EXHIBIT A

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AND WHEN RECORDED RETURN TO:

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

Record Without Fee
Pursuant to Government Code Section 27383

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF NAPA

AND

1351 SECOND STREET, LLC,
KELLER YOUNTVILLE VINEYARD LLC,
YOUNG BUILDING LLC,
AND
JAMES F. KELLER,

Agreement Effective Date: ____________, 2026

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DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**"), dated as of **________ __, ___** (the "**Effective Date**"), is entered into by and between the City of Napa, a California charter city ("**City**") and 1351 Second Street, LLC, a California limited liability company ("**1351 Second Street LLC**"), Keller Yountville Vineyard, LLC, a Delaware limited liability company ("**Keller Yountville LLC**"), Young Building LLC, a California limited liability company ("**Young Building LLC**"), and James F. Keller ("**Keller**" and, collectively, with 1351 Second Street LLC, Keller Yountville LLC, and Young Building LLC the "**Developer**"). Developer and City may be referred to individually in this Agreement as a "**Party**" and collectively as the "**Parties**."

R E C I T A L S

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

A. Recognized as a key element of the City of Napa's historic downtown, the Franklin Station Post Office building was severely damaged by the South Napa Earthquake on August 24, 2014. In light of the historic and architectural significance of the Franklin Station Post Office building, the United States Postal Service opted, rather than demolishing the damaged building, to sell that certain approximately 0.66-acre property that includes the historic Franklin Station Post Office building located at 1351 Second Street, Napa, California ("**Post Office Parcel**") to a developer who could adaptively reuse the building. A group affiliated with Developer acquired the Post Office Parcel from the United States Postal Service on or about March 2017. The Post Office Parcel, including the Franklin Station Post Office building (Franklin Station Post Office Building) thereon, is listed in the National Register of Historic Places.

B. On February 23, 2017, the group affiliated with Developer, William R. Keller and Dorothy C. Keller, as Trustees of the Bill and Dottie Keller Revocable Trust dated October 10, 2000 granted a Preservation Covenant ("Preservation Covenant") to Napa County Landmarks, Inc., a non-profit corporation organized and operating under the laws of the State of California, having an office at 1754 Second Street, Suite E, Napa, California, 94559, ("**Covenant Holder**") to preserve, maintain, rehabilitate and/or restore the significant historic character defining features of the Post Office Parcel. A copy of the Preservation Covenant is attached hereto as Exhibit E and incorporated herein by this reference. Pursuant to Section 9 of the Preservation Covenant the covenant is "a binding servitude upon" the Post Office Parcel and "shall be deemed to run with the land".

C. 1351 Second Street LLC is the current fee owner of the Post Office Parcel, designated as Assessor Parcel Number (APN) 003-208-001, as more particularly described in Exhibit A attached hereto. As fee owner of the Post Office Parcel, 1351 Second Street LLC is now the Covenant Holder.

D. On February 13, 2017, the City and Keller entered into an Agreement of Purchase and Sale and Joint Escrow Instructions (Surface Parking Lot at Southeast Corner of Second and Randolph APN 003-212-001 Napa California) City Agreement No. C2017-037 ("**PSA**") which provided Keller an option to purchase that certain approximately 0.45-acre property and the surface parking lot thereon from the City of Napa located at the southeast corner of Randolph Street and Second Street in Napa, California, designated as APN 003-212-001, as more particularly described on Exhibit B attached hereto ("**Parking Lot Parcel**"). The PSA was amended on February 22, 2019 ("**First Amendment of the PSA**") and January 18, 2024 ("**Second Amendment of the PSA**"), and amended and restated on September 16, 2025 ("**Amendment 3 of the PSA**"). In accordance therewith, Keller has an equitable interest in Parking Lot Parcel.

E. Young Building LLC is the fee owner of that certain approximately 0.06-acre, property at 820 Randolph Street, designated as APN 003-300-014, as more particularly described on Exhibit C attached hereto (APN 003-300-014; the "**Wine Valley Box Unit Parcel**").

