

**EXHIBIT A**

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Napa, CA 94559  
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**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**CITY OF NAPA**

**AND**

**COOMBS STREET LLC**

**Effective Date: August 15, 2025**

# EXHIBIT A

## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS.....	4
1.1. Definitions.....	4
ARTICLE II GENERAL PROVISIONS .....	6
2.1. Ownership of Property .....	6
2.2. City Representations and Warranties.....	6
2.3. Developer Representations and Warranties .....	7
ARTICLE III EFFECTIVE DATE AND TERM .....	7
3.1. Effective Date .....	7
3.2. Term of Agreement.....	8
3.2.1 Term.....	8
3.2.2 Effect of Termination.....	8
3.2.3 Force Majeure Delay; Extension of Times of Performance .....	8
ARTICLE IV DEVELOPMENT OF THE PROPERTY.....	9
4.1. Vested Rights .....	9
4.2. Applicable City Regulations .....	9
4.3. Hierarchy of Applicable Laws .....	10
4.4. Conflicting Actions .....	10
4.5. Intentionally omitted.....	10
4.6. Intentionally omitted.....	10
4.7. Development Timing and Construction Schedule. ....	10
4.7.1 Development Milestones .....	11
4.7.2 Construction Schedule .....	11
4.8. Regulation by Other Public Agencies.....	12
4.9. Life of Project Approvals.....	12
4.10. Developer’s Right to Rebuild .....	12
4.11. State and Federal Law.....	12
4.12. Compliance with Laws .....	13
4.13. Moratoria.....	13
4.14. Project Approvals and Applicable City Regulations .....	13
ARTICLE V FEES AND EXACTIONS.....	13
5.1. Impact Fees .....	13

# EXHIBIT A

## TABLE OF CONTENTS (continued)

	Page
5.1.1 Fee Credit, Existing Development.....	14
5.1.2 Fee Credit, Improvements.....	14
5.2. Processing Fees.....	14
5.3. Other Agency Fees.....	14
5.4. Exactions.....	15
5.5. Connection Fees and Water Service .....	15
ARTICLE VI PUBLIC BENEFITS\PUBLIC BENEFITS OBLIGATIONS.....	15
6.1. Public Benefit Obligations.....	15
6.1.1 Project Public Improvements.....	15
6.1.2 Housing.....	17
6.1.3 Parking.....	18
6.1.4 Traffic Operations.....	18
6.1.5 Hotel Amenities .....	18
6.1.6 City of Napa Business License .....	18
6.1.7 Sales Tax Point of Sale Designation.....	18
6.1.8 Public Art.....	19
6.2. Sharing of Transient Occupancy Revenue for Construction or Financing of Public Improvements .....	19
ARTICLE VII ANNUAL REVIEW .....	20
7.1. Annual Review.....	20
7.1.1 Purpose.....	20
7.1.2 Conduct of Annual Review.....	20
7.1.3 Failure to Conduct Annual Review.....	21
ARTICLE VIII COOPERATION AND IMPLEMENTATION .....	21
8.1. Subsequent Approvals, Design Review .....	21
8.2. Processing Applications for Subsequent Approvals .....	22
8.2.1 Timely Submittals by Developer .....	22
8.2.2 Timely Processing by City.....	22
8.2.3 No Change in Standards.....	22
8.2.4 Decision Making Authority on Design Review and Other Discretionary Permits.....	23

# EXHIBIT A

## TABLE OF CONTENTS (continued)

	Page
8.2.5 Demolition .....	23
8.2.6 Subdivision of Property .....	23
8.2.7 CEQA.....	24
8.2.8 Substantial Conformance .....	24
8.2.9 Vesting of Subsequent Approvals.....	25
8.2.10 Transfer of City Property for Construction Purposes .....	25
ARTICLE IX AMENDMENT OF AGREEMENT AND PROJECT APPROVALS .....	25
9.1. Amendment by Written Consent .....	25
9.2. Major Amendments to Agreement.....	25
9.3. Minor Amendment.....	25
9.4. Requirement for Writing.....	26
9.5. CEQA/Mitigation Measures .....	26
ARTICLE X INSURANCE, INDEMNITY AND COOPERATION IN THE EVENT OF LEGAL CHALLENGE .....	26
10.1. Insurance Requirements.....	26
10.2. Indemnity and Hold Harmless .....	27
10.3. Defense and Cooperation in the Event of a Litigation Challenge .....	27
ARTICLE XI ASSIGNMENT AND TRANSFER.....	28
11.1. Assignment .....	28
11.2. Successive Assignment.....	28
ARTICLE XII MORTGAGEE PROTECTION.....	28
12.1. Mortgagee Protection.....	28
12.2. Mortgagee Not Obligated .....	29
12.3. Notice of Breach to Mortgagee.....	29
12.4. No Supersedure.....	29
ARTICLE XIII DEFAULT; REMEDIES; TERMINATION.....	29
13.1. Breach and Default .....	29
13.2. Failure to Cure Default Procedure .....	30
13.3. Termination or Modification.....	30
13.4. Specific Performance for Violation of a Condition .....	30

# EXHIBIT A

## TABLE OF CONTENTS (continued)

	Page
13.5. Legal Actions.....	30
13.5.1 Institution of Legal Actions .....	30
13.5.2 Acceptance of Service of Process .....	30
13.6. Rights and Remedies Are Cumulative.....	31
13.7. No Damages.....	31
13.8. Resolution of Disputes.....	31
13.9. Remedies Upon Transfer or Assignment.....	31
13.10. Appeals to City Council.....	31
13.11. Surviving Provisions.....	31
ARTICLE XIV GENERAL PROVISIONS .....	32
14.1. Covenants Binding on Successors and Assigns and Run with Land.....	32
14.2. Notice.....	32
14.3. Reserved.....	32
14.4. Counterparts.....	33
14.5. Waivers .....	33
14.6. Construction of Agreement.....	33
14.7. Headings .....	33
14.8. Severability .....	33
14.9. Time is of the Essence .....	33
14.10. Signatures.....	33
14.11. Entire Agreement.....	33
14.12. Estoppel Certificate.....	34
14.13. Recordation of Termination.....	34
14.14. City Approvals and Actions.....	34
14.15. Negation of Partnership .....	34
14.16. No Third Party Beneficiaries .....	34
14.17. Joint and Several.....	34
14.18. Governing State Law .....	34
14.19. Recordation.....	34
14.20. Exhibits .....	35

## EXHIBIT A

### DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”), dated as of the 15<sup>th</sup> day of August, 2025 (the “**Effective Date**”), is entered into by and between the City of Napa, a California charter city (“**City**”) and Coombs Street LLC, a California limited liability company, (“**CS**” or the “**Developer**”). Developer and City may be referred to individually in this Agreement as a “**Party**” and collectively as the “**Parties**.”

#### R E C I T A L S

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

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

B. In accordance with the Development Agreement Statute, the City Council of the City of Napa enacted Municipal Code Section 17.52.150 and has adopted City of Napa Resolution No. 93-267 (which amended City of Napa Resolution Nos. 83-176 and R2018-136) (“**Development Agreement Regulations**”), which authorize the execution of development agreements and set forth the required contents and form of those agreements. The provisions of the Development Agreement Statute and the City’s Development Agreement Regulations are collectively referred to herein as the “**Development Agreement Law**.”

C. Developer is the fee owner of those certain approximately 1.94-acre properties that includes the former Kohl’s Department Store and other users located at 1106, 1116 and 1118 First Street, Napa, California, designated as Assessor’s Parcel Nos. 003-166-010, 003-166-013, 003-116-015, 003-166-016, as more particularly described and depicted in Exhibit A attached hereto (“**CS Parcel**”).

D. Under the Amended and Restated Agreement of Purchase and Sale and Joint Escrow Instructions dated August 9, 2024 (City of Napa Agreement No. C2024-160) (“**Parking Lot PSA**”), the Developer has an equitable interest in that certain approximately 0.75-acre property and the surface parking lot thereon currently owned by the City of Napa located at 1151-1199 Pearl Street in Napa, California, designated as Assessor’s Parcel Nos. 003-166-008 & 003-166-011, as more particularly described on Exhibit B attached hereto (“**Parking Lot Parcel**”).

E. Under the Agreement For Exchange Of Real Property And Joint Escrow Instructions dated August 9, 2024 (City of Napa Agreement No. C2024-159) (“**DMP EA**”), the Developer has an equitable interest in, that certain approximately 0.18 acre property located on First Street adjacent to the CS Parcel known as the Dwight Murray Plaza currently owned by the City of Napa located adjacent to 1118 First Street in Napa, California, designated as Assessor’s Parcel Nos 003-166-017, as more particularly described on Exhibit C attached hereto (“**Dwight**

## EXHIBIT A

**Murray Parcel**”). Under the DMP EA the Developer will obtain fee title to the Dwight Murray Parcel in exchange for Developer granting the City certain real property rights to the property depicted in Exhibit D labelled “Public Access Easement” for use by the public as described herein. The Dwight Murray Parcel, the Parking Lot Parcel (collectively described as the “**City Property**”) and the CS Parcel all together comprise approximately 2.87 acres of land and are referred to herein collectively as the “**Property**”.

F. The current use of the CS Parcel includes approximately 76,000 square feet of commercial development, which includes retail, restaurant, and related accessory uses. As provided in that certain License Agreement dated February 1, 2000, City Agreement 7583 (“**License Agreement**”), the City provided 419 non-exclusive parking spaces for the retail uses conducted on the Kohl’s Parcel in nearby City parking lots and structures.

G. Developer intends to develop the Property with a mixed-use project consisting of: (i) up to a maximum of 78 units of for sale market rate branded residential multifamily housing units (“**Market Rate Housing**”); (ii) a 6-story, Upper Upscale hotel with a maximum of 161 rooms with accessory retail and related amenities (“**Hotel**”); and (iii) up to 30,000 square feet of ground floor and second floor retail (“**Retail**”); but in no case will the development exceed a total of 500,000 sf of conditioned space (excluding parking). The Market Rate Housing, Hotel, and Retail uses are intended to be consistent with the uses permitted in the Planned Development Overlay, as defined hereinafter. Developer also desires to continue to utilize certain off-site parking as part of the redevelopment project in the Pearl Street Garage and develop certain parking on site to serve the development. Collectively, the project described in this Recital G is hereafter referred to as the “**Project**”. The Project is further described in Exhibit E.

H. Developer intends to provide the City and its citizens and the surrounding region with the primary benefits set forth in Article VI of this Agreement (collectively, the “**Public Benefits**”).

I. In connection with the Project, Developer has applied to City for the following entitlements:

1. A Planned Development (“**PD-39**”) Overlay zoning district with use provisions, processing procedures and development standards;
2. A related Downtown Napa Specific Plan Map Amendment to redesignate and rezone the CS Parcel and Dwight Murray Parcel from DCC to DCC:PD-39, to rezone the Parking Lot Parcel from DMU to DMU:PD-39, and to amend the Downtown Napa Specific Plan entertainment zone designation to include the entirety of the Property (collectively, “**Rezoning**”);
3. Project specific “**Design Guidelines**”, generally consistent with the Downtown I Building Forms Standards;
4. A Tentative Parcel Map to reconfigure 7 existing fee parcels into 3 fee parcels, 1 condominium parcel and 1 airspace parcel for a total of 5 parcels for financing, ownership and condominium property division purposes (the

## EXHIBIT A

condominium parcel will contain 78 residential units and 32 commercial units);

5. An Affordable Housing Alternative Equivalent; and
6. Concurrently with these applications, Developer submitted to the City a Development Agreement application for approval of this Agreement.

J. The Project is within the scope of the development program described and evaluated by the City of Napa in the Environmental Impact Report for the Downtown Napa Specific Plan (“**EIR**”) prepared pursuant to the California Environmental Quality Act (“**CEQA**”) (Public Resources Code Section 21000 *et seq.*) and certified by Resolution No. 2012-54 adopted by the City Council on May 1, 2012 (State Clearinghouse No. 2010042043), as described in the First Street Phase II Addendum to the EIR dated April 30, 2025 prepared pursuant to CEQA Guidelines Sections 15164 and 15168 and considered by the City Council on June 24, 2025 (“**EIR Addendum**”).

K. On June 5 , 2025, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Law. Following the public hearing, the Planning Commission recommended adoption of the EIR Addendum, approval of this Agreement and made a final recommendation to the City Council, which included findings that the Project and this Agreement, as a whole and taken in their entirety, will be consistent with the objectives, policies, general land uses and programs specified in the General Plan and the DTSP, as proposed to be amended prior to or concurrently with approval of this Agreement.

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

1. Adopted Resolution No. R2025-079 approving the DTSP EIR Addendum;
2. Adopted Ordinance No. O2025-009 adopting a Planned Development Overlay District establishing use provisions and development standards for the Property (“**PD-39**”) including the adoption of site-specific Design Guidelines as reviewed and recommended by the Planning Commission, and approving the Affordable Housing Alternative Equivalent proposal;
3. Adopted Ordinance No. O2025-010 amending the Zoning District Map in Napa Municipal Code Section 17.04.050 to rezone the Property with a PD-39 Overlay designation;
4. Ordinance No. O2025-008 approving this Agreement; and
5. Adopted Resolution No. R 2025-079 approving a Tentative Parcel Map for the Project.



## EXHIBIT A

M. It is the intent of City and Developer to establish certain conditions and requirements related to review and development of the Project, including, among other matters, the following: (a) use, intensity and density, maximum floor area, and maximum height of development on the Property, including requirements for timing of construction; (b) public benefits, including (i) the quantities of affordable and for rent market rate housing, and (ii) the use of space on the Project site to be available for public use, (iii) public art, (iv) public pickup and drop off zone; (c) requirements for timing of construction of the Project; (d) the amount of retail frontage required by the Downtown Napa Specific Plan Guidelines; (e) a plan for Developer's participation in the improvement of the Brown Street Corridor and development of the New Plaza; (f) parking quantities sufficient to serve the Project's Hotel and Retail components; (g) vesting periods and impact fees; (h) CEQA compliance; (i) the scope of City's reserved discretion with respect to review and consideration of Subsequent Approvals; and such other matters related to the Property and the Project.

N. City finds that this Agreement will promote orderly growth and quality development in accordance with the goals and policies set forth in the City of Napa 2040 General Plan and Downtown Napa Specific Plan; is compatible with the uses authorized in, and the regulations prescribed for, the district in which the Property is located; will promote the public convenience, general welfare, and good land use practice; will not be detrimental to the health, safety and general welfare; will not adversely affect the orderly development of property or the preservation of property value; and will promote and encourage the development of the Project by providing a greater degree of requisite certainty.

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

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

Q. On June 24, 2025, the City Council introduced Ordinance No. O2025-008 ("Enacting Ordinance") approving this Agreement and authorizing its execution, and adopted the Enacting Ordinance on July 15, 2025. That Ordinance became effective on August 15, 2025 .

### A G R E E M E N T

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

#### **ARTICLE I DEFINITIONS**

##### **1.1. Definitions.**

## EXHIBIT A

***“9/11 Memorial Garden Improvements”*** is defined in Section 6.1.1.

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

***“Affordable Housing Agreement”*** means the agreement required pursuant to Napa Municipal Code Section 15.94.070 B subject to the approval of the City Attorney.

***“Affordable Housing Parcel”*** means that certain real property owned by First United Methodist Church located at 629 & 641 Randolph St. & 1301 Fourth Streets Napa, CA 94559. Assessor’s Parcel Nos. 003-262-006 and 003-262-007, as more particularly described on Exhibit H-1.

***“Affordable Housing Obligation”*** is defined in Section 6.1.2.

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

***“Applicable City Regulations”*** is defined in Section 4.2.

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

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

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

***“Brown Street Corridor”*** is defined in Section 6.1.1.

***“Brown Street Corridor Improvements”*** is defined in Section 6.1.1.

***“Building Permit”***, when capitalized in this Agreement, means a City-issued building permit for construction; permits for demolition or grading shall not constitute a Building Permit.

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

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

***“Changes in the Law”*** is defined in Section 4.11.

***“City”*** means the City of Napa, a California charter city and municipal corporation.

***“City Attorney”*** means the City’s City Attorney or their designee.

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

***“City Manager”*** means City’s City Manager or their designee.

## EXHIBIT A

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

**“City Property”** is defined in Recital E.

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

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

**“Connection Fees”** means those fees charged by a utility provider to utility users as a cost for connecting water, sanitary sewer, and other utilities. “Connection Fees” do not include Impact Fees.

**“CS”** means Coombs Street LLC, a California limited liability company.

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

**“Default”** is defined in Section 13.1.

**“Design Guidelines”** is defined in Recital I.

**“Design Review Permit”** is defined in Section 8.1.

**“Developer”** means, collectively, CS, and its permitted successors and assigns.

**“Development Agreement Law”** is defined in Recital B.

**“Development Agreement Regulations”** is defined in Recital B.

**“Development Agreement Statute”** is defined in Recital A.

**“Development Milestone”** is defined in Section 4.7.1.

**“Discretionary Action”** or **“Discretionary Approval”** means an action which requires the exercise of judgment, deliberation or a decision on the part of the City, including any board or commission or any officer or employee of the City, in the process of approving or disapproving a particular activity, as distinguished from an activity which requires the City, including any board, commission or department or any officer or employee of the City, to determine whether there has been compliance with statutes, ordinances or regulations.

