pay the expected costs of such construction.

EXHIBIT J

**STANDARDS FOR MAINTENANCE AND SECURITY OF STREETS, PARKS AND
OPEN SPACE****[Excluding Wetlands and Urban Farm]**

I. MAINTENANCE SERVICES:

- A. Scope of Work: Furnish all supervision, labor, material, equipment and transportation required to maintain the Park in a first class condition pursuant to the standards provided in this Exhibit J, "Park Maintenance, Standards and Security Plan" and to a quality standard equivalent to parks and open space located throughout Napa County and the City of Napa. All work and/or workers shall comply with applicable state, Federal, and local laws. Maintenance shall include the following:
1. Landscape planting and irrigation system.
 2. Pavement cleaning and repair.
 3. Trash pick-up.
 4. Site lighting.
 5. Site furnishing.
 6. Fountain mechanical and electrical systems.
- B. Work Force: The Park maintenance foreman should be experienced in landscape maintenance and should have an education in ornamental horticulture.
- C. Materials: All materials used shall be compatible with the materials used to construct the Park. The County Parks Department shall upon request be given a list of the control chemicals used. Any maintenance contractor shall also provide records and copies of all fertilizers, herbicides, insecticides, fungicides, and other materials, applied to the Park premises. Records shall indicate dates, amount applied and person making the application.
- D. General Tree and Shrub Care: Maintain trees, vines and shrubs in a healthy growing condition by performing all necessary operations, including the following:
1. Watering: Plants should not be watered until a moisture check has been made of representative plants in the landscape. Use of a probe or other tool to check the moisture in the root ban as well as the soil surrounding the root ball. Maintain a large enough water basin around plants so that enough water can be applied to establish moisture through the major root zone. In the rainy season, open basins

to allow surface drainage away from the root crown where excess water may accumulate. Use mulches to reduce evaporation and frequency of watering. Plants in terracotta planters, if any, shall be hand irrigated.

2. Pruning Trees:

- a. Prune trees to select and develop permanent scaffold branches that are smaller in diameter than the trunk or branch to which they are attached, which have vertical spacing of from 18 to 48.inches and radial orientation so as to not overlay one another; to eliminate diseased or damaged growth; to eliminate narrow, V-shaped branch forks that lack strength; to reduce toppling and wind damage by thinning out crowns; to maintain growth within space limitations; to maintain a natural appearance; to balance crown with roots.
- b. Do not strip lower branches (raising up) of young trees. Lower branches should be retained in a “tipped back” or pinched condition with as much foliage as possible to promote caliper trunk growth [tapered trunk]. Lower branches should be cut at the branch collar in accordance with ISA recommended pruning practices only after the tree is able to stand erect without staking or other support.
- c. Evergreen trees should be thinned out and shaped when necessary to prevent wind and storm damage.
- d. The primary pruning of deciduous trees should be done during the dormant season.
- e. Damaged trees or those that constitute health or safety hazards shall be pruned at any time of the year as required. All pruning cuts shall be made to lateral branches, or buds or flush with the trunk. “Stubbing” will not be allowed.

3. Pruning Shrubs and Vines. The objectives of shrub and vine pruning are the same as for the trees. Shrubs or vines shall not be clipped into balled or boxed forms.

- a. Trees, vines and shrubs should be checked for possible pruning a minimum of once per month.

4. Staking and Guying. When trees attain a trunk caliper of 4” consider removal of existing stakes and guys. If unstable at this time, replacement should be considered. Stakes and guys are to be inspected at least twice per year to prevent girdling of trunks or branches, and to prevent rubbing that causes bark wounds.

5. Weed Control. Keep basins and areas between plants free of weeds. This will reduce damage to tree trunks and roots by machinery and by excess water. Use recommended, legally approved herbicides wherever possible to control growth in this open area. Avoid frequent soil cultivation that destroys shallow roots and

breaks the seal of pre-emergent herbicides. Great care must be employed when using systematic herbicides not to damage plantings. Any plantings destroyed should be replaced with material of the same specific type and site as the dead plantings when (seasonally) recommended by accepted horticultural methods and practices. Weeds with spreading underground rootstocks, must be hand dug to remove all invading roots.

6. Fertilization and Spraying

- a. Fertilizer for shrubs, groundcovers, and lawn should be applied as necessary for healthy growth.
- b. Apply insecticides as needed to protect all plant materials from damage, including slug and snail control.
- c. Apply the proper fungicide, herbicide and pesticides for the control of pests, weeds and plant diseases. Also treat cuts and breaks on exposed surfaces of trees.
- d. Chemicals and insecticides used shall conform to applicable laws and standards.