F. Young Building LLC is the fee owner of that certain approximately 0.32-acre property at 809 Coombs Street, designated with APNs 003-300-015, -017, -018, -019, -020, -023, and -024, together and with common ownership interest in APNs 003-300-016 and -021 with Keller Yountville LLC, the fee owner of APN 003-300-022 (all such parcels collectively, the "**Young Building Parcel**"), as more particularly described on Exhibit D attached hereto.

G. The Post Office Parcel, the Parking Lot Parcel, the Wine Valley Box Unit Parcel, and the Young Building Parcel together comprise approximately 1.5 acres of land and are referred to herein collectively as the "**Property**".

H. Upon acquiring the Post Office Parcel, Developer submitted a project proposal to the City to rehabilitate the earthquake damaged Franklin Station Post Office building and construct on the Post Office Parcel and an adjacent parcel a five-story, Upper Upscale hotel with a maximum of 163 rooms (of which up to 25% of the rooms may be condo-hotel and up to 25% of the rooms may be accessory whole ownership dwelling units), with ancillary retail and related amenities and to develop an automated parking structure not to exceed 60' in height with ancillary improvements, including up to 7,000 square feet (sf) of ground floor retail/restaurant/commercial space (the "**Original Project**").

I. In connection with the Original Project, Developer applied to City for a General Plan Amendment, Specific Plan Amendment, Certificate of Appropriateness and Zoning Amendments to rezone the Post Office Parcel from DP to DMU/PD, the Parking Lot Parcel from DMU to DMU/PD, and an adjacent parcel from DMU to DMU/PD. Concurrently with the zoning amendment applications, Developer submitted to the City an application for a development agreement (the "**Original Development Agreement**").

J. 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.

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

L. In 2018, the City Council determined that the Project was within the scope of the development program described and evaluated in the Environmental Impact Report for the Downtown Napa Specific Plan (the "**EIR**") (State Clearing House Number 2010042043) prepared pursuant to the California Environmental Quality Act ("**CEQA**") (Public Resources Code Section 21000 *et seq*.) and certified by Resolution No. 2012 54 adopted by the City Council on May 1, 2012, as described in the Franklin Post Office Project Addendum to that EIR dated October 9, 2018 prepared pursuant to CEQA Guidelines Sections 15164 and 15168 (the "**2018 EIR Addendum**").

M. In conjunction with the foregoing CEQA determination, the City Council took several actions to review and plan for the future development and use of the Original Project (collectively, the "**2018 Approvals**"). These include:

1. Resolution No. R2018-132 amending the General Plan to re-designate the Post Office Parcel from Downtown Public to Downtown Mixed Use;

2. Resolution No. R2018-133 amending the Downtown Specific Plan to re-designate the Post Office Parcel from Downtown Public to Downtown Mixed Use and revise the Historic Resources Design Guidelines in Appendix G of the Specific Plan for the Post Office Parcel;

3. Resolution No. R2018-134 approving a Certificate of Appropriateness as reviewed and recommended by the Cultural Heritage Commission;

4. Ordinance No. 02018-014 approving a Planned Development Overlay District establishing use provisions and development standards;

5. Ordinance No. 02018-013 amending the Zoning District Map in Napa Municipal Code Section 17.04.050 to rezone the Post Office Parcel from Downtown Public to Downtown Mixed Use ("**Rezoning**"); and

6. Ordinance 2018-015 approving the execution of the Original Development Agreement.

N. The 2018 Approvals required Developer to later apply for a design review permit and certificate of appropriateness to ensure that the Project's final architectural plans were consistent with the design parameters established under the 2018 Approvals. In accordance therewith, Developer submitted to the City detailed architectural plans along with an application for a design review permit and certificate of appropriateness for the Project in 2020, which went before a joint meeting of the Planning Commission and Cultural Heritage Commission for preliminary review on July 16, 2020. However, due to shifting economic conditions associated with the COVID-19 pandemic affecting Project feasibility, including but not limited to increased construction costs, Developer needed to update the Project design to justify the costs associated with the plans to rehabilitate and adaptively reuse the Franklin Station Post Office building.