**“DMP EA”** is defined in Recital E.

**“Dwight Murray Parcel”** is defined in Recital E.

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

## EXHIBIT A

“**EIR**” is defined in Recital J.

“**EIR Addendum**” is defined in Recital J.

“**Enacting Ordinance**” refers to the Ordinance identified in Recital Q.

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

“**Existing Approvals**” is defined in Recital L.

“**Extended Term**” is defined in Section 3.2.1.

“**Force Majeure Delay**” is defined in Section 3.2.3.

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

“**Hotel**” is defined in Recital G.

“**Impact Fees**” means the monetary amount charged by City to Developer in connection with approval of a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the development project on of the public facilities related to the development project, including: (a) any “fee” as that term is defined by Government Code Section 66000(b); (b) any “capacity” fee as that terms are defined by Government Code Section 66013; and (c) any parkland dedication fee as defined by Government Code Section 66477. TOT is not an Impact Fee.

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

“**Initial Term**” is defined in Section 3.2.1.

“**Litigation Challenge**” is defined in Section 10.3.

“**Main Street Connection Improvements**” is defined in Section 6.1.1.

“**Main Street Drop-Off Improvements**” is defined in Section 6.1.1.

“**Major Amendment**” is defined in Section 9.2.

“**Market Rate Housing**” is defined in Recital G.

“**Minor Amendment**” is defined in Section 9.3.

## EXHIBIT A

**“MMRP”** means the Mitigation Monitoring and Reporting Plan adopted in connection with the EIR.

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

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

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

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

**“New Plaza”** is defined in Section 6.1.1.

**“New Plaza Improvements”** is defined in Section 6.1.1.

**“Notice of Breach”** is defined in Section 13.1.

**“Other Agency Fees”** is defined in Section 5.3.

**“Parking Agreement”** is defined in Section 6.1.3.

**“Parking Lot PSA”** is defined in Recital D

**“Parking Lot Parcel”** is defined in Recital D.

**“PD-39”** is defined in Recital I.

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

**“Processing Fees”** means all fees for processing development project applications, including any required supplemental or other further environmental review, plan checking and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

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

**“Project”** is defined in Recital G

**“Project Public Improvements”** are the improvement described in Article VI.

## EXHIBIT A

***“Property”*** is defined in Recital E.

***“Public Works Director”*** means City’s Public Works Director or other designee of either the Public Works Director or City Manager.

***“Reimbursable Project Public Improvements”*** are only those Project Public Improvements described in Section 6.1.1.

***“Rezoning”*** is defined in Recital I.2.

***“Specific Plan”*** means the Downtown Napa Specific Plan, adopted by the City Council pursuant to Resolution No. R2012-56 on May 1, 2012 as amended from time to time.

***“Subsequent Approvals”*** is defined in Section 8.1.

***“Term”*** means the Initial Term plus the Extended Term.

***“TOT”*** means the City’s Transient Occupancy Tax means the tax imposed by the City in accordance with Napa Municipal Code Chapter 3.20.

***“TOT Sharing Agreement”*** means the agreement between the City and the Developer setting forth the Parties obligations regarding potential reimbursement of Developer of certain pre-approved aspects of the Project Public Improvements.

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

## ARTICLE II GENERAL PROVISIONS

2.1. Ownership of Property. The Parties hereby acknowledge that, as of the Effective Date, Developer has either a fee interest or an equitable interest in all of the parcels comprising the Property by virtue of Developer’s fee ownership of the CS Parcel and Developer’s contractual rights to acquire the Parking Lot Parcel pursuant to the Parking Lot PSA and the Dwight Murray Parcel pursuant to the DMP EA.

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

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

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

## EXHIBIT A

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

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

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

2.3.1 Developer is the sole fee owner of the CS Parcel. Developer has contractual rights to acquire the City Property pursuant to the Parking Lot PSA and the DMP EA with City, the fee owner of the parcels, described in Recital E and therefore has equitable interests in the City Property.

2.3.2 Developer is a duly organized and validly existing limited liability company under the laws of its state of incorporation or organization and is in good standing and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

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

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

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

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

### ARTICLE III EFFECTIVE DATE AND TERM

3.1. Effective Date. The Effective Date of this Agreement shall be the later of (a) the date that is thirty (30) days after the date that the Enacting Ordinance is adopted, or (b) the date this Agreement is executed by City. The Effective Date is inserted at the beginning of this Agreement. The Parties acknowledge that Section 65868.5 of the Development Agreement Statute requires that this Agreement be recorded with the County Recorder no later than ten (10) days after the City

## EXHIBIT A

enters into this Agreement, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

### 3.2. Term of Agreement.

3.2.1 Term. The “**Initial Term**” of this Agreement shall commence on the Effective Date and shall expire 10 years and one day after the Effective Date unless earlier terminated. The Term shall automatically extend from the date of expiration of the Initial Term until the date which is five (5) years following the expiration of the Initial Term (“**Extended Term**”) provided that: (i) Developer shall have obtained Building Permit(s) for the Market Rate Housing by the expiration of the Initial Term and such permits are valid and have not expired; (ii) Developer shall have met all of the Development Milestones, including any extended Development Milestone timeframes; and (iii) the Affordable Housing Agreement shall have been recorded against the Affordable Housing Parcel in accordance with Section 6.1.2.

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

3.2.3 Force Majeure Delay; Extension of Times of Performance. Subject to the limitations set forth below, the Term and the time within which either Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock outs, and other labor difficulties; Acts of God; unusually severe weather, but only to the extent that such weather or its effects (including, without limitation, dry out time) result in delays that cumulatively exceed twenty (20) days for any winter season occurring after commencement of construction of the Project; failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body; any development moratorium or any action of other public agencies that regulate land use, development, or the provision of services that prevents, prohibits, or delays construction of the Project; enemy action; civil disturbances; wars; terrorist acts; fire; excessive smoke; pandemics, water shortage, unavoidable casualties; and litigation or other administrative or judicial proceeding involving the Project Approvals or this Agreement, including any extension authorized by Government Code Section 66463.5(e) (each a “**Force Majeure Delay**”). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice in accordance with Section 14.2 is sent by the Party claiming such extension to the other Party within sixty (60) days of the commencement of the cause. If notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Developer. Downturns in the economy or Developer’s inability or failure to obtain financing for the Project shall not be deemed to be causes outside the reasonable control of Developer and shall not be the basis for a Force Majeure Delay.



**ARTICLE IV  
DEVELOPMENT OF THE PROPERTY**

4.1. Vested Rights. The Property is hereby made subject to the provisions of this Agreement. Developer shall have the vested right to develop the Property and the Project in accordance with and subject to the Existing Approvals, the Subsequent Approvals, Applicable Law and this Agreement, which shall, among other things, control the permitted uses, density and intensity of use of the Property, requirements for on- and off-site infrastructure and public improvements, the applicable Exactions, and the maximum height and maximum size of buildings on the Property.

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

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

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

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

4.2.4 New City Laws that revise City’s uniform construction codes, including City’s building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit issuance, provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties; provided that for the period commencing on the date the City issues the Design Review Permit for the Project (“**Design Review Approval Date**”) and continuing until the end of the one year plus one day after the Design Review Approval Date, the City shall apply to the Project the construction codes, including City’s building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes in existence on the Design Review Approval Date;

## EXHIBIT A

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

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

4.2.7 New City Laws mandated by Changes in the Law as provided in Section 4.11 below; and

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

4.3. Hierarchy of Applicable Laws. In the event of any conflict between Subsections 4.2.1 through 4.2.8, the hierarchical order of authority shall be Subsection 4.2.5 first, then Subsection 4.2.1, Subsection 4.2.2, then Subsection 4.2.3, then Subsection 4.2.4, then Subsection 4.2.6, then Subsection 4.2.7, and then Subsection 4.2.8. Conflicting Actions. Without limiting the generality of Sections 4.2.1 through 4.2.8 above, any action or proceeding of the City (whether enacted administratively, or by a commission, a board, the legislative body, or the electorate) undertaken without the consent of Developer that has any of the following effects on the Project shall be in conflict with the Vested Rights, this Agreement, and Applicable Law:

- i. 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 or other improvements;
- ii. 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;
- iii. limiting, reducing, or substantially modifying vehicular access or parking availability and facilities from that described in the Project Approvals or otherwise contemplated in the Project Approvals;
- iv. limiting or controlling the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of a Project, including the demolition or removal of existing buildings, facilities, or other infrastructure; and
- v. limiting the processing or procuring of applications and approvals for any Subsequent Approvals that are required to implement the Project.

4.5. Intentionally omitted.

4.6. Intentionally omitted.

4.7. Development Timing and Construction Schedule.

## EXHIBIT A

4.7.1 Development Milestones. To ensure proper that the Project is developed in a timely manner, Developer shall meet each of the following milestones (each, a “**Development Milestone**”):

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

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

c) If building permits for the Project have not been issued by the date which is thirty (30) months from the Effective Date, submit to City a financing plan reasonably acceptable to the City Manager demonstrating how Developer plans to fund construction of the Project; and

c) Reach agreement with City on the Agreement to Share Transient Occupancy Tax Revenue, the Maintenance and Use Agreement, and the Parking Agreement by no later than the dates established by Section 6.2 of this Agreement.

During the Initial Term, Developer may submit a written request, prior to the expiration of such Development Milestone date, for City to extend the outside date(s) (each, a “**Development Milestone Outside Date**”) by which one or more of the Development Milestones must be achieved. Developer’s extension request shall be accompanied by evidence to support a determination that Developer has used commercially reasonable efforts to satisfy the applicable Development Milestone in a timely manner. Following review of the request, the City Manager may approve a Minor Amendment to extend the applicable Development Milestone Outside Date for a period of time mutually agreeable to the Developer and City.

4.7.2 Construction Schedule. Developer anticipates building the Project in a single phase, provided that Developer shall have the Vested Right to develop the Project in phases and in the order, at the rate and at the time as determined by the Developer, subject to the terms and conditions of this Development Agreement. Parties acknowledge that Developer cannot at this time predict when or the rate at which the phases of the Project will be developed or the order in which each phase will be developed. Such decisions depend upon numerous factors, such as market orientation and demand, construction financing, interest rates, absorption, completion and other factors which may not be within the control of Developer. Since the California Supreme Court held in *Pardee Construction Co. v. The City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties’ agreement, it is the Parties’ desire to avoid that result by acknowledging that Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Agreement that set forth the requirements for timing of development of the Project. Consistent with the forgoing, Developer will use commercially reasonable efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing Developer’s business

decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Agreement and the Project Approvals. Notwithstanding the foregoing, the Developer must satisfy its Affordable Housing Obligation as defined in and in accordance with the requirements of Section 6.1.2 of this agreement and in no event shall the City issue a certificate of occupancy for the Hotel prior to satisfaction of its Affordable Housing Obligation.

4.8. Regulation by Other Public Agencies. City and Developer acknowledge and agree that other governmental or quasi-governmental entities not within the control of City, including the Napa Sanitation District and the Napa County Health Department, possess authority to regulate aspects of the development of the Property and the Project and that this Agreement does not limit the authority of such other public agencies. City shall reasonably cooperate with Developer in Developer's effort to obtain such permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Property and/or the Project; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement, or to amend any City policy, regulation or ordinance in connection therewith.

4.9. Life of Project Approvals. If, upon expiration of the Term of this Agreement, Developer has redeveloped the entirety of the Property consistent with the Project Approvals, the Project Approvals shall continue to control until such time as the City Council changes the underlying land use designations or entitlements applicable to the Property consistent with all Applicable Law and procedure. If, upon expiration or earlier termination of this Agreement, Developer has not redeveloped the entirety of the Property consistent with this Agreement and the Project Approvals, then the City Council, in its discretion at any time may change the underlying land use designations or entitlements applicable to the parcels comprising such Property consistent with all Applicable Law and procedure. Upon expiration of the Term of this Agreement, the City may continue to process applications for permits for development or remodeling on or of the Property consistent with the PD adopted in conjunction with this Agreement unless the City takes separate legislative action to terminate the PD.

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

4.11. State and Federal Law. As provided in Section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than City, created or operating pursuant to the laws of the State of California ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude, or render substantially more expensive or time consuming, compliance with one or more provisions of this Agreement, the City and Developer shall meet and confer in good

## EXHIBIT A

faith in order to determine whether such provisions shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Nothing in this Agreement shall preclude City or Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such Changes in the Law. If Changes in the Law preclude or substantially prevent or preclude, or render substantially more expensive or time consuming, performance of this Agreement in a manner that makes the Project economically infeasible, Developer, in its sole and absolute discretion, may terminate this Agreement by providing written notice thereof to City.

4.12. Compliance with Laws. Developer, at its sole cost and expense, shall comply with the requirements of, and obtain all permits and approvals required by local, State and Federal agencies having jurisdiction over the Property or Project. Furthermore, Developer shall carry out the Project work in conformity with all Applicable Law, including applicable state labor laws and standards; Applicable City Regulations; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

4.13. Moratoria. In the event an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, or otherwise after the Effective Date, which relates to the rate, timing, or sequencing of the development or construction on all or any part of the Property, including, without limitation, any ordinance, resolution or other measure restricting or precluding the issuance of building permits (“**Moratoria**”), the City agrees that the ordinance, resolution or other measure shall not apply to the Property or this Agreement, unless the changes are both (a) found by the City to be necessary to protect the health and safety of the residents of the City, and (b) generally applicable on a Citywide basis, provided further that in no event shall a New City Law adopting any Moratoria affecting the development of hotels be considered Applicable City Regulations during the Term of this Agreement.

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

## ARTICLE V FEES AND EXACTIONS

5.1. Impact Fees. For the period commencing on the Effective Date and continuing until the end of the tenth year plus one day after the Effective Date (the “**Impact Fee Lock Period**”), except as provided herein, Developer shall pay when due all existing Impact Fees applicable to the Project in effect as of the Effective Date at the rates in effect as of the Effective Date subject to any rate escalators in effect on the Effective Date. During the Impact Fee Lock Period, Developer shall not be required to pay any escalations in such Impact Fees in excess of the fee escalation in effect on the Effective Date or any new Impact Fees enacted or established after the Effective Date. The Impact Fees and development schedule contained in Exhibit F represent the Parties’ good faith

## EXHIBIT A

effort to identify the Impact Fees applicable to the Project based on estimated construction during the Impact Fee Lock Period and the rate escalators in effect on the Effective Date. City and Developer agree to amend and restate Exhibit F by operating memoranda no later than upon the issuance of the Design Review Permit, as necessary, in the event one or more Impact Fees have been inadvertently omitted or if any escalation provisions have been inadvertently miscalculated. The operating memorandum to amend and restate Exhibit F issued with the Design Review Permit shall establish all Impact Fees applicable to the Project during the Impact Fee Lock Period provided in no event shall Exhibit F be amended and restated in excess of twenty percent (20%) above the Exhibit F incorporated herein on the Effective Date. During the Impact Fee Lock Period, Developer shall not be required to pay any escalations in such Impact Fees in excess of the fee escalation in effect on the Effective Date or any new Impact Fees enacted or established after the Effective Date. During the Impact Fee Lock Period Developer shall be allowed to prepay Impact Fees at any time following City approval of the Design Review Permit (as defined in Section 8.1). Following expiration of the Impact Fee Lock Period, City may charge and, subject to Developer's statutory right to protest and/or pursue a challenge in law or equity to any new or increased Impact Fees (e.g., Government Code Section 66020), Developer shall pay any and all Impact Fees imposed by City, including new Impact Fees adopted after the Effective Date; provided, however, City shall only require Developer to pay new Impact Fees (including increases in Impact Fees) that are uniformly applied by City to all substantially similar types of development projects and properties.

5.1.1 Fee Credit, Existing Development. All Impact Fees and Connection Fees applicable to the development of the Project shall be offset and credited to Developer for the existing development on the Property.

5.1.2 Fee Credit, Improvements. In no case shall the City impose any Impact Fee or Connection Fee that lacks a proportional relationship or nexus from the impacts of the Development. Developer agrees that because the City is agreeing to reimburse Developer for a portion of the cost of the Reimbursable Project Public Improvements as set forth in Section 6.2 below, other than fee credits for existing development described in Section 5.1.1 Developer is not entitled to and will not seek any potentially applicable offsets or credits to certain Impact Fees or Connection Fees applicable to the development of the Project, including any Street Improvement Fees, Park and Recreation Acquisition and Development Fees, Water Connection Fees, Undergrounding Fees, or Utility Fees.