E. Ground Cover Care:

1. Control weeds with pre-emergent weed herbicides and hand weeding. Do not damage plantings.
2. Nitrogen for groundcovers should be applied as necessary for healthy growth. Complete fertilizers are not desired unless soil test shows specific nutrient deficiencies.
3. Water enough that moisture penetrates throughout root zone, and only as frequently as necessary to maintain healthy growth.
4. A cleared circle 18" to 24" in diameter, should be maintained at the base of trees to reduce competition for nutrients by ground cover. A cleared strip 12" to 18" in width should be maintained at base of the palms.
5. Edge ground cover to keep in bounds and trim tip growth as necessary to achieve an overall even appearance. Great care should be taken not to damage adjacent plantings when mowing.
6. Control rodents, insects and diseases as necessary, using legally approved materials.
7. Replace dead and missing plants. Plantings should be replaced with a time period of four weeks. All materials shall be of the same specific types and gazes as the ones destroyed.

F. Lawn Care:

1. The lawns should be kept generally weed free at all times.
2. Mowing and edging: Mow, edge and trim lawns bi-weekly or as required to maintain an even, well groomed appearance.
3. Renovation: Renovate lawns by verticuting and aerating as required.

G. Vine Care:

1. Pruning
 - a. Vines and espalier plants shall be checked and re-tied as required.
 - b. Do not use nails to secure vines.
 - c. Prune all vines on an annual basis using accepted horticultural practices.
 - d. Vines shall be pruned and maintained so as not to obstruct fixtures, signs, windows, etc.
2. Fertilizers for vines should be applied as necessary for healthy growth..
3. Water as necessary to provide optimum growth.

H. Irrigation Systems:

1. Check and adjust sprinkle valves and heads as necessary.
2. Program or reprogram irrigation controller as necessary.
3. The irrigation system shall be kept in good working order and condition at all times. Any damages to the system caused by any contractor's operation should be repaired without charge by that contractor. Repairs should be made within one watering period.
4. Faulty electrical controllers should be replaced as soon as possible.
5. In late Winter, all systems should be checked for proper operations. Lateral lines should be flushed out after removing the last sprinkler head or two at each end of the lateral. All heads are to be adjusted as necessary for unimpeded cover.
6. Set and program automatic controllers for seasonal water requirements. Watering schedule should be arranged so as not to interfere with the public's use of the Park.
7. An accurate up-to-date log must be maintained of all irrigation repairs, starting date of repairs, specific location, and nature of repair.

I. Paving:

1. Keep all paved areas free from foreign matter, wastes and trash on a regular basis. Concrete walk and unit paver areas should be steam cleaned as necessary, but in no event less than twice a year.
2. All paved areas should be cleaned of debris caused by maintenance operations or silting.
3. All plant growth should be prevented in cracks in walks or along paved areas within limits of service area.
4. Drains: All subsurface drains should be periodically flushed with clean water to avoid building of silt and debris. Keep all inlets to subsurface drains clear of leaves, paper, and other debris to ensure unimpeded passage of water, including the opening to all inlets, and perform any necessary maintenance to stormwater quality requirements such as filters.
5. Patch, repair or replace damaged paving as necessary to keep the area safe and suitable for children at play.

J. Fountains:

1. Daily regulation of fountain systems.
2. Routine maintenance of fountain mechanical and electrical systems as well as lighting associated with fountains.
3. Maintain water quality as specified in the Final Environmental Impact Report.
4. Periodically inspect mechanical and electrical systems. Repair and replace equipment as necessary.
5. Leaves and loose trash shall be removed from all fountains at least once a day.

K. Trash Pick-up:

1. Pick-up litter throughout the park and empty trash containers at least once a day.

L. Site Lighting:

1. Maintain site lighting.
2. Replace lamps as necessary.
3. Repair and replace damaged poles and luminaries.

M. Site Furnishing:

1. Clean and wipe benches as often as necessary to keep clean and tidy. Maintain all site furnishings including but not limited to drinking fountains, play equipment, seating, bollards, pergolas, gateways, trash containers in a clean condition. Replace damaged furnishings as necessary. Replace furnishings on a schedule consistent with generally accepted park maintenance standards for parks within Inglewood.

N. Debris Removal:

1. All debris accumulated as a result of maintenance operations should be removed from the site.
2. All leaves, branches, paper and litter shall be removed from the premises.

O. Graffiti Removal and Vandalism: All graffiti shall be removed from the Park and vandalism shall be repaired as quickly as is practicable.P. Corrective Action:

1. Weed control: Corrective actions shall be made as soon as reasonably practicable after receipt by the maintenance supervisor of such complaint.
2. Plant Material Pruning: Within the limitations of these specifications, corrective action on complaints shall be made as soon as reasonably practicable after receipt by the maintenance contractor of such complaint.
3. Plant Material Replacement: Dead and missing plants shall be replaced. All materials shall be of the same types and, where reasonably practicable, sizes as the ones destroyed.