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

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

## EXHIBIT A

5.4. Exactions. City may impose and Developer shall comply with those Exactions required by this Agreement and the Existing Approvals. In addition, City may impose Exactions in connection with the Subsequent Approvals (as defined in Section 8.1) that are necessary or appropriate to comply with Applicable Law. Except as otherwise specifically provided in this Section 5.4 and in Sections 4.2.5, 4.2.7 and 9.5 hereof, the City shall not impose any additional Exactions in connection with the development of the Project.

5.5. Connection Fees and Water Service. Developer shall pay all Connection Fees in the amount in existence at the time the Connection fee is imposed, subject to Section 5.1.1.

### ARTICLE VI PUBLIC BENEFITS\PUBLIC BENEFITS OBLIGATIONS

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

#### 6.1.1 Project Public Improvements:

(i) Plaza Concept. Developer shall construct and maintain a new public plaza (the “**New Plaza**”) of a size equal to or greater than the Dwight Murray Parcel (approximately 0.18 acres) in a location depicted at page 14 of the Design Guidelines that is roughly aligned with the former Clay Street right-of-way consistent with the Project Approvals. The New Plaza shall be consistent with the Public Realm component of the Guidelines and is intended to facilitate the revitalization of downtown Napa by restoring the historical grid and creating visual connections for pedestrians from Coombs Street to the 9/11 Memorial Garden and the Opera House. The “**New Plaza Improvements**” will be as set forth in the Project Approvals and will consist of a pedestrian-oriented ADA-compliant space with design elements for retail activation consistent with the Public Realm component of the Guidelines connecting to First Street and containing public gathering opportunities that will include a public concourse running between the hotel and residential buildings that will lead from the First Street Napa Mall to the re-activated Brown Street corridor adjacent to the Property (“**Brown Street Corridor**”). The New Plaza will bisect the interior part of the project site and provide multiple access points to buildings, a direct pedestrian walkway from the First Street Napa Mall, and more general pedestrian connection route through downtown, and shall feature hardscape and landscape design, seating areas. The New Plaza design shall be included in the Design Review submittal for the Project. Developer shall design and construct the New Plaza Improvements in accordance with the Project Approvals. Subject to terms of the Maintenance and Use Agreement defining terms for the maintenance, use and operation of the New Plaza, Developer may retain limited rights to exclusively occupy the New Plaza at certain times related to Project use consistent with the DMP EA. Prior to any Certificate of Occupancy for any portion of the Project Developer and City shall execute an agreement for the maintenance, use and operation of the New Plaza in accordance with the terms set forth in Exhibit G prior to the City’s acceptance of the Irrevocable Offer of Easement as defined in the Agreement For Exchange Of Real Property And Joint Escrow Instructions for the Dwight Murray Parcel.

(ii) Brown Street Corridor. The former Brown Street Corridor will be improved and is intended to be designed to meaningfully engage the adjacent public rights-of-way between

## EXHIBIT A

the site, the 9/11 memorial, Main Street, Napa Creek and the surrounding downtown areas and Oxbow district as depicted at page 15 of the Design Guidelines (the “**Brown Street Corridor Improvements**”). This will transform the currently underutilized spaces adjacent to the Creek into an extension of the Project’s spaces for public and private use. The Brown Street Corridor Improvements shall be consistent with the Public Realm component of the Design Guidelines and will feature hardscape and landscape design, seating areas, and may include vendor areas integrated into the Brown Street Corridor. Developer shall include conceptual design of the Brown Street Corridor connection south of the Project from the Project site to the Third Street interface with the Brown Street right-of-way, provided that the Developer shall not be required to construct any of the designed Brown Street Corridor Improvements south of First Street. Design, permitting, approval, construction and use of Brown Street Corridor Improvements south of First Street shall not be considered a component of the Project. The City shall be entitled to utilize the plans for the Brown Street Corridor Improvements from First Street to Third Street at no cost to the City. Developer shall design and construct the public improvements on the Brown Street Corridor Improvements in accordance with the Project Approvals.

(iii) Main Street Drop-Off. Prior to issuance of the first Certificate of Occupancy for any portion of the Project and in connection with the Brown Street Corridor Improvements, the Developer shall construct a vehicular/ride-share drop-off area within the existing City parking lot adjacent to the Brown Street Corridor and the 9/11 Memorial Garden which shall be designed to allow for access by emergency vehicles including fire trucks. (“**Main Street Drop-Off Improvements**”). The Main Street Drop-Off Improvements shall be consistent with the Public Realm component of the Design Guidelines and as depicted at page 17 of the Design Guidelines, and Developer shall design and construct the Main Street Drop-Off Improvements in accordance with the Project Approvals.

Prior to demolition of the existing City-owned enclosure, Developer and City shall analyze and incorporate into the plans for the Main Street Drop-Off Improvements or Project improvement plans solid waste, recycling, and compostables areas and services during construction and permanently thereafter that shall include either:

(a) area(s) and fully compliant structures for one or more solid waste and recycling enclosure(s) that meet City standards for all the commercial uses adjacent to the Main Street Drop-Off area that are in existence as of the Effective date. The enclosure(s) must be accessible by the City’s authorized collection vehicle and at a location agreeable to the businesses in existence as of the Effective Date; collection vehicle accessibility and turning routes are to be coordinated with the City’s vendor (as of the Effective Date Napa Recycling Waste Service (NRWS)) to facilitate standard servicing of all solid waste, separated bottles/glass, recyclable materials, and compostable materials generated at the site, and the size of the solid waste receptacle(s) for the existing facilities adjacent to the existing properties subject to this Agreement shall be equal to or greater than what existed prior to construction of the Project, unless directed otherwise by the City of Napa Utilities Department; or

(b) alternative solid waste, recycling, and compostable materials collection plan serving the Main Street Drop-Off area and all existing facilities adjacent to the Main Street Drop-Off area acceptable to the City Manager.



## EXHIBIT A

Project will ensure compliance with the Municipal Code for storage and collection and municipal Solid Waste, Recyclables and Compostables as described in Chapters 5.60 and 5.61 or other applicable sections of the Municipal Code.

(iv) 9/11 Memorial Garden. Prior to issuance of the first Certificate of Occupancy for any portion of the Project the 9/11 Memorial Garden will be improved as depicted at page 15 of the Design Guidelines and approved in Design Review. (the “**9/11 Memorial Garden Improvements**”).

(v) Main Street Connection. Prior to issuance of the first Certificate of Occupancy for any portion of the Project, Developer shall design and construct public improvements to create a mid-block crossing on Main Street in the Public Realm as defined by the Guidelines (“**Main Street Connection Improvements**”) as further described herein as depicted at page 15 of the Design Guidelines. The Main Street Improvements design may include but are not limited to: Rectangular Rapid Flashing Beacon, Street lighting, accessible curb ramps and sidewalk, signage and striping in accordance with the adopted Manual of Uniform Traffic Control Devices, minor pavement restoration, wayfinding signs, and traffic calming measures such as raised crosswalk with curb extensions to accommodate the features listed here. A concept design shall be provided to the City of Napa for its review, comment and submittal to other agencies with jurisdiction prior to the issuance of a Design Review Permit for the Project. Upon City concept design approval and issuance of all required permits, the Developer shall construct the Main Street Connection Improvements in accordance with the Project Approvals.

(vi) Intentionally Omitted.

(vii) Developer’s Maintenance Obligations. Developer shall be obligated to maintain, repair and replace the New Plaza Improvements, the Brown Street Corridor Improvements, the 9/11 Memorial Garden Improvements, and the Main Street Drop Off Improvements, at a level at our above industry standards for such improvements at no cost to the City. The Developer’s maintenance obligations shall be set forth in a separate, recordable agreement consistent with terms included in Exhibit G which shall be recorded prior to the issuance of the first Certificate of Occupancy for the Project.

6.1.2 Housing. To satisfy Developer’s entire Affordable Housing requirements, Developer shall: (i) fund its “**Affordable Housing Obligation**” in the amount of approximately Two Million Thirty Seven Thousand Dollars (\$2,037,000.00) as described and in accordance with the Alternative Equivalent Proposal, attached as Exhibit H; and (ii) enter into the Affordable Housing Agreement with the City and the owner of the Affordable Housing Parcel. In the event the Developer modifies the Project that is deemed a Major Modification, the Affordable Housing Obligation may be proportionally modified by the City. In addition, Developer shall cause the Affordable Housing Agreement to be recorded against the Affordable Housing Parcel by no later than twenty four (24) months following the Effective Date. Except as set forth herein, the Project shall not be subject to any other Affordable Housing Impact Fees other affordable housing obligations beyond the Affordable Housing Obligation and recordation of the Affordable Housing Agreement against the Affordable Housing Parcel. In the event that Developer fails to: (i) pay the Affordable Housing Obligation in accordance with Exhibit H; or (ii) enter into and cause the Affordable Housing Agreement to be recorded as required by this Section 6.1.2 Developer shall

## EXHIBIT A

pay the City the Affordable Housing Impact Fee in accordance with Chapter 15.94 of the Municipal Code.

6.1.3 Parking. Parking for the Project shall be provided as described in Exhibit I (“Parking Requirements and Supply”). The City shall not require any parking quantities above the Parking Requirements and Supply and as contained in the PD. No later than 12 months following the issuance of the first vertical Building Permit for any component of the Project, the Developer and City Manager shall execute a new parking agreement consistent with the Parking Requirements and Supply that includes either agreed upon lump sum payment or annual payments to the City for the use of public parking stalls (the “**Parking Agreement**”).

6.1.4 Traffic Operations. In conjunction with the Design Review of the Project Developer shall prepare a traffic operation report following the City’s Traffic Impact Analysis Guidelines. The purpose of this is to affirm that intersections in the vicinity of the Project meet the General Plan’s Intersection Level of Service (LOS) requirements. If the Public Works Director determines base on the traffic operations report that improvements are needed to maintain the Level of Service (LOS) requirements, the Developer shall fund “Traffic Operations Improvements” at those intersections/and or driveway connections that do not meet the LOS requirements provided that such Traffic Operations Improvements are consistent with the Downtown Napa Specific Plan and have a nexus and proportional relationship to traffic impacts of the Development. These may include but are not limited to channelization, signal timing changes, adding signal phases, striping, and signing.

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

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

6.1.7 Sales Tax Point of Sale Designation. Developer shall use good faith, diligent efforts to the extent allowed by law and provided that it does not add material costs to the cost of construction to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to (a) obtain a use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars (\$5,000,000) or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Developer shall instruct and cause its general contractor(s) for the Project to instruct its/their subcontractors to

## EXHIBIT A

cooperate with City to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible, provided that it does not add material costs to the cost of construction. To assist City in its efforts to ensure that such local sales/use tax is so allocated to City, Developer shall on an annual basis provide City with such information as shall be reasonably requested by City regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and the dollar value of such subcontracts. City may use such information to contact each subcontractor who may qualify for local allocation of use taxes to City.

6.1.8 Public Art. To satisfy Developer's entire public art contribution for the Project, in addition to the improvements described in Section 6.1.1, Developer shall install on the Property or within the adjacent areas of improvement described in Section 6.1.1 public art or enhance public art valued at \$500,000.00, or greater at the discretion of the Developer ("**Public Art**"), at a time no later than the issuance of first occupancy permit for any component of the Project. The Public Art shall be installed in a public place, as approved by the reviewing body with final design review authority for the Project. The creator of the Public Art shall be a qualified artist selected by the Developer. Public Art shall be displayed in a manner that will enhance its enjoyment by the general public. Except as provided in the foregoing sentence, Developer shall have no further public art obligations with respect to the Project.

6.2. Sharing of Transient Occupancy Revenue for Construction or Financing of Public Improvements. Prior to issuance of the first Certificate of Occupancy for any portion of the Project developer is required to construct the Project Public Improvements. City and Developer shall enter into a TOT Sharing Agreement in accordance with the terms set forth in Exhibit J whereby the City will make periodic payments to Developer in an amount equal to a portion of the TOT generated by the Project to reimburse Developer for certain aspects of one or more Reimbursable Public Project Improvements that the City has agreed upon in advance and that exceed the City's authority to impose the obligation on the Developer as a condition of property development under Sheetz v. County of El Dorado (2024) 601 U.S. 267) ("**Reimbursement Payments**"). The City's obligation shall be for a period of time not to exceed 10-years from the first date the City issues a final Certificate of Occupancy for the Project (the "**Reimbursement Period**") and in no event shall the City's obligation to provide any Reimbursement Payments exceed Thirty-three Million Dollars (\$33,000,000.00) (the "**Reimbursement Cap**"). Developer shall pay TOT at the rate and in the amount applicable at the time the obligation to pay TOT is incurred. That is, the TOT rate will not be locked and can increase from the amount in effect as of the Effective Date.

6.2.1 Developer and City (through the City Manager) shall execute and record a TOT Sharing Agreement consistent with the Term Sheet For The Agreement To Share Transient Occupancy Tax Revenue contained at Exhibit J prior issuance of a building permit for any vertical portion of the Project.

6.2.2 The TOT Sharing Agreement shall (a) describe the Project Public Improvements and improvement costs incurred and paid by Developer that the City agrees in advance are eligible to be offset by Reimbursement Payments, (b) require Developer to operate and maintain the Project in conformance with this Agreement, (c) provide for City to make Reimbursement Payments to Developer in amounts based on the TOT generated by Developer's operation of the Project during the Reimbursement Period not to exceed the Reimbursement Cap, and (d) provide for the schedule

## EXHIBIT A

of the Reimbursement Payments and the amount of payments in terms of percentages of Transient Occupancy Tax generated by Developer's operation of the Project. The costs associated with Project Public Improvements subject to Reimbursement Payments shall be determined from actual hard and soft costs for design, permitting, construction, construction management and related costs of the Project Public Improvements and costs included shall include, without limitation: (i) PG&E (and other utility or Agency Fees, defined below) permitting fees; (ii) any Performance and Payment bonds; (iii) City required legal documentation fees; (iv) Engineering and Design costs, construction surveying, material testing, permitting, and inspection, (v) construction management overhead in the amount of 10% of the Project Public Improvement construction costs incurred from commencement of construction to final inspection (for items (i) through (v)), and (vi) Developer's financing costs associated with the Reimbursable Project Public Improvements during the 10-year payback period ("**Public Improvement Final Costs**"). All Public Improvement Final Costs shall be subject to Developer providing documentation to the satisfaction of the City Manager in accordance with this Section 6.2 which shall include without limitation, a copy of the agreements with design professionals, construction contracts, and proof of payment.

### ARTICLE VII ANNUAL REVIEW

#### 7.1. Annual Review.

7.1.1 Purpose. As required by California Government Code Section 65865.1, Municipal Code Section 17.52.150 and Section E of the City's "Procedures and Requirements for Consideration of Development Agreements," as established under City Resolution number R2018-136, City and Developer shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement. Specifically, City's annual review shall be conducted for the purposes of determining compliance by Developer with its obligations under this Agreement. Each annual review shall also document: (a) the status of the Project development, and (b) any extension of the Term of this Agreement pursuant to Section 3.2.

7.1.2 Conduct of Annual Review. The annual review shall be conducted as provided in this Section 7.1.2. By December 1st of each year, Developer shall provide documentation of its good faith compliance with this Agreement during the calendar year, and such other information as may reasonably be requested by the City Manager. Within ninety (90) days after receipt of Developer's documentation of good faith compliance with this Agreement, the City Manager shall make a determination regarding whether or not Developer has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Developer in the manner prescribed in Section 14.2. If the City Manager finds good faith compliance by Developer with the terms of this Agreement, Developer shall be notified in writing and the review for that period shall be concluded. If the City Manager is not satisfied that Developer is performing in accordance with the terms and conditions of this Agreement, the City Manager shall prepare a written report specifying why the Developer may not be in good faith compliance with this Agreement, refer the matter to the City Council, and notify Developer in writing at least fifteen (15) business days in advance of the time at which the matter will be considered by the City Council. This notice shall include the time and place of the City Council's public hearing to

## EXHIBIT A

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

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

## ARTICLE VIII COOPERATION AND IMPLEMENTATION

8.1. Subsequent Approvals, Design Review. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals, will be necessary or desirable for implementation of the Project ("**Subsequent Approvals**"). The Subsequent Approvals may include, without limitation, the following: amendments of the Existing Approvals, grading permits, building permits, Design Review Permit (defined below), sewer and water connection permits, certificates of occupancy, lot line adjustments, parcel maps and/or subdivision maps, and any amendments to, or repealing of, any of the foregoing. Subject to Section 8.2.4, Developer must apply for and obtain a Design Review Permit ("**Design Review Permit**"), which is a Discretionary Approval, before development of any portion of the Project may proceed other than demolition, grading and/or foundation. Developer's application for a Design Review Permit shall be limited to and include the application components listed in Exhibit K. In connection with its review of Developer's Design Review Permit application(s), City shall exercise its discretion in a manner consistent with (a) the design-related criteria, guidelines and standards set forth in the PD including the Design Guidelines; and (b) Developer's vested rights under this Agreement and the Existing Approvals with respect to permitted uses of the Property, the number of permitted hotel rooms, the density and intensity of use of the Property and the maximum height of the Project.