Q. Other Equipment:

Unless otherwise set forth herein, other park equipment shall be maintained in accordance with manufacturers' warranties, manuals, and product specifications.

II. ADDITIONAL ACCESS, MAINTENANCE AND USE STANDARDS

- A. Park Use: The use of the Parks shall be limited to both passive and active recreation purposes only, including, without limitation, leisure, social activities, picnics and barbecues, plazas and pavilions, playgrounds, and informal sports (i.e. jogging, walking, bicycling, etc.). Organized team sports that require dedicated fields are not permitted uses within the Parks. The Parks shall be developed in accordance with the terms and conditions of the Project Approvals approved by the County.

- B. Maintenance Standard: All of the Parks shall be operated, managed and maintained in a neat, clean, attractive and safe condition in accordance with the anticipated and foreseeable use thereof.
- C. Hours of Operation: The Parks should be open and accessible to the public, at a minimum, during the hours of 7:00 a.m. and 9:00 p.m., seven (7) days per week during Pacific Daylight Savings time, and during the hours of 7:00 a.m. and 6:00 p.m., seven (7) days per week during Pacific Standard time, unless reduced or modified hours are approved by Park operators or otherwise expressly provided for herein. No Person shall enter, remain, stay or loiter on the Parks when the Parks are closed to the public, except Persons authorized in conjunction with Special Events, or temporary closures as permitted or authorized service and maintenance personnel.
- D. No Discrimination: There shall be no discrimination against, or segregation of, any Person, or group of Persons, on account of race, color, religion, creed, national origin, gender, ancestry, sex, sexual orientation, age, disability, medical condition, marital status, acquired immune deficiency syndrome, acquired or perceived, in the use, occupancy, tenure or enjoyment of the Parks.
- E. Temporary Closure and Special Events:
1. Emergencies and Repairs: Landowner shall have the right, without obtaining the consent of the County or any other Person or entity (except as specifically set forth herein), to temporarily close the Parks to unauthorized Persons, at any time and from time to time for any one or more of the following:
 - a. In the event of an emergency, or danger to the public health or safety created from whatever cause (e.g., flood, storm, fire, earthquake, explosion, accident, criminal activity, riot, civil disturbances, civil unrest or unlawful assembly), Landowner may temporarily close the subject Park (or affected portions thereof) for the duration thereof, in any manner deemed necessary or desirable to promote public safety, security and the protection of Persons and property.
 - b. Landowner may temporarily close the subject Park (or applicable portion thereof) as is necessary to make such repair, maintenance and operation to the Park that the Landowner may deem necessary or desirable, and for such time as may be necessary to make such repairs and maintenance.
 2. Special Events: Portions of a Park may be closed for a period of up to twenty-four (24) consecutive hours, in connection with the use of the Parks for private special events including, without limitation, weddings, 4th of July celebrations, receptions, and assemblies (collectively, "Special Events"), and nothing herein limits the ability of park operators to provide for reservations of portions of a Park for private events. Prior to closing any Park for a Special Event, a notice of the impending closure at the major entrances to the subject Park shall be posted in

advance of the Special Event. A payment of a permit fee or charge for the use of the Parks for Special Events.

3. Public Events: Park operators may regulate and provide for the use of the Parks for meetings, receptions, seminars, lectures, concerts, art displays, exhibits, demonstrations, marches, conventions, parades, gatherings and assemblies that do not require the closure of the Parks for general use.
- F. Arrest or Removal of Persons: Landowner shall have the right (but not the obligation) to use lawful means to effect the arrest or removal of any person or persons who create a public nuisance, who otherwise violate the applicable rules and regulations, or who commit any crime including, without limitation, infractions or misdemeanors in or around the Parks.
- G. Removal of Obstructions: Landowner shall have the right to remove and dispose of, in any lawful manner it deems appropriate, any object or thing left or deposited on the Parks deemed to be an obstruction, interference or restriction of use of the Parks for the purposes set forth herein, including, but not limited to, personal belongings or equipment abandoned on the Parks during hours when public access is not allowed.
- H. Project Security During Periods of Non-Access: Landowner and successor Park operators shall have the right but not the obligation to block off the Parks or any portion thereof, and to install and operate security devices and to maintain security personnel to prevent the entry of Persons or vehicles during the time periods when access is not allowed.
- I. Temporary Structures: No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be used on any portion of the Parks at any time either temporarily or permanently unless such structure is approved by Landowner.
- J. Signs: Landowner and successor Park operators shall post signs at the major public entrances to the Parks, setting forth applicable regulations, hours of operation, and a telephone number or other contact information regarding security, management or other inquiries.
- K. Prohibited and Restricted Activities: Rules and Regulations: Landowner shall take commercially reasonable efforts and actions to enforce the rules and regulations.
- L. Limitation on Other Uses: No use by the public nor any person of any portion of the Parks for any purpose or period of time other than specifically described herein, shall be construed, interpreted or deemed to create any rights or interests to or in the Parks. The right of the public or any person to make any use whatsoever of the Parks or any portion thereof is not meant to be an implied dedication or to create any rights or interests in any third parties, and the Landowner expressly reserves the right to control the manner, extent and duration of any such use.
- M. Commitments for Retail Plazas: The Retail Plazas shall include a variety of amenities which may include landscape, hardscape, benches and other seating areas, retail tenant