Notwithstanding the foregoing, Developer acknowledges that through proper exercise of City Design Review related discretion City may require certain building features which limit usable interior building space and that in order for Developer to achieve its desired number of hotel rooms, residential density or commercial spaces, Developer may need to design and build hotel rooms or residential units that are substantially smaller than industry standard. Subject to Section 4.8 of this Agreement, nothing herein shall prohibit Developer from reducing the number of Hotel rooms (i.e. 161), Market Rate Housing (i.e. 78) units or Retail (i.e. 30,000 square feet) if Developer determines, in its sole discretion, that the size of: (i) the Hotel rooms required to achieve the 161 room maximum, (ii) the Market Rate Housing units required to achieve the 78 unit maximum, or (iii) the Retail square footage is impracticable or financially infeasible. Any subsequent Discretionary Action or Discretionary Approval initiated by Developer that is not otherwise permitted by or contemplated in the Existing Approvals or which changes the uses, intensity, density, building height or timing of the Project, or decreases the lot area, setbacks, parking or other entitlements permitted on the Property shall be subject to the rules, regulations, ordinances and official policies of the City then in effect and City reserves full and complete discretion with respect to any findings to be made in connection therewith.

## 8.2. Processing Applications for Subsequent Approvals.

8.2.1 Timely Submittals by Developer. Developer acknowledges that City cannot begin processing applications for the Design Review Permit or other Subsequent Approvals until Developer submits complete applications on a timely basis and pays applicable Processing Fees. Developer shall use diligent good faith efforts to (a) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (b) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals. Developer shall submit to the City its Sequencing of Subsequent Approvals and related approvals by another agency having jurisdiction over the Project as depicted in Exhibit L upon submission of its application for a Design Review Permit, which such Sequencing of Subsequent Approvals may be modified by developer from time to time to ensure the timely development and completion of the Project.

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

8.2.3 No Change in Standards. In the course of such review, City shall not apply criteria or standards that would conflict with Applicable Law, the Project Approvals, or previously

approved Subsequent Approvals. Consequently, City shall not use its authority to change the policy decisions reflected by the Project Approvals, expressly or otherwise, or to prevent, delay or modify development of the Project as contemplated by the Project Approvals, except in the case of a violation or other enforcement action. The City shall process and approve Subsequent Approvals in accordance with the final Sequencing of Subsequent Approvals, as may be amended from time to time.

8.2.4 Decision Making Authority on Design Review and Other Discretionary Permits. The City Manager shall make the final determinations on any Use Permit applications subject to Ch. 17.60, all Design Review applications for the Project subject to Ch. 17.62 of the Napa Municipal Code, all Certificate of Appropriateness applications subject to Ch. 15.52 of the Napa Municipal Code or any other discretionary permit that is not a Major Modification that also conforms to the Project approvals, provided that such applications are filed and processed in accordance with this Agreement within 12 months of the Effective Date. For applications filed more the 12 months after the Effective Date, all determinations shall be made in accordance with the decision-making authority as provided in the applicable provisions of the Napa Municipal Code, consistent with Article 4 of the Agreement. The decision of the City Manager may be appealed to the City Council within ten (10) days of the Director's decision.

8.2.5 Demolition. Developer may apply for and the City shall process any permits to allow Developer commence demolition activities on the Property prior to the approval of any Subsequent Approvals other than the demolition permit provided that the demolition permit contains demolition features that substantially conform to the demolition features on page \_\_\_\_ of the Design Guidelines. Prior to the transfer of the City Property to Developer, Developer shall be required to obtain an approved by the City Manager prior to entering the City Property and/or conducting any demolition on City Property.

8.2.6 Subdivision of Property. The Existing Approvals include a Tentative Parcel Map for the purpose of (a) reconfiguring current parcel boundaries on the Property to create the dedication of the New Plaza and (b) allow for the creation of a condominium plan necessary to develop, sell, lease or finance the Market Rate Housing units. The City shall defer all design related components of the Tentative Parcel Map application and approvals other than parcel configuration to the Design Review Permit and the Final Map. Provided it does not reduce the size or location of the New Plaza, Developer shall have the right, from time to time or at any time, to apply for one or more subdivision maps applications, 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 (“Subdivision Maps”). All other Subdivision Maps shall be processed in accordance with Project Approvals and the California Subdivision Map Act and Title 16 (Subdivisions) of the Napa Municipal Code . Except to the extent provided in this Agreement and Project Approvals, all provisions of the City Subdivision Code and Regulations shall apply to the Project.

(i) Tentative Parcel Map Amendment Approval. The Community Development Director in consultation with the City Engineer shall make findings and approve, conditionally approve or deny any Subsequent Approval tentative map or tentative parcel map amendment that conforms to the Project Approvals without a public hearing. The Director may

## EXHIBIT A

impose reasonable conditions of approval for amendments to the tentative map and may in their discretion, deny approval of the map amendments if such conditions cannot be met.

(ii) Final Map Approval. Subsequent Approval Final Maps shall be processed in accordance with Project Approvals and the California Subdivision Map Act and Title 16 (Subdivisions) of the Napa Municipal Code.

8.2.7 CEQA. The Parties acknowledge that certain Subsequent Approvals may legally require additional analysis under CEQA. Subject to Section 9.5, in the event supplemental or additional environmental review is required for a Subsequent Approval, City shall limit such supplemental or additional environmental review to the scope of analysis mandated by CEQA and in consideration of the City's discretion to be exercised in connection with the Subsequent Approval. Consistent with the City's determination that the Project is not subject to further environmental documentation under CEQA pursuant to the City's adopted findings related thereto, the City shall utilize, to the greatest extent legally possible, any applicable statutory or categorical exemptions from CEQA for any Subsequent Approval that is determined to be a discretionary approval.

8.2.8 Substantial Conformance. The Community Development Director shall review all applications for Subsequent Approvals for substantial conformity with the Project Approvals, and substantial 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. Applications for a Subsequent Approval shall be submitted to the Director.

(i) The Director shall 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. 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 make a good faith effort to advise the applicant in writing within fourteen (14) calendar days that the submittal is complete or whether and what specific additional materials or information is still required. Upon the Director's determination that the application is complete, the City shall make a good faith effort to expeditiously process and take an action on the complete application.

(ii) Applications for Subsequent Approvals, that substantially conform to the Agreement and Project Approvals shall be reviewed and, if deemed complete and require no further CEQA review consistent with the applicable laws, shall be approved ministerially by the Community Development Director consistent with the intent and regulations adopted with this Agreement.

(iii) Applications for Subsequent Approvals that do not substantially conform with the Agreement and Project Approvals or that require exceptions or exemptions to any applicable standards shall be processed as a Minor Amendment consistent with Section 9.3 of this Agreement, unless said permits require a Major Amendment as determined in the Director's sole discretion, which shall be processed consistent with Section 9.2 to this Agreement.



## EXHIBIT A

(iv) All Subsequent Approvals that qualify to be processed as a Minor Amendment, including any non-administrative exceptions or exemptions to any standards under City Laws shall be processed pursuant to the procedures contained in Chapter 17.56 – Administrative Exceptions, of the Napa Municipal Code.

8.2.9 Vesting of Subsequent Approvals. As Subsequent Approvals are adopted and therefore become part of the Applicable Law to the Project, those Subsequent Approvals may refine the permitted uses, density, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project. Once approved Subsequent Approvals are vested under the Agreement during the Term thereof. The City shall not use the Subsequent Approval process to reduce the height, density, types of permitted and accessory uses, number of units, area of the buildings and development area, alter setbacks, parking requirements or other development standards within the Project or other program elements.

8.2.10 Transfer of City Property for Construction Purposes. The Parking Lot PSA and the DMP EA set forth the Parties' intent regarding the transfer of the City Parcels from the City to Developer. Subject to compliance with the Parking Lot PSA and the DMP EA, the City shall cooperate and use good faith efforts to execute any further documentation required to allow construction to commence at the time of the first Building Permit is ready to issue, notwithstanding the completion of Project parcel configuration or Final Map approval.

### ARTICLE IX AMENDMENT OF AGREEMENT AND PROJECT APPROVALS

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

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

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

## EXHIBIT A

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

9.5. CEQA/Mitigation Measures. The City has prepared and certified the EIR and adopted the EIR Addendum, which evaluates the environmental effects of full development, operation and use of the Project, and has imposed all feasible mitigation measures to reduce the significant environmental effects of the Project. The Parties understand that the EIR is intended to be used not only in connection with the Existing Approvals, but also, to the extent legally permitted, in connection with necessary Subsequent Approvals. However, the Parties acknowledge that certain Subsequent Approvals may legally require additional analysis under CEQA. For example, a change in the Project could require additional analysis under CEQA if the triggering conditions identified in CEQA Guidelines Section 15162 are met. In the event supplemental or additional CEQA review is required for a Subsequent Approval, City shall limit such supplemental or additional CEQA review to the scope of analysis mandated by CEQA in light of the scope of City's discretion to be exercised in connection with the Subsequent Approval. Developer acknowledges that, if the City determines based upon supplemental or additional CEQA review that the Project will result in new significant effects or substantially increase the severity of effects that were identified in the EIR, City may require additional feasible mitigation measures necessary to mitigate such impacts, provided however (except as otherwise expressly provided herein) such additional mitigation measures shall not prevent development of the Project for the uses set forth in the Existing Approvals. Developer shall comply with the mitigation measures in the MMRP, which reflect the mutually agreed-upon timing of specified improvements and Developer's pro rata share of funding, where applicable. In the event further mitigation measures are identified by such additional environmental review, City may require, and Developer shall comply at its expense with, all feasible mitigation measures necessary to substantially lessen new or substantially more severe significant environmental impacts of the Project, which were not foreseen at the time of execution of this Agreement.

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

10.1. Insurance Requirements. Prior to commencement of construction of the Project, Developer shall procure and maintain, or cause its contractor(s) to procure and maintain, until the earlier of (a) the expiration of the Term; or (b) the completion of the Project, a commercial general liability policy in an amount not less than five million (\$5,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of one million (\$1,000,000), combined single limit. Such policy or policies shall be written on an occurrence form, so long as such form of policy is then commonly available in the commercial insurance marketplace and shall be placed with insurers with a current A.M. Best's rating of no less than A-:VII or a rating otherwise approved by the City in its sole discretion. If Developer desires to satisfy the foregoing insurance requirements through its contractor, then Developer shall require in its construction contract with the general contractor that said general contractor comply with all of the requirements of this Section 10.1. Developer or its contractor shall furnish at City's request appropriate certificate(s) of insurance evidencing the insurance coverage required

hereunder, and City Parties shall be named as additional insured parties in such policies. The certificate of insurance shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination (ten (10) days advance notice in the case of cancellation for nonpayment of premiums) where the insurance carrier provides such notice to the Developer. Coverage provided hereunder by Developer or its contractor shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City.

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

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

**ARTICLE XI  
ASSIGNMENT AND TRANSFER**

11.1. Assignment. Because of the necessity to coordinate development of the entirety of the Property pursuant to plans for the Project, particularly with respect to the provision of replacement public parking, certain restrictions on the right of Developer to assign or transfer its rights and obligations under this Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Project and this Agreement. Developer agrees to and accepts the restrictions set forth in this Section 11.1 as reasonable and as a material inducement to City to enter into this Agreement. Developer shall have the right to sell or transfer its rights and obligations under this Agreement, in whole but not in part, to any person, partnership, joint venture, firm, company, corporation or other entity (any of the foregoing, an “**Assignee**”) subject to the written consent of City; provided that the City shall not unreasonably withhold approval of an assignment to a proposed Assignee who in the reasonable opinion of the City Manager can perform the duties and obligations of Developer hereunder by demonstrating that assignee has similar or improved (i) verifiable source of funds/financing for the entirety of the Project; (ii) experience developing Upper Upscale hotel projects including the Market Rate Housing units internationally or in the United States, and (iii) experience operating Upper Upscale hotel brands; further provided that Developer may assign its rights and obligations under this Agreement without the consent of City to any corporation, limited liability company, partnership or other entity acquiring all of Developer’s fee interest in the Property which is controlled by CS, and “control,” for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity (“**Affiliated Party**”). Developer shall provide the City with written notice of any proposed transfer or assignment of Developer’s rights and obligations hereunder (each, an “**Assignment**”) at least thirty (30) days prior to such Assignment. Each such notice of proposed Assignment shall be accompanied by evidence of Assignee’s agreement to assume all of Developer’s rights and obligations hereunder. Developer shall pay the actual costs borne by City in connection with its review of the proposed Assignment, including the costs incurred by the City Attorney’s Office. A written assignment and assumption agreement, in a form approved by the City Attorney, shall be required for any Assignment, including a permitted Assignment to an Affiliated Party, and shall be recorded in the Official Records of Napa County. Any approved Assignee shall succeed to all rights, duties and obligations of Developer accruing after the date of the Assignment.

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

**ARTICLE XII  
MORTGAGEE PROTECTION**

12.1. Mortgagee Protection. Neither entering into this Agreement nor a breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value. Nothing in this Agreement shall prevent or limit Developer, at its sole discretion, from granting one or more Mortgages encumbering all or a portion of Developer’s interest in the Property or portion thereof or improvement thereon as security for one or more loans or other

## EXHIBIT A

financing, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of Mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Developer shall provide the City with a copy of the deed of trust or mortgage within ten (10) days after its recording in the official records of Napa County; provided, however, that Developer's failure to provide such document shall not affect any Mortgage, including without limitation, the validity, priority or enforceability of such Mortgage.

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

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

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

## ARTICLE XIII DEFAULT; REMEDIES; TERMINATION

13.1. Breach and Default. Subject to Force Majeure Delays or by mutual consent in writing, and except as otherwise provided by this Agreement, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a "**Default.**" In the event of any alleged Default of any term, condition, or obligation of this Agreement, the Party alleging such Default shall give the defaulting Party notice in writing specifying the nature of the alleged Default and the manner in which the Default may be satisfactorily cured ("**Notice of Breach**"). The

## EXHIBIT A

defaulting Party shall cure the Default within thirty (30) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged Default is non-monetary and such that it cannot reasonably be cured within such thirty (30) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no Default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Agreement.

13.2. Failure to Cure Default Procedure. If after Notice of Breach and expiration of the applicable cure period, the Community Development Director finds and determines that Developer remains in Default and that the City intends to terminate or modify this Agreement, the Director shall make a report to the Planning Commission and then set a public hearing before the Planning Commission. If, after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer, has not cured the Default pursuant to this Section, and that the City therefore may terminate or modify this Agreement, Developer shall be entitled to appeal that finding and determination to the City Council in accordance with Section 13.10 below.

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

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

13.5. Legal Actions.

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

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

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

13.7. No Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable in damages, including without limitation, actual, consequential or punitive damages, for any Default under this Agreement. It is expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate or modify this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to, obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

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

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

13.10. Appeals to City Council. Developer may appeal a finding and/or determination of the City Manager or the Planning Commission to the City Council, provided that appeal shall be made by Developer (including payment of applicable fees), if at all, within twenty (20) days after the mailing of the finding and/or determination to Developer. The City Council shall act upon the appeal within the time period provided in Applicable City Regulations or within such additional period as may be agreed upon by Developer and the City.

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

## EXHIBIT A

### ARTICLE XIV GENERAL PROVISIONS

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

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

If to the City:	City Clerk City of Napa City Hall, 955 School Street Napa, CA 94559 Telephone: (707) 257-9503
with a copy to:	City Attorney City of Napa City Hall, 955 School Street Napa, CA 94559 Telephone: (707) 257-9516
If to Developer:	Coombs Street LLC Christopher M. George c/o CMG Mortgage 3160 Crow Canyon Road, Suite 400 San Ramon, California 94583 E-mail: <a href="mailto:cgeorge@cmgfi.com">cgeorge@cmgfi.com</a>
with a copy to:	Jerry Hunt 300 Venture Group 321 Hartz Avenue, Suite 200 Danville, California 94526 Email: <a href="mailto:Jerry@3VG.us">Jerry@3VG.us</a>
with a copy to:	Kevin Teague Holman Teague Roche Anglin, LLP 1455 First Street, Suite 217 Napa, CA 94559 Telephone: (707) 927-4280

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

14.3. Reserved.



## EXHIBIT A

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

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

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

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

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

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

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

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

14.12. Estoppel Certificate. Developer or its lender may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing that: (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) Developer is not in Default of the performance of its obligations, or if in Default, to describe therein the nature and extent of any such Defaults. Developer shall pay, within thirty (30) days following receipt of City's invoice, the actual costs borne by City in connection with its review of the proposed estoppel certificate, including the costs expended by the City Attorney's office in connection therewith. The Community Development Director shall be authorized to execute any certificate requested by Developer hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the City Attorney. The Community Development Director shall execute and return such certificate within thirty (30) days following Developer's request therefor. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, and Mortgagees. The request shall clearly indicate that failure of the City to respond within the thirty-day period will lead to a second and final request. Failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate.