and directional signage, passive recreation (e.g. water fountains, kiosks with items for sale, stages for entertainment, other seasonal entertainment, seating areas for restaurant dining and service of alcohol in specified areas). The Retail Plazas shall be open and accessible to the public, at a minimum, during the hours of operation of the Public Parks. However, Landowner may provide for different opening and closing times for the Retail Plazas in its sole discretion, including earlier closing times for any special events, promotional events or private events, or temporary closing in the event of an emergency or to undertake repairs or maintenance.

III. STREETS. Maintenance associated with the street section of the proposed development shall include:

- A. Keeping all paved areas clean and free of debris by way of street sweeping, trash pickup and landscape debris clean-up. Streets shall be monitored for trash and landscape debris weekly; street sweeping shall be performed no less than once per month.
- B. Plant growth shall be prevented along cracks within paved areas. Roadside vegetation shall be maintained to provide adequate sight distance at all locations in the street system.
- C. Storm drain inlets shall be cleaned and free of debris, including the opening to all inlets, and any necessary maintenance to stormwater quality requirements such as filters.
- D. Bioretention areas adjacent to streets shall be maintained to accept drainage and so as to not allow water to pond into street. Plantings shall be monitored and plants replaced as necessary until established.
- E. The road sections within the development shall be checked routinely for pavement distress including alligator cracking, block cracking, distortions, longitudinal and transverse cracking, patching and utility cut patching, rutting and depressions, weathering and raveling. Should distress be noticed the pavement management program manager shall evaluate and suggest solutions including but not limited to: crack sealing, slurry sealing, cape sealing, asphalt overlay or reconstruction.
- F. Potholes shall be patched or repaired within sixty (60) days of being discovered or reported to the Landowner or its contractor.
- G. Traffic control devices (signs and pavement markings) shall be monitored for visibility and effectiveness, and shall be replaced as needed.

IV. AMENDMENT AND ADJUSTMENT

Landowner and its successor Park operators shall have authority, in the exercise of its commercially reasonable discretion, to modify, amend or adjust the standards and requirements in this Park Maintenance and Security Plan, after consultation with and

opportunity to comment by the General Manager of the County Park and Open Space District, or his or her successor or designee, provided that any such modification, amendment or adjustment shall be consistent with the intent of these standards to maintain the Parks in a neat, clean, attractive and safe condition, generally consistent with comparable area public Parks, and in accordance with the anticipated and foreseeable use thereof.

Nothing herein shall require adherence to a standard or performance that is inconsistent with federal, state or local laws, regulations or policies, or environmental considerations such as, but not limited to, drought conditions and mandatory or voluntary water use restrictions.

Exhibit K
Form of Landowner's Indemnification

Declarant and each Owner shall indemnify, defend and hold harmless the City of Napa, and its respective elected and appointed councils, boards, commissions, officers, agents, employees, volunteers and representatives (collectively, "**City**") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death or physical property damage (including inverse condemnation) and from any and all claims, demands and actions in law or equity (including attorneys' fees and litigation expenses) (collectively, "**Claims**") by any Person or entity, directly or indirectly arising or alleged to have arisen out of or in any way related to the Declarant's or Owner's use of the Property or its breach of any of Declarant's or Owner's obligations under this Declaration, including, without limitation, any actions or inactions by Declarant or Owner or its contractors, subcontractors, agents, or employees or by any one or more persons directly or indirectly employed by or acting as an agent for Declarant or Owner or any of their respective contractors or subcontractors in connection with the construction or improvement of the Property or the performance of their obligations hereunder.

Notwithstanding the foregoing, the indemnification obligations arising under this Section [XX] shall not include Claims to the extent arising from (1) the gross negligence or willful misconduct of City, or its contractors, subcontractors, agents or employees, or by any one or more persons directly or indirectly employed by or acting as an agent for Landowner or any of Landowner's contractors or subcontractors; (2) the maintenance, use or condition of any improvement or portion of the Property after the time it has been dedicated to and accepted by the City or another public entity or agency or utility service provider (except as provided in an improvement agreement or warranty bond); or (3) any public use easements for water and sewer services after the time such public use easements have been accepted by the City or Napa Sanitation District (except as provided in an improvement agreement or warranty bond).