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

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

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

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

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

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

14.19. Recordation. As provided in Government Code Section 65868.5, the City Clerk of the City of Napa shall record a copy of this Agreement with the Registrar-Recorder of the County of Napa

## EXHIBIT A

within ten (10) days following its execution by both Parties. Developer shall provide the City Clerk with the fees for recording prior to or at the time of recording.'

14.20. Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full.

Exhibit A: Legal Description CS Parcels

Exhibit B: Legal Description Parking Lot Parcels

Exhibit C: Legal Description Dwight Murray Parcel

Exhibit D: New Plaza Easement Area

Exhibit E: Project Description

Exhibit F: Impact Fee List

Exhibit G: Term Sheet for Maintenance and Use Agreement

Exhibit H: Alternative Equivalent

Exhibit H-1: Affordable Housing Parcel Legal Description

Exhibit I: Parking Requirements and Supply

Exhibit J: Term Sheet for Agreement to Share Transient Occupancy Tax Revenue

Exhibit K: Design Review Application Submittal List

Exhibit L: Sequencing of Subsequent Approvals

[Signatures on Next Page]

**EXHIBIT A**

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

**CITY:**

CITY OF NAPA, a California charter city

By: \_\_\_\_\_  
Steve Potter, City Manager  
*[Signature must be notarized]*

**ATTEST:**

By: \_\_\_\_\_  
Tiffany Carranza, City Clerk

**COUNTERSIGNED:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Auditor

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney

**DEVELOPER:**

COOMBS STREET LLC, a California limited liability company

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

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

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

## EXHIBIT A

NOTARY ACKNOWLEDGEMENTS TO BE ATTACHED

Acknowledgment

# **EXHIBIT A**

## **Exhibit A**

### **LEGAL DESCRIPTION CS PARCELS**

# EXHIBIT A

OWNER'S POLICY NO.  
FSNX-TO2200103N

## EXHIBIT "A" Legal Description CS Parcels

For APN/Parcel ID(s): 003-166-010-000, 003-166-013-000, 003-166-016-000 and 003-166-015-000

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NAPA, COUNTY OF NAPA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

### PARCEL ONE:

Parcel 166-2 as shown on the Parcel Map entitled, "Parcel Map of a portion of the Lands of Napa Community Redevelopment Agency", filed June 10, 1975 in Book 7 of Parcel Maps at Page 15 in the Office of the County Recorder of said Napa County.

APN: 003-166-016-000

### PARCEL TWO:

A right of way over Parcel 166-5 as shown on the above mentioned Parcel Map.

### PARCEL THREE:

An encroachment easement, 7 feet along the Southeasterly line and 8 feet along the Northeasterly line of Parcel One above, as described in the Easement Agreement by and between the City of Napa and Parkway Plaza Investors, a California Limited Partnership, recorded November 19, 1990 in Book 1781 at Page 755, of Official Records of Napa County.

### PARCEL FOUR:

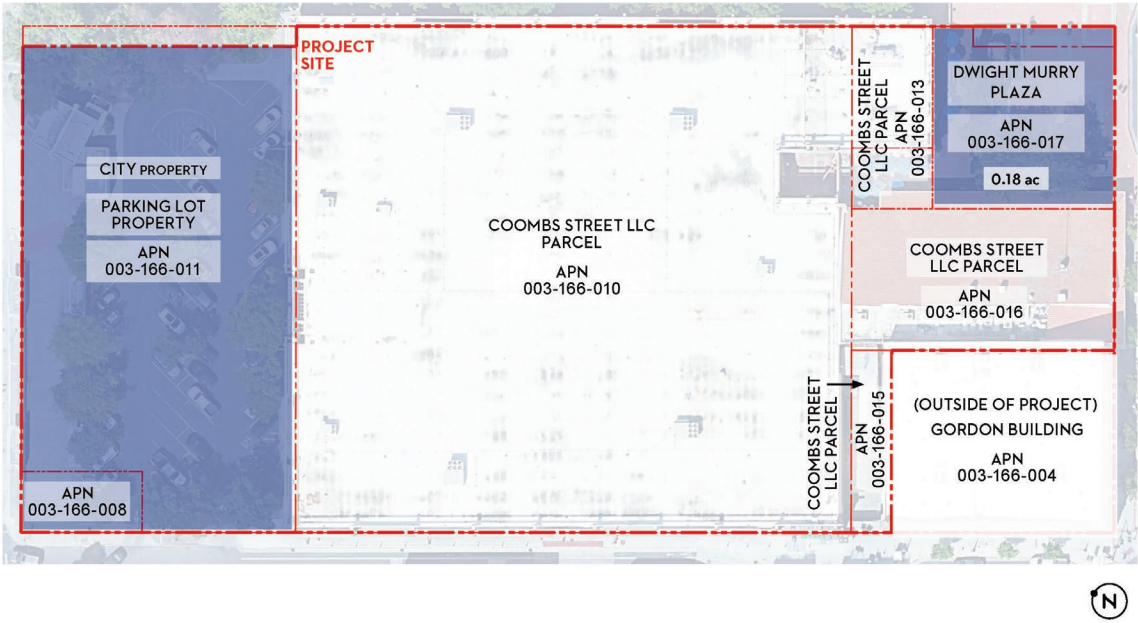
Commencing at a point which bears North 32° 58' 30" West 160.00 feet and South 57° 06' 30" West 20.00 feet from the intersection of the centerline of Brown Street with the centerline of First Street as the same is shown on Map No. 2122 entitled, "Record of Survey of the Lands of Nichandros Associates", filed in Book 17 of Surveys at Page 84 in the Office of the County Recorder of said Napa County; running thence South 57° 06' 30" West along a line parallel to the centerline of First Street 250.00 feet to the Northeastern line of Coombs Street; thence North 32° 58' 30" West along said Northeastern line of Coombs Street 275.00 feet; thence North 57° 06' 30" East along a line parallel to the centerline of First Street 250.00 feet; thence South 32° 58' 30" East along a line parallel to the centerline of Brown Street, 275.00 feet to the point of commencement.

APN: 003-166-010-000

### PARCEL FIVE:

An easement appurtenant to Parcel Four above for "Incidents to the Building" in a strip of land, 5 feet in width, completely around Parcel Four above, as conveyed to Nichandros Associates by Deed recorded September 27, 1972 in Book 889 at Page 845, of Official Records of Napa County.

Excepting from Parcel Five any portion lying within Parcel Seven below.





**EXHIBIT A**

**Exhibit B**

**LEGAL DESCRIPTION PARKING LOT PARCELS**

# EXHIBIT A

## EXHIBIT "B"

### Legal Description Parking Lot Parcels

**For APN/Parcel ID(s): 003-166-008-000 and 003-166-011-000**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NAPA, COUNTY OF NAPA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

#### **PARCEL ONE:**

A portion of Lot 3 in Block 19, as shown on the map entitled, "Plan of Napa City", filed November 28, 1853 in [Book B of Deeds, at Page 433](#), Napa County Records, described as follows:

Commencing at the most Western corner of said Lot 3; running thence Southeasterly along the Northeastern line of Coombs Street, 60.00 feet; thence Northeasterly parallel with the Southeastern line of Pearl Street, 30.09 feet; thence Northwesterly, parallel with the Northeastern line of Coombs Street, 60.00 feet to the Southeastern line of Pearl Street; thence Southwesterly along last mentioned line, 30.09 feet to the point of commencement.

[APN: 003-166-008-000](#)

#### **PARCEL TWO:**

A portion of Lots 1, 2, 3 and 4 in Block 19, as shown on the map entitled, "Plan of Napa City", filed November 28, 1853 in [Book B of Deeds, at Page 433](#), Napa County Records, described as follows:

Commencing at the intersection of the Southwesterly line of Brown Street with the Southeasterly line of Pearl Street; thence along the Southwesterly line of said Brown Street Southeasterly 135.00 feet to the Northwesterly line of the parcel of land described in the deed to Nichandros Associates recorded September 27, 1972 in [Book 889, at Page 845](#), Napa County Official Records; thence leaving the Southwesterly line of Brown Street and running South 57° 06' 30" West 240.00 feet along said Northwesterly line to the Northeasterly line of Coombs Street; thence Northwesterly along said Northeasterly line 75.00 feet to the most Southerly corner of the parcel of land described in the deed to City of Napa, a municipal corporation of the state of California, recorded March 24, 2011 as [Instrument No. 2011-0007031](#); thence leaving the Northeasterly line of Coombs Street and running Northeasterly 30.09 feet along the Southeasterly line of said City of Napa parcel to the most Easterly corner thereof; thence along the Northeasterly line of said City of Napa parcel Northwesterly 60.00 feet to the herein above mentioned Southeasterly line of Pearl Street; thence along said Southeasterly line of Pearl Street Northeasterly 209.91 feet to the point of commencement.

[APN: 003-166-011-000](#)

# EXHIBIT A

Your Reference:

Chicago Title Company

## EXHIBIT "B" Legal Description Parking Lot Parcels

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NAPA, IN THE COUNTY OF NAPA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

### PARCEL ONE:

A PORTION OF LOT 3 IN BLOCK 19, AS SHOWN ON THE MAP ENTITLED, "PLAN OF NAPA CITY", FILED NOVEMBER 28, 1853 IN [BOOK B OF DEEDS, AT PAGE 433](#), NAPA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERN CORNER OF SAID LOT 3; RUNNING THENCE SOUTHEASTERLY ALONG THE NORTHEASTERN LINE OF COOMBS STREET, 60.00 FEET; THENCE NORTHEASTERLY PARALLEL WITH THE SOUTHEASTERN LINE OF PEARL STREET, 30.09 FEET; THENCE NORTHWESTERLY, PARALLEL WITH THE NORTHEASTERN LINE OF COOMBS STREET, 60.00 FEET TO THE SOUTHEASTERN LINE OF PEARL STREET; THENCE SOUTHWESTERLY ALONG LAST MENTIONED LINE, 30.09 FEET TO THE POINT OF COMMENCEMENT.

[APN: 003-166-008-000](#)

### PARCEL TWO:

A PORTION OF LOTS 1, 2, 3 AND 4 IN BLOCK 19, AS SHOWN ON THE MAP ENTITLED, "PLAN OF NAPA CITY", FILED NOVEMBER 28, 1853 IN [BOOK B OF DEEDS, AT PAGE 433](#), NAPA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF BROWN STREET WITH THE SOUTHEASTERLY LINE OF PEARL STREET; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID BROWN STREET SOUTHEASTERLY 135.00 FEET TO THE NORTHWESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO NICHANDROS ASSOCIATES RECORDED SEPTEMBER 27, 1972 IN [BOOK 889, AT PAGE 845](#), NAPA COUNTY OFFICIAL RECORDS; THENCE LEAVING THE SOUTHWESTERLY LINE OF BROWN STREET AND RUNNING SOUTH 57° 06' 30" WEST 240.00 FEET ALONG SAID NORTHWESTERLY LINE TO THE NORTHEASTERLY LINE OF COOMBS STREET; THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE 75.00 FEET TO THE MOST SOUTHERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO CITY OF NAPA, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA, RECORDED MARCH 24, 2011 AS [INSTRUMENT NO. 2011-0007031](#); THENCE LEAVING THE NORTHEASTERLY LINE OF COOMBS STREET AND RUNNING NORTHEASTERLY 30.09 FEET ALONG THE SOUTHEASTERLY LINE OF SAID CITY OF NAPA PARCEL TO THE MOST EASTERLY CORNER THEREOF; THENCE ALONG THE NORTHEASTERLY LINE OF SAID CITY OF NAPA PARCEL NORTHWESTERLY 60.00 FEET TO THE HEREIN ABOVE MENTIONED SOUTHEASTERLY LINE OF PEARL STREET; THENCE ALONG SAID SOUTHEASTERLY LINE OF PEARL STREET NORTHEASTERLY 209.91 FEET TO THE POINT OF COMMENCEMENT.

[APN: 003-166-011-000](#)

## **EXHIBIT A**

### **Exhibit C**

#### **LEGAL DESCRIPTION DWIGHT MURRAY PARCEL**

Exhibit C-1

# EXHIBIT A

Your Reference:

Chicago Title Company

## EXHIBIT "C" Legal Description Dwight Murray Plaza

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NAPA, IN THE COUNTY OF NAPA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

### PARCEL ONE:

Parcel 166-3 as shown on [Map No. 2661](#) entitled "Parcel Map of a portion of the lands of Napa Community Redevelopment Agency" filed June 10, 1975 in [Book 7 of Parcel Maps, Page 15](#), Napa County Records.

### PARCEL TWO:

Parcel 166-3A as shown on [Map No. 2661](#) entitled "Parcel Map of a portion of the lands of Napa Community Redevelopment Agency" filed June 10, 1975 in [Book 7 of Parcel Maps, Page 15](#), Napa County Records.

APN: 003-166-017-000

# EXHIBIT A

## Exhibit D

### NEW PLAZA AREA

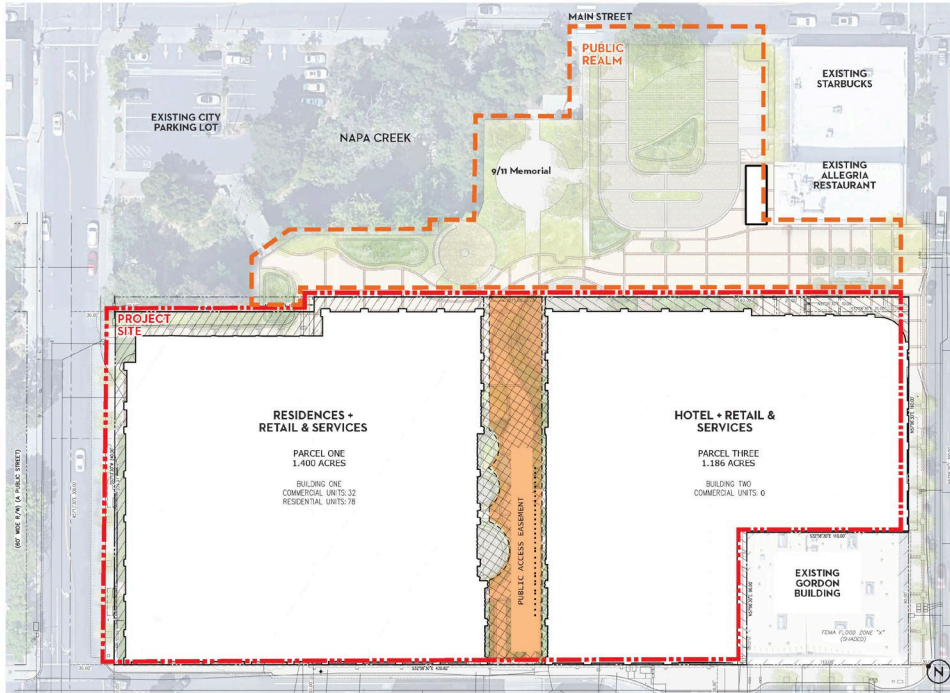


Exhibit D

## Exhibit D-1

## Exhibit E

### FIRST STREET NAPA PHASE II PROJECT DESCRIPTION

**Project Overview:** Located generally between Coombs and Brown Streets, and Pearl and 1<sup>st</sup> Streets, the First Street Napa Phase II Project (“**Project**”) is a mixed-use development project consisting of: (i) up to a maximum of 78 units of for sale market rate “branded residential” (described below) multifamily housing units (“**Market Rate Housing**”); (ii) a 6-story, Upper Upscale hotel with a maximum of 161 rooms (“**Hotel**”); and (iii) up to 30,000 square feet of commercial space that will be split into roughly two categories, a) uses serving the Hotel directly (for example, restaurant/food and beverage, spa, and other incidental retail uses); and, b) traditional commercial space which will be tenanted at a later date. The commercial space will be predominantly on the ground floor with some second/upper-floor space occupied. The following actions are requested to achieve this legacy project:

- Planned Development Overlay District (PD-39): To establish Project-specific development regulations and processes for the proposed buildings and site improvements, including public improvements, that also includes site specific Development Guidelines (“**Guidelines**”) establishing the requirements for Building and Landscape Architecture, site and public plaza/use area design.
- Zoning Map Amendment: To designate the Property PD-39.
- Specific Plan Entertainment Zone Map Amendment: To include the entirety of the Property.
- Tentative Parcel Map: To reconfigure 7 parcels into 5 parcels for financing purposes as well as residential condominium sales purposes.
- Development Agreement: To establish the entitlement approvals discussed in the above bullet points that specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, conditions, terms, restrictions, and requirements for subsequent discretionary actions, and terms and conditions relating to applicant financing of necessary public facilities, benefits and/or improvements, and subsequent reimbursement over time.

**Site History:** The site is located in downtown Napa’s commercial core. In 1970, the City of Napa’s application for the Neighborhood Development Program was approved and funded by the U.S. Department of Urban Development, setting the wheels in motion for the first major phase of redevelopment, which included the First Street beautification project, Brown Street Mall, another new downtown shopping mall, parking garages, new department stores (Mervyns and Carithers), and a one-time public art program. This effort led to the demise of some historic downtown commercial buildings, including the construction of a controversial clock tower and plaza on First Street to replace the Migliavacca Building (1905, demolished 1973), and the demolition of the Behlow Building (1900, demolished 1977) to make way for a new parking garage. Building permits from the 1970s are also on record for the demolition of a handful of buildings on Pearl Street to make way for a parking lot.

The devastating loss of these historic buildings and their replacement with the current buildings, including underutilized Dwight Murry Plaza and Brown Street corridor, provides the backdrop and opportunity for the First Street Napa Phase II Project to “re-imagine” this key location within the



## EXHIBIT A

Downtown. In addition, the severing of the historic grid pattern, so important to the success of a vital commercial downtown, resulted in an unclear and confusing pedestrian pattern including a lack of visibility from primary public rights-of-way. The Project will create a sense of place and provide new opportunities to restore and reinvigorate this central hub of Downtown by restoring the historic urban grid and relocating Dwight Murray Plaza into a new plaza roughly aligned with the former Clay Street.

**Downtown Napa Specific Plan Town Center Focus Area:** The Downtown Napa Specific Plan (DTSP), adopted in 2012, covers the downtown core area between Jefferson Street and the Napa River and roughly between River Terrace Lane, Caymus Street, and Polk Street to the north and Third and Division Streets to the south. The plan established a vision for downtown Napa in 2030, featuring public spaces, attractive streets, shops and eateries, entertainment venues, public art, historic buildings, sustainable new buildings, and an array of housing options. Development capacity under the DTSP projected a net increase of 627 dwelling units, 303 hotel rooms, approximately 109,000 square feet of retail space, and approximately 471,000 square feet of office uses on top of the existing (as of 2012) 125 dwelling units, 526 hotel rooms, 1.09 million square feet of retail and restaurant space, and 763,000 square feet of office space.

The Project is located on approximately 3 acres within a portion of the approximately 14-acre Town Center Focus Area designated in the DTSP, located near the center of Downtown. The Project area and adjacent Public Realm area are within the commercial “heart” of the city, bounded to the east by Main Street, to the south by First Street, to the west by Coombs Street and to the north by Pearl Street. The majority of the Focus Area is comprised of the Napa Town Center. The Project area and Public Realm area make up most of the Focus Area east of Coombs Street. The DTSP envisioned significant redevelopment within the Focus Area, stating:

*These areas offer special opportunities to stimulate development and set the tone for future land use and development character in Downtown Napa. The three Focus Areas are the Town Center (and adjacent shopping area now named First Street Napa), CineDome (and surrounding land), and former Copia property.*

*These areas differ from other areas within the Planning Area due to their size and character, land uses, vacancies, and location within the Downtown, and represent the highest concentration of opportunities for change. The Specific Plan provides descriptions and diagrams for the Focus Areas, which represent potential development scenarios and concepts.*

As discussed in great detail in the Guidelines and generally outlined above, the Project advances the City’s goals for the DTSP Town Center Focus Area.

**Project Goals:** When completed, First Street Napa Phase II will achieve the following:

- Restore the City right-of-way grid by recreating Clay Street through to Brown Street as a new public plaza and enhance Brown Street as a functional and vibrant pedestrian space.
- Through proper site design and architectural details, create grand new buildings that respect the historic fabric previously removed as part of past redevelopment actions.
- Create active, functional, useable public spaces that integrate well with the two new buildings as well as with existing adjacent development.



## EXHIBIT A

- Activate this key location within the Downtown as identified by the DTSP Focus Area.
- Generate roughly 50% more annual sales tax revenue realized by the City of Napa, from \$259,000 to \$380,000, generate new Transient Occupancy Tax of approximately \$5.2 million per year, and generate roughly 6-times the annual property tax revenue to the City, from its current level of approximately \$100,000 annually to \$600,000 annually.
- Create jobs and revenue for the City of Napa.
- Facilitate the creation of Housing and Affordable Housing within the Downtown.

**Property.** The Project will be developed on the 1.94-acre parcels that includes the former Kohl's Department Store and other users located at 1106, 1116 and 1118 First Street, Napa, California, designated as Assessor's Parcel Nos. 003-166-010, 003-166-013, 003-116-015, 003-166-016 ("**CS Parcel**") ; the approximately 0.75-acre property and the surface parking lot located at 1151-1199 Pearl Street in Napa, California, designated as Assessor's Parcel Nos. 003-166-008 & 003-166-011 ("**Parking Lot Parcel**") and the approximately 0.18 acre property on First Street adjacent to the CS Parcel known as the Dwight Murray Plaza, designated as Assessor's Parcel Nos 003-166-017 ("**Dwight Murray Parcel**"). The Dwight Murray Parcel, the Parking Lot Parcel and the CS Parcel all together comprise approximately 2.87 acres of land and are referred to herein collectively as the "**Property**". Other Project improvements will occur within the Brown Street right-of-way adjacent to the Property.

**Use Description:** The Project is a dynamic housing, retail and upper-upscale hotel project located in Downtown Napa's most important and central public gathering area. The conceptual description of the key components of the Project, to be further clarified by the Parties through the negotiation and execution of a Development Agreement, is as follows:

- **Housing:** Approximately 78 market-rate for sale condominium branded whole ownership residential units totaling 198,000 square feet (these units would be similar in use and function to the branded Stanly Ranch Vineyard Homes). Branded whole ownership residential units are residential condominium units that may be occupied by the owner some or all of the time and also made available to the hotel's short-term transient rental pool and are serviced by the hotel. In addition to the on-site branded residential units, the Development Agreement further defines the terms and timing by which Developer will provide funding assistance to the affordable housing project proposed on property owned by the First United Methodist Church in downtown Napa and funding to the Affordable Housing Trust Fund through payment of additional Housing Impact Fees.
- **Commercial:** Approximately 30,000 square feet of commercial space that will be split into roughly two categories, a) uses serving the Hotel directly (for example, restaurant/food and beverage, spa, and incidental retail uses); and, b) traditional commercial space which will be tenanted at a later date. The commercial space will be predominantly on the ground floor of the two new buildings with some second/upper-floor space occupied primarily to serve the residents and Hotel patrons.
- **Hotel:** The planned hotel will be at a minimum an STR-rated Upper Upscale facility with approximately 161 rooms and a gross total square footage of approximately 200,000 which includes 10,000 square feet dedicated to Function and Event Space, 1,900 square feet for an outdoor terrace serving the Function and Event Space, and a 2,000 square foot Fitness Studio. The Hotel will also include amenities such as a restaurant on the ground floor and a

## EXHIBIT A

rooftop patio and bar. These amenities may be operated as independent retail and commercial uses from the Hotel.

- **Public Realm Improvements:** The Project will provide approximately 54,000 square feet of fully improved public open space including: replacing Dwight Murray Plaza with a paseo between the two new Market Rate Housing and Hotel buildings; enhancing and integrating the 9/11 Memorial Garden; executing the long-desired pedestrian improvements to the Brown Street Corridor from 1<sup>st</sup> to Pearl Street; and, creating a public “drop-off” zone, that will double as a valet service, within the parking lot on the east side of the Project site. Finally, the Project will provide a mid-block crossing on Main Street between 1<sup>st</sup> and Pearl to better connect pedestrians to the River-Walk access along the north side of Napa Creek. The design and benefits of these public realm improvements are described below and in the Guidelines.

**Outdoor and Public Spaces:** The outdoor and public spaces will include both raised and at-grade spaces facilitating a myriad of public and private uses. This will include spaces designed for active engagement and connections for pedestrians on public property on First Street and the former Brown Street corridor. Programming includes the potential for public gatherings, traditional food and beverage sales, and for organized public and private events. The Project will develop a new public plaza (the “**New Plaza**”) of a size equal to or greater than Dwight Murray Plaza (approximately 0.18 acres) and in a location roughly aligned with the former Clay Street right-of-way (to create visual connections for pedestrians from Coombs Street to the 9/11 Memorial Garden and the Opera House). The New Plaza will be a pedestrian-oriented ADA-compliant space with design elements for retail activation complimentary to First Street and public gathering opportunities that will include a public concourse running between the Hotel and Market Rate Housing buildings that will lead from the First Street Napa mall to the Brown Street Corridor. The former Brown Street corridor will be improved and designed to meaningfully engage the adjacent public rights-of-way between the Project site, the 9/11 Memorial Garden, Main Street, Napa Creek and the surrounding downtown areas and Oxbow district. This will transform the currently underutilized spaces adjacent to the Creek into an extension of the Project’s spaces for public and private uses.

In addition to the public pedestrian amenities to be created and discussed above, the Project will also improve the parking lot on Main Street adjacent to the 9/11 Memorial Garden as a public rideshare/valet drop-off area. This circulation improvement will significantly aid in:

- **Decreasing Congestion and Traffic on First Street and Promoting Safety.** In high-traffic locations with limited open curbside space, pick-ups and drop-offs can create safety concerns for passengers and both safety issues and congestion for drivers and other street users such as bicyclists and pedestrians. The renovated drop-off area will reduce impact along First Street by eliminating the existing lay-by lane adjacent to Dwight Murray Plaza and pushing vehicular drop-off to the new arrival location. Additionally, by working with the rideshare operators to designate this as the preferred pick-up and drop-off zone, the new location will mitigate congestion and improve accessibility, safety and efficiency for all users.
- **Improving Circulation and Efficiency Throughout Downtown.** Consolidating drop-offs in a redesigned location will contribute to better pedestrian and vehicular circulation and a more vibrant downtown area. Together with the new Main Street pedestrian crossing, this drop-off area will enhance public access to downtown and promote strong connectivity to public gathering places, plazas, parks, and the Napa River, including linkages to Oxbow Commons and Oxbow Public Market.

## EXHIBIT A

- Providing New Sense of Arrival. This redesigned and improved drop-off area, located along the revitalized Brown Street corridor, will enhance the downtown arrival experience for locals and visitors. Additionally, the public realm will be further improved through enhanced integration of the existing 9/11 Memorial, and new Public Art flanking the opposite side of the drop-off area.

**Parking, Generally:** As detailed in Exhibit I of the Development Agreement prior to the Effective Date of the Development Agreement, the City of Napa was obligated to provide a designated number of non-exclusive parking spaces for retail uses conducted on the Kohl's Parcel under the then existing Kohl's (formerly Mervyn's) lease. The License Agreement required the City to provide 419 non-exclusive parking spaces for the retail uses conducted on the Kohl's site. Currently, within the area subject to the former License Agreement "**Licensed Parking Area**") there are 3 surface lots and the Pearl Street Garage with a total of 513 parking spaces.

- **Pearl Street Garage:** The Pearl Street Garage contains 403 parking spaces. 145 of those spaces are exclusively licensed to the Archer hotel, leaving 258 spaces available.
- **Surface Parking.** There are 3 surface lots within the Licensed Parking Area with 109 spaces, 102 of these are required as part of the License Agreement. There are additional city-owned surface lots outside of the Licensed Parking Area, such as the 26-stall lot adjacent to Heritage Park. The 3 lots are:
  1. The 51-stall parking lot to the rear of the CS parcel, which is being incorporated into the project and will be the approximate location of 110 structured parking stalls within the residential building.
  2. The 23-stall parking lot at the corner of Main and Pearl Street remains as parking.
  3. The 35-stall parking lot on Main Street that will be converted to the City drop-off area as a Public Realm improvement as part of the Project implementation with approximately 10 parking stalls remaining.

Combined, under existing conditions the 109 surface lot spaces and the 258 available stalls (excluding the Archer spaces) in the Pearl Street Garage total 367 spaces, leaving the License Agreement with a 52-stall shortfall, but sufficient to meet the parking demand for the existing uses on the CS Parcel. With post-Project conditions, there would be approximately 33 surface stalls remaining in the Licensed Parking Areas for a total of 291 city-stalls remaining in the Licensed Parking Area, which is more than sufficient to meet the Project demand as detailed below.

**Project Specific Parking:** 110 parking stalls will be supplied in the Project's residential structure and 129 stalls will be supplied in the Pearl Street garage or other parking facilities owned by the City. The project requires 239 parking stalls for Project operations: 78 residential parking stalls parked at 1 space per residence; 129 parking stalls for the hotel parked at 0.8 spaces per room, which parks at the same rate as the Archer Hotel within the Pearl Street Garage; and an additional 32 flex spaces for Project demands. The City shall not require any parking quantities above the Parking Requirements and Supply and as contained in the PD for the Project (PD-39).

Adding 129 exclusive stalls to Archer's 140 exclusive spaces (269 stalls) leaves 143 stalls available in the Pearl Street Garage and approximately 33 surface lot stalls within the Licensed Parking Area and 26 stalls in the Heritage Park lot, for a total of 202 unrestricted stalls remaining. If the City requests that the Project provide valet parking for non-hotel visitors arriving at the new

## EXHIBIT A

drop off, an additional 30 stalls should be reserved in the Pearl Street Garage for such non-Project valet operations.

Under the Development Agreement, before the Project is completed the Parties will negotiate and execute a “Parking Agreement” which will completely supersede and replace the existing License Agreement, including an accounting of total parking demand from the Project and a credit for historic parking allocated to uses on the Project site under the License Agreement.

**Project Applications and Requested Approvals.** As described in more detail below, the Project is applying for a Development Agreement, a Planned Development (PD-39) Overlay zoning district implementing certain development standards generally consistent with the Downtown I Building Forms Standards and adopting project specific “Design Guidelines,” a Downtown Napa Specific Plan Amendment to amend the entertainment zone to include the entirety of the Property, a rezone of all parcels to PD, Tentative Parcel Map that includes the dedication of the New Plaza area, and adoption of an affordable Housing Alternative Equivalent. More specifically:

1. **Development Agreement.** Adoption of a Development Agreement pursuant to 65864 *et seq.* of the Government Code and Municipal Code section 17.52.150 and Resolution No. 93-267 to establish certain conditions and requirements related to review and development of the Project.
2. **Specific Plan Map Amendment/Rezoning.** Amend the entertainment zone to include the entirety of the Property in the entertainment zone and designate the Property as PD-39.
3. **Planned Development Overlay (PD-39).** Rezone each parcel with a PD Overlay specific to this proposed project. The PD-39 Overlay will establish specific use provisions, intensity and density, maximum floor area, and maximum height, along with other development standards that will be required as part of the future design review for the Project. The PD-39 also establishes Project-specific Design Guidelines: Design Guidelines have been prepared to facilitate creating a blend of dense residential and commercial uses, plazas and promenades, and natural areas that will advance some of the key goals for the Downtown Napa Specific Plan Town Center Focus Area. The First Street Napa Phase II Redevelopment Design Guidelines are site-specific and supersede the more general Downtown Napa Specific Plan Design Guidelines, Chapter 5, to guide and define the character of new development within the PD area within the Focus Area and implement the vision and goals of the Specific Plan.
4. **Tentative Parcel Map:** Reconfigure 7 existing fee parcels into 3 fee parcels, 1 condominium parcel and 1 airspace parcel for a total of 5 parcels for financing, ownership and condominium property division purposes. The condominium parcel will contain 78 residential units and up to 32 commercial units (that are affiliated with the hotel or other common areas).
5. **Affordable Housing Alternative Equivalent.** The Project will contribute approximately \$2,000,000 in funding and will provide consulting services to the First United Methodist Church’s proposed development of an affordable housing and workforce project located off the Project site at the Church’s property in downtown Napa (“**Affordable Church Project**”). This contribution will directly seed and facilitate the development of the Church’s multifamily workforce housing in downtown Napa in lieu of payment of affordable housing fees. Developer will also cause additional payments to be made into the City’s Affordable Housing Trust Fund at the time of the first sale of the residential units in First Street Napa Phase II Redevelopment Project.