Declarant's and each Owner's indemnity obligations under this Declaration arising prior to the expiration, termination or assignment of this Declaration shall survive such expiration, termination or assignment. Declarant and each Owner responsible for Claims under this Indemnity shall timely pay all costs incurred by City in defending any such Claims or challenges, and Landowner shall be solely responsible to pay, in a timely manner and on City's behalf any and all awards of money damages, attorney fees and court costs against City.

EXHIBIT L
FORM OF ASSIGNMENT, ASSUMPTION AND RELEASE

RECORDING REQUESTED BY:

City of Napa
 Community Development Department
 (Exempt from Recording Fees Pursuant
 to Government Code Section 27383)

AND WHEN RECORDED MAIL TO:

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

**ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT RELATIVE TO
 DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF NAPA AND NAPA
 REDEVELOPMENT PARTNERS, LLC**
 (Napa Pipe [Insert Transfer Property Description])

This ASSIGNMENT, ASSUMPTION AND RELEASE (this "AARA"), dated as of ____, is entered into by and among CITY OF NAPA, a California charter city and municipal corporation ("City"), and Napa Redevelopment Partners, LLC, a Delaware limited liability company ("Landowner"), and _____, a _____ ("Transferee"), with respect to the property described in Exhibit A attached hereto and made a part hereof (the "Transferred Property").

RECITALS

A. In accordance with the Development Agreement Statute of the State of California (Government Code Section 65864 *et seq.*), Napa County, a political subdivision of the State of California ("County"), acting through its Board of Supervisors ("Board"), entered into a development agreement with Landowner for a mixed use project known as Napa Pipe (the "Project"), dated January 13, 2015 and recorded in the Official Records of Napa County on January 26, 2015 as Document No. 2015-0002281 (the "Development Agreement"), which was amended by the First Amendment to the Development Agreement dated September 22, 2015 and recorded in the Official Records of Napa County on September 23, 2015 as Document No. 2015-0024296.

B. After the Napa Pipe Property (as described in Recital C) was annexed into the City boundaries, the City (assuming the County's rights and responsibilities under the Development Agreement) entered into and approved the Second Amendment to and First

Restatement of the Development Agreement on _____, 20__ which was recorded in the Official Records on _____, 20__, as Document No. _____. The Development Agreement, as amended and as it may be further amended from time to time, is herein referred to as the "Development Agreement" and, unless otherwise defined in this Agreement, all initially capitalized defined terms used in this Agreement shall have the respective meanings given them in such Development Agreement.

C. The Development Agreement provides for the development, rehabilitation and revitalization of the property located on approximately 154-acres of real property in the City, designated by Assessor's Parcel Numbers 046-412-005 and 046-400-030 and as more particularly described in the Development Agreement (the "Napa Pipe Property").

D. In order to facilitate the development of the Project within the Napa Pipe Property as well as the Transferred Property, the County adopted certain land use approvals, as amended and assumed by the City, for the Project. A list of these land use approvals is set forth on Exhibit B attached hereto and made a part hereof (the "Project Approvals"). The list of Project Approvals attached hereto as Exhibit B is illustrative of the material documents and instruments governing development of property within the Napa Pipe Property and the Transferred Property in particular, but is not intended to be an exhaustive list of all documents, instruments, and/or other matters that may govern development of the Napa Pipe Property.

E. The Development Agreement provides that, subject to the terms and conditions contained in Section 19 thereof, Landowner (and any Transferee) shall have the right (1) to Transfer all or any portion of the Property during the Term of the Development Agreement; (2) to assign all or a portion of its rights and obligations under the Development Agreement to a Transferee; and (3) upon the City's receipt of an Assignment and Assumption Agreement duly executed in accordance with the terms of the Development Agreement [and additional evidence of experience and financial resources as described in Section 19.2.2, applicable to a release associated with the assignment and assumption of Public Improvement obligations] to be released from those obligations of the Landowner under the Development Agreement that are applicable to the portion of the Property so Transferred but that are not intended to be retained by the Landowner after the Transfer.

F. Landowner and Transferee have entered into that certain Purchase [Transfer] Agreement dated as of _____, pursuant to which Landowner has agreed to sell or transfer to Transferee, and Transferee has agreed to acquire from Landowner, the Transferred Property upon the terms and conditions therein set forth.

G. In connection with the conveyance of the Transferred Property from Landowner to Transferee pursuant to Section 19 of the Development Agreement, Landowner desires to assign to Transferee, effective as of the Landowner's conveyance of the Transferred Property to Transferee (the "Assignment Effective Date") certain of Landowner's rights, title, interest, burdens and obligations under the Development Agreement applicable to the Transferred Property, and Transferee is willing to accept such rights, title and interests and to assume such burdens and obligations, on the terms and conditions set forth in the Development Agreement and this AARA. In addition, in connection with the foregoing assignment and assumption, Landowner desires to be released by City from Landowner's obligations under the Development

Agreement applicable to the Transferred Property (except as expressly provided below), and City is willing to release Landowner from such obligations, on the terms and conditions set forth in this AARA.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, Landowner, and Transferee agree as follows:

1. **Assignment By Landowner.**

1.1 **Transferred Rights and Obligations.** Except as provided in Section 1.2 hereof with respect to the Excluded Rights and Obligations, Landowner hereby assigns to Transferee as of the Assignment Effective Date each and all of the rights, title and interests of the Landowner under the Development Agreement to the extent applicable to the Transferred Property (collectively, the "**Transferred Rights**") and each and all of the burdens, obligations, terms, covenants, and agreements of the Landowner under the Development Agreement to the extent applicable to the Transferred Property (collectively, the "**Transferred Obligations**"), including without limitation, the obligation to comply with the requirements of the Development Agreement with respect to the application to the Transferred Property of (a) the MMRP, (b) **[those items of Project Infrastructure described in Exhibit C attached hereto]**, (c) Affordable Housing Plan, (d) Phasing Plan; (e) Design Review Procedures; and (f) [_____] all as set forth in the Development Agreement. The Transferred Rights and the Transferred Obligations are sometimes collectively referred to herein as the "**Transferred Rights and Obligations**".

1.2 **Excluded Rights and Obligations.** Landowner and Transferee hereby expressly confirm and agree that the assignment and assumption contemplated in this Agreement shall not include or affect any of the following specifically excluded rights and obligations ("**Excluded Rights and Obligations**"): _____, and that Landowner further retains all of the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the Property owned by Landowner, or which are not specifically assigned to and assumed by Transferee under this AARA.

2. **Assumption By Transferee.**

2.1 **Transferee's Assumption.** Transferee hereby accepts each and all of the Transferred Rights, and Transferee hereby assumes and agrees to be bound by and to perform, as a direct obligation of Transferee to City, each and all of the Transferred Obligations as of the Assignment Effective Date. The parties intend that, upon the Assignment Effective Date, Transferee shall become substituted for Landowner under the Development Agreement with respect to the Transferred Property for all Transferred Rights and Obligations.

2.2 **Transferee's Acknowledgment.** Transferee hereby acknowledges that Transferee has reviewed the Development Agreement and agrees to be bound by the Development Agreement and all conditions and restrictions applicable to the Transferred Property, including, without limitation, all conditions and restrictions contained in the Project Approvals that are applicable to the Transferred Property (as stated in Recital C above). The

Project Approvals listed in Exhibit B attached hereto are illustrative of the material documents and instruments governing development of Property, but such list is not intended to be an exhaustive list of all documents, instruments, and/or other matters that may govern development of Property including Transferred Property).

3. Reaffirmation of Indemnifications; Survival of Public Benefits. Transferee hereby consents to and expressly reaffirms any and all indemnities of City set forth in the Development Agreement, including, without limitation, Section 23 of the Development Agreement. Assignee understands that certain Public Benefits and Public Improvement obligations may survive the expiration of the Development Agreement and remain in effect in accordance with Section 7.7 of the Development Agreement.

4. Representations and Warranties of Landowner. Landowner hereby makes the following representations and warranties to City as of the Effective Date:

4.1 Development Agreement. To the extent applicable to the Transferred Property, the Development Agreement is [unmodified] and in full force and effect.

4.2 No Defaults. To the actual knowledge of Landowner, no default on the part of Landowner, and no breach or failure of condition that, with notice or lapse of time or both, would constitute a default on the part of Landowner, exists under the Development Agreement with respect to the Transferred Property.

4.3 No Set-Offs. To the actual knowledge of Landowner, there are no set-offs or defenses against the enforcement of any right or remedy, or any duty or obligation, of City or Landowner under the Development Agreement with respect to the Transferred Property.

4.4 No Termination Right. Landowner currently has no right to terminate the Development Agreement with respect to the Transferred Property pursuant to the Development Agreement.

4.5 Consents. Landowner has obtained all consents to the assignments and transfers of the Transferred Property to Transferee that may be required by any agreement to which Landowner is a party. Other than the consents so obtained, no consent to the Transfer of the Transferred Property to Transferee is required under any agreement to which Landowner is a party or by which the Transferred Property is bound (other than the Development Agreement).

4.6 No Conflicts. The execution, delivery, and performance by Landowner of this AARA (i) will not contravene any legal requirements applicable to Landowner or the Transferred Property, (ii) will not conflict with, breach or contravene any other agreement binding upon Landowner or the Transferred Property, and (iii) will not result in the creation or imposition of any liens on any portion of the Transferred Property (except as may be permitted under the terms of the Development Agreement).