## EXHIBIT A

### Exhibit F

#### Development Impact Fee List

Description of Fee
Affordable Housing Impact Fee <sup>1</sup> <ul style="list-style-type: none"><li>• Single Family- \$4.75 per sq ft</li><li>• Condominium- \$4.75 per sq ft</li><li>• Multi-Family- \$4.05 per sq ft</li><li>• Office- \$3.55 per sq ft</li><li>• Retail-3.55 per sq ft</li><li>• Hotel- \$6.00 per sq ft</li></ul>
Street Improvement <ul style="list-style-type: none"><li>• Condominium-\$1,516 per unit</li><li>• Hotel- \$1,787 per room</li><li>• Restaurant-High Turnover Sit-Down Downtown-\$11,541 per 1000 square feet</li><li>• Retail - \$6,338 per 1000 square feet</li></ul>
Utility Underground <ul style="list-style-type: none"><li>• Condominium-\$1,388 per unit</li><li>• Hotel-\$119 per room</li><li>• Restaurant-High Turnover Sit-Down Downtown-\$771 per 1000 square feet</li><li>• Retail - \$423 per 1000 square feet</li></ul>
Fire and Paramedic Impact Fee <ul style="list-style-type: none"><li>• Single Family Residential-\$656 per dwelling unit</li><li>• Multi Family Residential- \$589 per dwelling unit</li><li>• Commercial- \$0.51 per sq ft</li><li>• Office-\$0.32 per sq ft</li><li>• Industrial- \$1.17 per sq ft</li></ul> <p>These fees are developed by the Fire Department and are updated annually, per NMC 15.78 and R2016-164</p>
Parking Impact Fees <ul style="list-style-type: none"><li>• \$23,000 per net new public parking space licensed to Developer<sup>2</sup></li></ul>
Parks Fee (Quadrant 2) <ul style="list-style-type: none"><li>• Park Dedication Fees (per unit)<ul style="list-style-type: none"><li>○ Single Family-detached: \$6,581</li><li>○ Single Family-attached: \$4,723</li><li>○ Duplex: \$4,884</li><li>○ Multi-Family: \$4,196</li><li>○ Mobile Homes: \$3,462</li></ul></li></ul>

<sup>1</sup> As set forth in Development Agreement Section 6.1.2 Developer intends to satisfy its Affordable Housing Impact Fee requirements through use of the Alternative Equivalent.

<sup>2</sup> See Development Section 6.1.3 regarding parking requirements.

## EXHIBIT A

<ul style="list-style-type: none"><li>• Park Development Fees (per unit)<ul style="list-style-type: none"><li>○ Single Family-detached: \$1,003</li><li>○ Single Family-attached: \$720</li><li>○ Duplex: \$744</li><li>○ Multi-Family: \$639</li><li>○ Mobile Homes: \$528</li></ul></li></ul>
Public Art Fee: For Non-Residential development over \$250,000 (NMC 15.108; R2021-105) <ul style="list-style-type: none"><li>• 1% of Construction Cost<sup>3</sup></li></ul>

## EXHIBIT F

### FEE ESTIMATES

1. The following tables are an illustrative example of the calculation of the Development Impact fees in the table above and other fees applicable to the Project, including processing fees. Only the Development Impact Fees listed in the table above are subject to the Impact Fee Lock Period as set forth in Section 5.1 of the Development Agreement. All other fees shall be calculated in accordance with the Development Agreement at the time such fees are due in the amounts applicable at the time the fees are paid. The Development Impact Fees were calculated by the City based on the rate in the table above pursuant to Development Agreement Section 5.1 and based on square feet or unit counts, and valuation provided by the Developer. The actual amount of the Development Impact Fees will be based on actual square feet, unit counts, and valuation based on approved building permits. All other fees, including processing fees subject to Development Agreement Section 5.2, were estimated based on information provided by Developer and are illustrative estimates only, the actual amount of the fee will conform to the City's Master Fee Schedule. Final fee calculations shall be calculated pursuant to Development Agreement Article V.

### BUILDING 1: Hotel & Retail

Description of Fee	Amount
A-Building Permit Fee	\$137,300.43
A-Building Plan Check Review	\$90,618.28
A-Fire Plan Check Review	\$32,952.10
A-High Performance Fee	\$34,325.11
A-Planning Advanced Fee	\$6,865.02
A-Planning Plan Check Fee	\$13,730.04

<sup>3</sup> See Development Agreement Section 6.1.8

## EXHIBIT A

C-Building Standards Admin Fund	\$1,455.00
C-Public Art Fee	\$363,535.99
C-SMIP TAX (Commercial)	\$10,178.84
D-Land Dev Excise (Commercial)	\$1,831.07
H-Plumbing Fee (Commercial)	\$54,530.40
I-Mechanical Fee (Commercial)	\$54,530.40
L-Electrical Fee (Commercial)	\$54,530.40
M-Insulation	\$1,831.07
P-Affordable Hsng Impact (Com Hotel)	\$1,058,736.00
P-Afford Hsng Impact (Com Retail)	\$23,611.05
S-Const & Amp; Demo Debris Building	\$231.64
S-Const & Amp; Demo Debris Recycling	\$463.36
S-Street Improvement	\$316,449.00
S-Utility Underground	\$21,070.00
Total	\$2,278,775.20
NOTES: 2. Fees based on 176,456 square feet of hotel (161 rooms) 3. Fees based on 6,651 square feet of retail 4. Valuation based on February 2025 ICC Table (Hotel R-1 \$198.22 and Retail B \$206.96); Job Valuation \$36,353,599.30. 5. Fees based on information provided by applicant (no plans submitted at the time of estimate)	

## EXHIBIT A

### BUILDING 2: Residential, Retail, & Parking

Description of Fee	Amount
A-Building Permit Fee	\$120,292.61
A-Building Plan Check Review	\$79,393.12
A-Fire Plan Check Review	\$28,870.23
A-High Performance Fee	\$30,073.15
A-Landscape Review Fee	\$400.00
A-Planning Advanced Fee	\$6,014.63
A-Planning Plan Check Fee	\$12,029.26
C-Building Standards Admin Fund	\$1,190.00
C-SMIP TAX (Commercial)	\$1,967.53
C-SMIP TAX (Residential)	\$2,951.98
D-Land Dev Excise (Commercial)	\$585.89
D-Land Dev Excise (Residential)	\$9,750.00
F-Park Fees Quadrant 2	\$377,130.00
H-Plumbing Fee (Commercial)	\$17,648.95
H-Plumbing Fee (Residential)	\$21,840.00
I-Mechanical Fee (Commercial)	\$17,648.95
I-Mechanical Fee (Residential)	\$21,840.00
L-Electrical Fee (Commercial)	\$17,648.95
L-Electrical Fee (Residential)	\$21,840.00
M-Insulation	\$21,840.00
P-Affordable Hsng Impact (Com Retail)	\$16,148.95
P-Afford Hsng Impact (Res Multi Family)	\$485,797.50
S-Const & Amp; Demo Debris Building	\$231.64
S-Const & Amp; Demo Debris Recycling	\$463.36
S-Street Improvement	\$539,240.00
S-Utility Underground	\$136,296
Total	\$1,989,132.70
NOTES: 1. Fees based on 119,950 square feet of residential 2. Fees based on 69,600 square feet of other (stairwells, elevators, recreation, pool, lobby) 3. Fees based on 54,040 square feet of parking 4. Fees based on 4,549 square feet of retail 5. Valuation based on February 2025 ICC Table (Residential R-2 \$149.80, Other U \$68.09, Parking S-1 \$112.61, and Retail B \$206.96); Job Valuation \$29,734,479. 6. Street improvement fees and utility underground are based on public works tables and have not been verified. 7. Fees based on information provided by applicant (no plans submitted at the time of estimate)	



## EXHIBIT A

### Exhibit G

#### TERM SHEET FOR MAINTENANCE AND USE AGREEMENT

<i>Parties</i>	The City of Napa (“City”) and Coombs Street LLC, a California limited liability company, (“Developer”) and their respective successors and assigns. <sup>4</sup>
<i>Improvements Subject to Agreement</i>	New Plaza Improvements; Brown Street Corridor Improvements; Main Street Drop Off Improvements; and the 9/11 Memorial Garden Improvements; Collectively herein the “Improvements”.
<i>Term</i>	The term of the Maintenance and Use Agreement shall commence on the acceptance of the Improvement by the City but no later than the date of the issuance of the first certificate of occupancy for any portion of the Project and shall continue in perpetuity unless terminated by written agreement of the Parties.
<i>Developer’s Responsibilities</i>	Maintenance and Use Agreement shall provide for Developer’s responsibilities for the maintenance, repair, and replacement of the Improvements installed by Developer in accordance with the Development Agreement, the Project Approvals, and all applicable laws including the American’s with Disabilities Act and Title 24 of the California Building Code. The Agreement shall provide, among other things, specific landscaping and hardscaping responsibilities and standards for the maintenance, repair and replacement of Improvements.
<i>Maintenance and Repair Standards</i>	Maintenance, repair, and replacement of the Improvements will be at or above industry standards for improvements related to a Upper Upscale hotel and will be in compliance with City standards which

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<sup>4</sup> Maintenance and Use Agreement will be recorded against the Property and will be binding on Developer’s successors in interest to the Property.

## EXHIBIT A

includes, without limitation maintaining asphalt pavement at an appropriate Pavement Condition Index (PCI) mutually agreed to by the parties.

### *City's Right to Perform Maintenance and Repair; Lien for City Costs*

In the event that the Developer fails to repair, periodically inspect, maintain in good working condition, care for and, if and when necessary, replace the Improvements, as solely determined by City, the City may, but is not obligated to, enter upon the property and take whatever steps it deems reasonably necessary to maintain, repair, periodically inspect, care for, and replace such Improvements, or to contract for the correction of such deficiencies, after written notice to the Developer and opportunity to cure.

The Developer agrees to reimburse the City within 60 days of the date of a notice identifying all charges and costs incurred by the City for such maintenance, repair and replacement work. Until so paid, the City shall have a lien on the Site for the amount of such charges or costs incurred by the City; provided, however for the period of time under the TOT Agreement that the City is reimbursing the Developer for Costs Eligible for Reimbursement, the City can elect to deduct such costs from the TOT payment due to the Developer under the TOT Agreement.

### *Use*

The Improvements will be available for use by the public at all times subject to the need for Developer to close of areas to perform maintenance and repair work. Subject to Developer obtaining any required permits including without limitation a Special Event Permit: Developer has the right to exclusive use of the New Plaza for up to 6 times per year upon reasonable notice to the City and the City's pre-approval of the dates/times; and in addition, Developer can apply for applicable City permits to hold special events to exclusively use the New Plaza. The City

shall also have the right to hold City events in the New Plaza such as the Lighted Art Festival upon reasonable notice to the Developer. The Agreement shall provide for the ability of the Developer to provide alcohol service in the area of the Improvements if allowed by the State of California and if Developer obtains any required permits.

*Indemnification*

Developer will indemnify, defend and hold City, its elected and appointed officials, officers, agents and employees, free and harmless from and against any and all suits, actions, causes of action, claims, losses, expenses, liability and damages (including reasonable attorneys' fees and costs), arising out of or incurred in connection with Developer's maintenance, repair, and replacement obligations under the Maintenance and Use Agreement and/or from the intentional or negligent acts or omissions of Developer or of any of their officers, agents, or employees, except to the extent of the negligent acts or omissions of City or any of its officers, agents or employees. City will indemnify, defend and hold Developer, its officers, agents and employees and the Property free and harmless from and against any and all suits, actions, causes of action, claims, losses, expenses, liability and damages, arising from the breach of the Agreement by City and from the intentional or negligent acts or omissions of City or any of its officers, agents or employees, except to the extent of the negligent acts or omissions of Developer or any of its officers, agents or employees.

*Insurance*

Developer's obligations to provide insurance coverage will be the same as set forth in Article X of the Development Agreement.

**Exhibit H**

**ALTERNATIVE EQUIVALENT**

**First Street Napa Phase II Redevelopment Project**

**A. ALTERNATIVE EQUIVALENT SUMMARY**

Coombs Street LLC (“Coombs Street”) submits this alternative equivalent proposal for the affordable housing component related to its First Street Napa Phase II Redevelopment Project (“Project”) in downtown Napa and as described in Section 6.1.2 of the proposed Development Agreement by and between the City of Napa and Coombs Street LLC (“Development Agreement”). As further described below, Coombs Street proposes to contribute to the First United Methodist Church proposed development of an affordable housing and workforce project located off the Project site at the Church’s property in downtown Napa, as approved by the City or Napa in project No. PL24-0038 on August 6, 2024, which permits the development of 46 dwelling units which includes 45 affordable rental housing for households earning 30% to 60% of Area Median Income and 1 unrestricted manager’s unit (“Affordable Church Project”), and cause additional payments to be made into the City’s Affordable Housing Trust Fund at the time of the first sale of each of the residential units in the Project.

In addition to the payments described herein, in accordance with Napa Municipal Code (NMC) Section 15.94.070B Coombs Street and the owner of the Affordable Housing Parcel (defined below) will enter into an affordable housing agreement with the City which complies with the requirements of NMC Section 15.94.080 (the “Affordable Housing Agreement”). The Affordable Housing Agreement shall be recorded against that portion of certain real property owned by First United Methodist Church located at 629 & 641 Randolph St. & 1301 Fourth Streets Napa, CA 94559, Assessor’s Parcel Nos. 003-262-006 and 003-262-007 (the “Affordable Housing Parcel”), as approved by the City for affordable housing in the Affordable Church Project within two years of the Effective Date of the Development Agreement. The Affordable Housing Agreement will include, among other things, that the Affordable Housing Project include the number of affordable units described above at the identified income levels for the period of time required by the NMC.

This alternative equivalent proposal is intended satisfy Developer’s entire affordable housing requirement related to the Project (“Affordable Housing Obligation”) and the Project shall not be subject to any Affordable Housing Impact Fees or other affordable housing obligations beyond this Affordable Housing Obligation. Provided, however in the event that Coombs Street fails to: (i) make the payment described herein; or (ii) enter into and cause the Affordable Housing Agreement to be recorded at the time set forth in herein, then Coombs Street shall pay the City the Affordable Housing Impact Fee in accordance with Chapter 15.94 of the Municipal Code.

Concurrently with the submission of this alternative equivalent proposal, Coombs Street has submitted an application for a Development Agreement and Planned Development Overlay for the Project. The Project is described in the Development Agreement. The Affordable Housing Impact Fee for the entire Project is estimated to be \$2,263,236.00.

**B. REGULATORY FRAMEWORK**

Under the City's Affordable Housing Impact Fee Ordinance, Chapter 15.94 of the Napa Municipal Code (NMC), Coombs Street is required to pay an affordable housing impact fee for the Project. The Affordable Housing Impact Fee Ordinance allows applicants to propose and the City to approve an alternative equivalent to the payment of the required impact fee. Section 15.94.070 of the NMC allows an applicant to satisfy its affordable housing obligation through the performance of an alternative equivalent proposal, subject to City approval. Section 15.94.070(A) provides six examples of alternative equivalent proposals:

1. Construction of affordable housing units either on- or off-site;
2. Dedication of real property to be reserved for the construction of affordable units;
3. Provision of affordable rental units;
4. Conversion of existing market rate units to affordable ownership units;
5. Preservation of affordable units at risk of loss; or
6. Other means consistent with the Housing Element.

Section 15.94.070(A) requires Alternative Equivalent Proposals to further affordable housing opportunities in the City to an equal or greater extent than payment of the affordable housing impact fees applicable to a project.

**C. FIRST UNITED METHODIST CHURCH OF NAPA SITE PROPOSAL**

Concurrently with this alternative equivalent submission, the Church is working with qualified affordable housing developers Burbank Housing Development Corporation and Napa Valley Community Housing, in providing multifamily affordable workforce housing on its site at the First United Methodist Church of Napa site a portion of a Church-owned site located in Downtown Napa, California (629 & 641 Randolph St. & 1301 Fourth Streets Napa, CA 94559) The church with its affordable housing developer will develop a workforce and affordable project, along with other community serving facilities, that will include high quality design, including sustainable and energy efficient spaces, a creative but realistic financing plan, state of the art construction methods, and a comprehensive plan that includes "wrap-around" services for housing residents, the church and perhaps the community. The Church site is 22,310 sq. ft. (0.51 acres). The City approved the Church's affordable housing project in project No. PL24-0038 on August 6, 2024. The Church and its affordable housing developer are pursuing funding for the project.

Coombs Street will not be the affordable housing developer selected by the Church for its housing project. Instead, Coombs Street has offered to provide support to the Church including providing resources to:

1. Evaluate the site,
2. Develop project schemes,
3. Review respondents to the Church's RFQ submittals,

## EXHIBIT A

4. Assist on contracts,
5. Assist on entitlements,
6. Contribute gap funding on the lease or property acquisition, and
7. Provide a portion of the development funding for the housing project for any amount in excess of the property acquisition or lease payments.

Coombs Street's alternative equivalent contribution is intended to seed and facilitate the development of the Church's multifamily workforce housing in downtown Napa. This support will constitute the "Contribution" under this alternative equivalent proposal. The financial contribution Coombs Street shall provide the Affordable Church Project for items 6 and 7 shall be a payment of approximately \$2,037,000 and the final amount of the payment will be in an amount equal to the amount of the Affordable Housing Impact Fee that would otherwise be applicable to the Project determined in accordance with Section 5.1 of the Development Agreement ("Affordable Church Project Payment"). The Affordable Housing Project Payment shall be made by the earlier to occur of: 1) within 60-days of receipt of notification provided by the Church or the issuance of the first Building Permit for any portion of the Project or 2) prior to issuance of the first certificate of Occupancy for any portion of the Project ("Affordable Church Project Payment Date").

### **D. PAYMENTS INTO THE CITY'S AFFORDABLE HOUSING TRUST FUND AT THE TIME OF THE FIRST SALE OF THE RESIDENTIAL UNITS IN FIRST STREET NAPA PHASE II REDEVELOPMENT PROJECT**

Coombs Street shall cause the first purchaser of each Project residential unit to pay to the City an affordable housing fee in an amount of \$2.00 per square foot per residential unit ("Additional Residential Fee"). The amount of square feet shall be based on the gross square foot floor area of the unit (as defined by NMC Section 15.94.020). The fee shall be paid as a part of the close of escrow for the initial sale of each residential unit.

### **E. AFFORDABLE HOUSING OBLIGATION DEFINED**

Coombs Street's Affordable Housing Obligation will consist of:

1. Payment of the Affordable Housing Project Payment on or before the Affordable Church Project Payment Date;
2. Payment of the Additional Residential Fee at the time of the close of escrow for the initial sale of each residential unit in the Project; and
3. Recordation of the Affordable Housing Agreement within two years of the Effective Date of the Development Agreement.

This alternative equivalent proposal provides greater value to the City than the payment of a fee because the Project creates and adds both market rate, workforce and affordable housing to downtown Napa, consistent with the City's vision in the General Plan Update and in the downtown Napa Specific Plan and the payments under the Affordable Housing Obligation are in excess of the Affordable Housing Fee for the Project pursuant to the terms of the Development Agreement.

Except as set forth herein, the Project shall not be subject to any Affordable Housing Impact Fees

## EXHIBIT A

or other affordable housing obligations beyond this Affordable Housing Obligation.

## **EXHIBIT A**

### **EXHIBIT H-1**

#### **AFFORDABLE HOUSING PARCEL LEGAL DESCRIPTION**



## EXHIBIT A

### Exhibit H-1

Lots 1, 2, 3, and 4, Block A, as shown on the Map entitled, "Plan of Napa City", recorded November 28, 1853, in Book "B" of Deeds, at Page 433, Napa County Records.

APN: 003-262-006 and 003-262-007

## Exhibit I

### PARKING REQUIREMENTS AND SUPPLY

#### Summary:

Parking for the First Street Napa Phase II Redevelopment Project shall be provided as described in this Exhibit I, Parking Requirements and Supply and as described in the Planned Development Overlay District for the Project. Parking is uniquely tailored to the Project and will be provided partially on-site and within a city-owned lot or lots. The final parking configuration shall be documented in a parking agreement between the City and the Developer based on the release of the prior Parking License (described below), parking supply, and project parking needs, as detailed herein.

#### Existing Parking License:

On February 1, 2000, The City entered into City Agreement 7583 (“License Agreement”) to provide 419 non-exclusive parking spaces for the retail uses conducted on the Kohl’s site, which are the 1.94-acre properties that include the Kohl’s Department Store and other users located at 1106, 1116 and 1118 First Street, Napa, California, on Assessor’s Parcel Nos. 003-166-010, 003-166-013, 003-116-015, 003-166-016, referred to as the “**CS Parcel**” in the Project’s proposed Development Agreement and called Parkway Plaza property in the License Agreement.

All 419 parking spaces must be located within the boundaries formed by Randolph, Pearl, Main, and First Streets, (the “Licensed Parking Area”). 317 of the parking spaces could be located in either structured parking or in surface lots. 102 spaces had to be located in surface lots (but could be replaced with spaces in parking structures, 2 spaces for every surface stall lost). Under current Napa code requirements, if the existing uses on the CS Parcel were not subject to the parking exempt district, the existing 75,968 ft.<sup>2</sup> of development would require 304 parking spaces.

#### Parking Supply:

Currently, within the Parking License Area there are 3 surface lots and the Pearl Street Garage with a total of 513 parking spaces.

- Pearl Street Garage: The Pearl Street Garage contains 403 parking spaces. 145 of those spaces are exclusively licensed to Archer hotel, leaving 258 spaces available.
- Surface Parking. There are 3 surface lots within the Licensed Parking Area with 109 spaces, 102 of these are required as part of the License Agreement. There are additional city-owned surface lots outside of the Licensed Parking Area, such as the 26-stall lot adjacent to Heritage Park.
  1. The 51-stall parking lot to the rear of the CS parcel is being incorporated into the project and will be the approximate location of 110 structured parking stalls within the residential building.
  2. The 23-stall parking lot at the corner of Main and Pearl Street remains as parking.
  3. The 35-stall parking lot on Main Street that will be converted to the City drop-off area as a Public Realm improvement as part of the Project implementation with approximately 10 parking stalls remaining.

## EXHIBIT A

Combined, under existing conditions the 109 surface lot spaces and the 258 available stalls (excluding the Archer spaces) in the Pearl Street Garage total 367 spaces, leaving the License Agreement with a 52-stall shortfall, but sufficient to meet the parking demand for the existing uses on the CS Parcel. With post-Project conditions, there would be approximately 33 surface stalls remaining in the Licensed Parking Areas for a total of 291 city-stalls remaining in the Licensed Parking Area, which is more than sufficient to meet the Project demand as detailed below.

### **Project Parking:**

110 parking stalls will be supplied in the Project's residential structure and 129 stalls will be supplied in the Pearl Street garage or other parking facilities owned by the city. The project requires 239 parking stalls for Project operations: 78 residential parking stalls parked at 1 space per residence; 129 parking stalls for the hotel parked at 0.8 spaces per room, which parks at the same rate as the Archer Hotel within the Pearl Street Garage; and an additional 32 flex spaces for Project demands. The City shall not require any parking quantities above the Parking Requirements and Supply and as contained in the Planned Development Overlay District for the Project.

Adding 129 exclusive stalls to Archer's 140 exclusive spaces (269 stalls) leaves 143 stalls available in the Pearl Street Garage and approximately 33 surface lot stalls within the Licensed Parking Area and 26 stalls in the Heritage Park lot, for a total of 202 unrestricted stalls remaining. If the City requests that the Project provide valet parking for non-hotel visitors arriving at the new drop off, an additional 30 stalls should be reserved in the Pearl Street Garage for such non-Project valet operations.

In the event sufficient public parking is not available in the Pearl Street Garage, the 129 stalls may be located in another nearby sufficient public parking location acceptable to the City and Developer, subject to an agreement for such relocation between the City and Developer ("Future Parking"). The primary existing alternative location would be the Second Street Garage.

No later than 12 months following the issuance of a vertical building permit for any component of the Project the Developer and City Manager shall execute a new parking agreement consistent with the Parking Requirements and Supply that includes either agreed upon lump sum payment or annual payments to the City for the use of public parking stalls (the "**Parking Agreement**").

Bicycle parking shall also be provided for not less than 39 bicycles.

## EXHIBIT A

### Exhibit J

#### TERM SHEET FOR AGREEMENT TO SHARE TRANSIENT OCCUPANCY TAX REVENUE

<i>Parties:</i>	Coombs Street LLC (“ <b>Developer</b> ”) and the City of Napa, a California charter city (“ <b>City</b> ”).
<i>Intent:</i>	<p>Developer has proposed a mixed-use project consisting of up to 78 market rate branded residential multi-family housing units and a six story upper upscale hotel with a maximum of 161 hotel rooms and subsequent retail uses.</p> <p>The Project includes community public benefits as described in the Agreement, including the development of a new public plaza to facilitate the revitalization of downtown Napa by restoring the historical grid and creating visual connections for pedestrians from Coombs Street to the 9/11 Memorial Garden and the Opera House. The New Plaza component of the Project Public Improvements will be designed to match the quality and aesthetic of an upper upscale hotel outdoor/grounds experience and provide for seamless pedestrian and improved visitor and community experience with the goal of making the downtown Napa area more attractive to community members, consumers, and visitors.</p> <p>The public benefits provided under the Agreement are expected to significantly contribute to the maintenance, growth, and expansion of the economic base of the City, including increased transient occupancy tax revenue for the City for the lifetime of the Project.</p> <p>This Term Sheet sets forth the manner in which the City will provide funding to Developer in an amount equal to a percentage of revenue received by the City from transient occupancy tax generated by the Project (“<b>Project TOT</b>”) as a contribution to the cost of the Reimbursable Project Public Improvements. The Parties agree to the general terms and conditions set forth in this Term Sheet which will be incorporated into a “<b>TOT Agreement</b>” in accordance with Section 6.2 of the Agreement.</p>
<i>Public Benefits:</i>	<p>The Project includes the Project Public Improvements which will provide the City, its citizens and the surrounding region with significant quantitative and qualitative public benefits, and prospective future benefits set forth in <u>Article 6</u> of the Agreement. As set forth in the Agreement, the Project Public Improvements eligible for reimbursement include only the “<b>Reimbursable Project Public Improvements</b>” which are as defined those Project Public Improvements listed in Section 6.1.1 of the Agreement.</p>

## EXHIBIT A

<i>Revenue Sharing Structure:</i>	<p>Commencing 120 days following the date of the remittance of the first Project TOT payment by the Developer to the City and quarterly thereafter, and continuing for 10 years from the date of the first payment, the City shall reimburse the Developer for costs of the Reimbursable Project Public Improvements based on the following percentages of Project TOT revenue provided, however, that in no event shall the City's obligation to provide such reimbursement exceed the lesser of the Reimbursement Cap (\$33,000,000) or the actual cost of the Reimbursable Project Public Improvements dependent on the approach to cost utilized as set forth in the section below entitled "<i>Costs Eligible for Reimbursement</i>":</p> <p>Years 1-4: 90% of Project TOT  Years 5-8- 70% of Project TOT  Years 9-10- 50% of Project TOT  Years 11 and thereafter: 0% of Project TOT</p> <p>The City's obligation to reimburse Developer shall terminate at the end of the 10<sup>th</sup> year, whether or not the Developer has been fully reimbursed for the cost of the Reimbursable Project Public Improvements. Notwithstanding the foregoing, in no event shall the City's obligation to make any payments to the Developer extend beyond December 31, 2038, whether or not the ten year period has expired and whether or not the Developer has been fully reimbursed for the cost of the Reimbursable Project Public Improvements.</p>
<i>Costs Eligible for Reimbursement:</i>	<p>The cost of the Reimbursable Project Public Improvements shall be determined as follows:</p> <p>1. The cost of the Reimbursable Project Public Improvements will be determined by the City Manager based upon the plans for such improvements approved through Design Review and an engineer's or other qualified estimate of such costs provided by the Developer, acceptable to the City Manager, and such other information reasonably requested by the City Manager. The City may hire an independent third party to estimate the cost of the Reimbursable Project Public Improvements the cost of which will be paid by City. The approved plans will become an exhibit to the TOT Agreement and will include the specific materials that will be used during construction of the Reimbursable Project Public Improvements.</p> <p>The City Manager shall have final authority to approve the detailed Reimbursable Project Public Improvement plans and verify that the proposed improvements are consistent with the Agreement, Design</p>

## EXHIBIT A

	<p>Guidelines, the aesthetic of an upper upscale hotel use, and that the value of the Reimbursable Project Public Improvements meets or exceeds the Reimbursement Cap. When assessing the value of the Reimbursable Project Public Improvements, the City Manager may factor Developer's carrying costs over a 10 year period provided that the Developer provides information satisfactory to the City Manager that justifies this expense; or</p> <p>2. In the event that the City Manager determines that the value of the Reimbursable Project Public Improvements does not meet or exceed the Reimbursement Cap, the City's obligation to reimburse the Developer under the TOT Agreement shall be based upon the actual cost of the Reimbursable Project Public Improvements and will be limited to the lesser of: (i) the actual cost of the Reimbursable Project Public Improvements; or (ii) the Reimbursement Cap.</p> <p>The costs associated with the Reimbursable Project Public Improvements subject to Reimbursement Payments in this case shall be determined from actual hard and soft costs for permitting, construction, construction management and related costs of the Reimbursable Project Public Improvements. Such costs shall include, without limitation: (i) PG&amp;E and other utility or Agency Fees permitting fees; (ii) any Performance and Payment bonds; (iii) City required legal documentation fees; (iv) Engineering and Design costs, construction surveying, material testing, permitting, and inspection; (v) construction management overhead in the amount of 10% of the Reimbursable Project Public Improvement construction costs incurred from commencement of construction to final inspection (for items (i) through (v)); and (vi) Developer's financing costs associated with the Reimbursable Project Public Improvements during the 10-year payback period ("<b>Reimbursable Public Improvement Final Costs</b>"). All Reimbursable Public Improvement Final Costs shall be subject to Developer providing documentation to the satisfaction of the City Manager which shall include without limitation, a copy of the agreements with design professionals, construction contracts, and proof of payment. The City shall retain audit rights.</p>
<i>Developer Responsibility:</i>	Developer shall be solely responsible to pay the full cost of constructing the Project Public Improvements but shall be entitled to the Reimbursement Payments from the City for the costs identified herein.
<i>Source of Funds:</i>	City may, but is not required to use any source of funds it deems appropriate to make the reimbursement payment up to the Reimbursement Cap in order to expedite completing payments..

## EXHIBIT A

	City's obligation to reimburse Developer shall survive the expiration of the Development Agreement Term and any Extended Term.
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### Exhibit K

#### Design Review Submittal Requirements

Applicants shall submit electronically (PDF) for review by the Manager the following, including any other supporting materials as determined by the Manager:

**Application Form and Fee(s).** A City of Napa application form shall be completed with owner(s) signature, along with payment of applicable fees for design review.

**Preliminary Title Report.** A preliminary title report not more than 90 days old shall be submitted.

**Project Description.** A project description accurately describing key project components including proposed uses, square footages categorized by use type, number of rooms and/or units, lot size, parking requirements, and other pertinent information determined by the Director.

**Site Plan.** A site plan showing all property boundary lines with dimensions, location of all existing and/or proposed structures and features, dimension and distances to nearest property lines, existing and proposed adjacent circulation path of travel and street network, existing and proposed pedestrian improvements (curbs, sidewalks, edge of paving, etc.), ingress and egress locations, off-street parking location(s), trash enclosures, public art location(s), and areas of outdoor space such as plazas. Site plan shall be prepared to industry standard using appropriate scale, notations, etc. Site plan shall include appropriate turning templates for circulation.

**Utilities Plan** (Extending 100+ feet beyond site boundaries for public utilities or to adjacent exterior building footprint for private services) Location and size of existing and proposed: water-related facilities including but not limited to water mains with valve locations, water services to each parcel, water meter locations, fire sprinkler risers, backflow devices, fire hydrants within 300 feet, blow-offs and water wells; sewers; existing and proposed overhead utilities and poles; and all existing and proposed easements for these facilities. For sewer systems, top of structures and invert elevations shall be shown along with sewer laterals pipe size, slope and tie-in elevations at the existing downstream system. Slopes and elevations of proposed sewers and storm drains shall be indicated. The plan will need to identify all utility poles that will be removed and the line segments to be undergrounded. Existing gas mains, fiber optic lines, electrical lines, and other utilities shall be shown on plan.

**Landscape and Lighting Plan.** A landscape and lighting plan shall be prepared showing proposed landscape and lighting features in compliance with the City's Water Efficient Landscape Ordinance in effect at the time of submittal. The landscape plan shall include a detailed plant palette identifying species, water use requirements, size, and location. The lighting plan shall clearly show proposed locations of pedestrian, street, and structure lighting, including type of lighting fixture(s).



## EXHIBIT A

**Existing and Proposed Elevations.** Existing and proposed elevations shall be prepared showing all structures adequately dimensioned as they will appear upon completion of construction, indicating materials, exterior surface treatment, color(s), and details, including signage.

**Floor Plan.** Floor plans shall be provided indicating dimensions of each space.

**Waste Management Plan.** A waste management plan shall be submitted for the entirety of the Project and with respect to the Main Street Drop-Off consistent with Development Agreement Section 6.1.1(iii).

**Color Renderings.** Color renderings shall be prepared and submitted depicting the structures at full buildout. Renderings shall clearly indicate color and materials.

**Traffic Safety and Operations Report.** A traffic safety and operations report shall be submitted consistent with Development Agreement Section 6.1.4.

**Exhibit L**

**SEQUENCING OF SUBSEQUENT APPROVALS**

**Estimated Project Sequencing**

1. PG&E Temporary Power Coordination
2. Demolition/Grading Permit Submittal (with related investigations)
3. Demolition/Grading Permit Work Start
4. Development Agreement, PD-39 and Tentative Parcel Map Approval
5. Design Review Submittal
6. Foundation/Underground Permit Submittal
7. Structure/MEPS Permit Submittal
8. Full Building Permit Submittal
9. Design Review Approval
10. Foundation/Underground Permit Work Start
11. City Parcels Close of Escrow
12. Initial CCR review by City
13. Preliminary Public Report Application
14. Preliminary DRE Public Report
15. Final Map
16. Structure/MEPS Permit Work Start
17. Finalize TOT Agreement
18. Fee Credit Submittals
19. Full Building Permit
20. Construction Commencement
21. Conditional or Final Public Report for Condominium
22. Final DRE Report
23. Parking Agreement
24. Fund Affordable Housing Equivalent - Methodist Housing
25. Condo Deposits and Sales
26. Complete Construction
27. Temporary Occupancy
28. Final Occupancy
29. TOT Revenue Sharing begins
30. TOT Revenue Sharing ends