5. Representations and Warranties of Transferee. Transferee hereby makes the following representations and warranties to City as of the Effective Date:

5.1 No City Representations. Transferee has reviewed and is familiar with the terms and conditions of the Development Agreement. Transferee recognizes and acknowledges that, except as expressly provided herein, City makes no representation or warranty hereby, express or implied, regarding the amount, nature, or extent of any obligation, liability, or duty under the Development Agreement with regard to the Transferred Property. Transferee understands and acknowledges that (i) Transferee is responsible for satisfying itself as to the existence and extent of the Transferred Rights and Obligations, and (ii) in accordance with the representations made by City in Paragraph 6 below, City has not agreed to any amendment of any provision of the Development Agreement with regard to the Transferred Property and, except as expressly provided herein or in the Development Agreement, City has not waived any right of City or obligation of Landowner under the Development Agreement with respect to the Transferred Property.

5.2 Consents. Transferee has obtained all consents in connection with its assumption of the Transferred Obligations and for its acquisition of the Transferred Property that may be required by any agreement to which it is a party. Other than the consents so obtained, no consent to the acquisition of the Transferred Property is required under any agreement to which Transferee is a party.

5.3 No Conflicts. The execution, delivery, and performance by Transferee of this Agreement and of the Transferred Obligations (i) will not contravene any legal requirements applicable to Transferee, (ii) will not conflict with, breach, or contravene any other agreement binding upon Transferee, and (iii) will not result in the creation or imposition of any liens on any portion of the Transferred Property (except as may be permitted under the terms of the Development Agreement).

5.4 Litigation. To the current actual knowledge of Transferee, there are no actions, suits, or proceedings at law or in equity or by or before any governmental authority pending or threatened against or affecting Transferee in which there is a reasonable possibility of a determination adverse to Transferee and that are reasonably likely, individually or in the aggregate, if determined adversely to Transferee, to have a material adverse effect on the ability of Transferee to perform the Transferred Obligations.

[5.5 Financial Resources; Experience. Transferee (a) has "Net Worth" and/or "Liquid Assets" (as defined in Section 19.2.2 of the Development Agreement) or other financial resources that meet the standard set forth in Section 19.2.2 of the Development Agreement, and (b) has a development team with experience in developing projects reasonably related (i.e., substantially similar) to the project contemplated on the Transferred Property.]

6. Representations and Warranties of City. City hereby makes the following representations and warranties to Landowner and to Transferee as of the Assignment Effective Date:

6.1 Development Agreement. The Development Agreement is in full force and effect, and City has not agreed to any amendment of any provision of the Development Agreement with respect to the Transferred Property.

6.2 No Waivers. Except as expressly provided herein or in the Development Agreement, City has not waived any right of City or any obligation of Landowner under the Development Agreement with respect to the Transferred Property.

6.3 No Defaults. To the actual knowledge of City, no default on the part of Landowner, and no breach or failure of condition that, with notice or lapse of time or both, would constitute a default on the part of Landowner, exists under the Development Agreement with respect to the Transferred Property.

6.4 No Set-Offs. To the actual knowledge of City, there are no set-offs or defenses against the enforcement of any right or remedy, or any duty or obligation, of City or Landowner under the Development Agreement with respect to the Transferred Property.

6.5 No Termination Right. To the actual knowledge of City, City currently has no right to terminate the Development Agreement pursuant to the Development Agreement.

7. Release of Landowner.

7.1 Qualifying Transfer. City hereby agrees to release Landowner from its obligations under the Development Agreement applicable to the Transferred Property, as more particularly set forth in Paragraph 7.2 below.

7.2 City Release. City hereby unconditionally and irrevocably fully releases and discharges Landowner from the Transferred Obligations of Landowner under the Development Agreement applicable to the Transferred Property. Without limiting the generality of the foregoing, City acknowledges and agrees that Landowner shall not be liable for any default by Transferee with respect to the Transferred Obligations, and no default by Transferee with respect to the Transferred Obligations shall entitle City to modify or terminate the Development Agreement, or otherwise affect any rights thereunder, with respect to any portion of the Property other than the Transferred Property. With respect to the foregoing release, City hereby acknowledges that such release is made with the advice of counsel and with full knowledge and understanding of the consequences and effects of such release. Further, as to unknown and unsuspected claims as of the Assignment Effective Date, City hereby acknowledges that such release is made with the full knowledge, understanding, and agreement that California Civil Code Section 1542 provides as follows, and City hereby agrees that the protection afforded by said Code Section and any similar law of the State of California or any other jurisdiction is specifically waived:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

City

By: _____

7.3 City Acknowledgment. Without in any way modifying, limiting, or expanding the provisions of Section 19 of the Development Agreement, City hereby confirms that, pursuant thereto (i) Transferee shall not be liable for any default by Landowner or any other Transferee in the performance of their respective obligations under the Development Agreement, and (ii) without limiting the foregoing, a default under the Development Agreement by Landowner or any other Transferee shall not entitle City to modify or terminate the Development Agreement, or otherwise affect any rights under the Development Agreement, with respect to the Transferred Property.

8. General Provisions.

8.1 Attorneys' Fees.

8.1.1 Prevailing Party. Should any party hereto institute any action or proceeding in court or other dispute resolution mechanism ("DRM") to enforce any provision hereof or for damages by reason of an alleged breach of any provision hereof, the prevailing party(ies) shall be entitled to receive from the losing party(ies) court or DRM costs or expenses incurred by the prevailing party(ies), including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or RM may adjudge to be reasonable attorneys' fees for the services rendered the prevailing party(ies) in such action or proceeding. Attorneys' fees under this Paragraph 8.1 include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

8.1.2 Reasonable Fees. For purposes of this AARP, reasonable fees of attorneys and any in-house counsel for City, Landowner, or Transferee shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the party's in-house counsel's services were rendered who practice in the same city in law firms with approximately the same number of attorneys as employed by the City, or, in the case of Landowner's or Transferee's in-house counsel, as employed by the outside counsel for Landowner or Transferee, respectively.

8.2 Notices. A notice or communication under this Agreement by any party to any other party shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

8.2.1 in the case of a notice or communication to City,

City of Napa
955 School Street
Napa, CA 94559

Attention: City Manager

with a copy to:

Office of the City Attorney
 955 School Street
 Napa, CA 94559
 Attention: City Attorney

8.2.2 in the case of a notice or communication to Landowner,

Napa Redevelopment Partners, LLC
 c/o Rogal Walsh & Mol
 1025 Kaiser Road
 Napa, CA 94558
 Attention: Keith Rogal

with copies to:

Farallon Capital Management
 One Maritime Plaza
 Suite 2100
 San Francisco, CA 94111
 Attention: _____

8.2.3 in the case of a notice or communication to Transferee,

with copies to:

For the convenience of the parties, copies of notices may also be given by telefacsimile.

8.2.4 Content of Notice. Every notice given to a party hereto, pursuant to the terms of the Development Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

(a) the Section of the Development Agreement (or this AARA) pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto;

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval or disapproval of or consent to the subject matter of the notice;

(d) if approval is being requested, shall be clearly marked "Request for Approval"; and

(e) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

8.2.5 Effective Date of Notice. Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this AARA shall be deemed given, received, made, or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. No party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

8.3 Successors and Assigns. This AARA shall be binding upon and inure to the benefit of each of the parties hereto and their respective executors, administrators, successors, and assigns.

8.4 Counterparts. This AARA may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument. It shall not be necessary in making proof of this Agreement to account for more than one counterpart.

8.5 Captions. Any captions to, or headings of, the Sections, subsections or Paragraphs of this AARA are solely for the convenience of the parties hereto, are not a part of this AARA, and shall not be used for the interpretation or determination of the validity of this AARA or any provision hereof.

8.6 Amendment To Agreement. The terms of this AARA may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

8.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

8.8 Waiver. The waiver or failure to enforce any provision of this AARA shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

8.9 Applicable Law. This AARA shall be governed by and construed and enforced in accordance with the laws of the State of California.

8.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this AARA.

8.11 Partial Invalidity. If any portion of this AARA as applied to any party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall

be deemed severed from this AARA and shall in no way affect the validity or enforceability of the remaining portions of this AARA.

8.12 Independent Counsel. Each party hereto acknowledges that: (a) it has been represented by independent counsel in connection with this AARA; (b) it has executed this AARA with the advice of such counsel; and (c) this AARA is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, City has caused this Agreement to be duly executed on its behalf as of the Effective Date.

CITY OF NAPA,
a California charter city and municipal corporation

Steve Potter, City Manager

Date: _____

ATTEST:

Tiffany Carranza, City Clerk

Date: _____

COUNTERSIGNED:

Desiree Brun, City Auditor

Date: _____

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

Date: _____

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

IN WITNESS WHEREOF, Landowner has caused this Agreement to be duly executed on its authorized person as of the Effective Date.

NAPA REDEVELOPMENT PARTNERS,
LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

IN WITNESS WHEREOF, Transferee has caused this Agreement to be signed by a duly authorized person as of the Effective Date.

TRANSFeree

By: _____
 Print Name: _____
 Print Title: _____

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

State of California)
 County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF TRANSFERRED PROPERTY

EXHIBIT B

PROJECT APPROVALS

[include list of Development Entitlements from the D.A., and any subsequent project approvals applicable to the Transferred Property]

EXHIBIT C

ITEMS OF PROJECT INFRASTRUCTURE TO BE PROVIDED BY TRANSFEREE