O. On February 22, 2019, City and James Keller and 1351 Second Street, LLC entered into the Original Development Agreement which was recorded in the Official Records of Napa County on March 19, 2019 as Document No. 2019-0004399. The Original Development Agreement was amended on or about February 18, 2021, February 16, 2023, and finally on January 18, 2024. Pursuant to Section 3.2.1 of the Original Development Agreement, the Initial Term of the Original Development Agreement expired on the day immediately following the PSA Outside[1] Date. On January 8, 2025, the Original Development Agreement expired since the PSA Outside Date was January 7, 2025, pursuant to the Second Amendment of the PSA.

P. On July 3, 2025, Developer submitted an updated application based on the Original Project that maintains the rehabilitation and adaptive reuse of the historic Franklin Station Post Office building as a five-story upper-upscale hotel with 94 hotel rooms and other amenities, including a rooftop café and bar, restaurant, and event and meeting spaces (collectively, the "**Post Office Redevelopment**"); a five-story building with 25 For-Sale Hotel Units including a rooftop unit (such units commonly referred to as "branded residential" and that may be occupied by owner), shared amenities, and ground-floor retail; and integrates 3 existing condominium units as For-Sale Hotel Units in the adjacent Young Building for a total of 28 For-Sale Hotel Units with on-site parking facilities and retail on the level (collectively, the "**Mixed Use Development**") (the Post Office Redevelopment and the Mixed Use Development shall together be referred to herein as "**Project**"), and as more particularly described in <u>Exhibit F</u>.

Q. The Project does not increase the intensity of use contemplated under the 2018 Approvals and is fully within the scope of the development program described and evaluated in the EIR, as described in the Franklin Post Office Project Addendum to that EIR dated ________ __, ___ prepared pursuant to CEQA Guidelines Sections 15164 and 15168 ("**EIR Addendum**").

R. Prior to or concurrently with approval of this Agreement, the City has taken several actions to review and plan for the future development and use of the Project (collectively, the "**Project Approvals**"). These include:

[1] Amendment No. 2 to Agreement no. C2017-037 Agreement of Purchase and Sale and Joint Escrow Instructions amended subsection 4(b) as follows: "(b) Close of Escrow. The escrow for conveyance of the Property shall close ("Close of Escrow") within thirty (30) days after the satisfaction, or waiver by the appropriate Party, of all of the Seller Conditions Precedent (defined in Section 7(a)) and all of the Buyer Conditions Precedent (defined in Section 7(b)), which shall occur prior to the Outside Date. The "Outside Date" shall be the earlier of (a) the date that is ninety (90) days after the date on which Buyer obtains a building permit for the Hotel Project as defined by the Development Agreement, or (b) January 7, 2025. If Closing does not occur on or before the Outside Date then this Agreement shall automatically terminate. For purposes of this Agreement, "Closing" shall mean the time and day the Grant Deed is recorded with the Napa County Recorder."

1. Resolution No. R20__-___ approving the EIR Addendum;

2. Ordinance No. 020__-___ amending the PD Overlay District ("**PD**") applicable to the Property;

3. Resolution No. R20__-___ approving a Certificate of Appropriateness;

4. Resolution No. R20__-___ approving Design Review; and

5. Resolution No. R20__-___ approving the Tentative Parcel Map.

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

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

U. 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.

V. On ________ __, ___, the City Council introduced Ordinance No. O20__-___ ("**Enacting Ordinance**") approving this Agreement and authorizing its execution, and adopted the Enacting Ordinance on ________ __, ___, which became effective on ________ __, ___.

A G R E E M E N T

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants and promises contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions.

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

"**2018 EIR Addendum**" is defined in Recital L.

"***2018 Approvals***" means and includes those permits and approvals for the Project granted by City to Developer as of the Effective Date as set forth in Recital M.

"***Affiliated Party***" is defined in Section 11.1.

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

"***Applicable City Regulations***" is defined in Section 4.2.

"***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.

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

"**Certificate of Occupancy**" means a Final Certificate of Occupancy issued by the City authorizing occupancy of the Project or portion thereof.

"***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 4.6.

"***City***" means the City of Napa, a California charter city.

"***City Council***" means the City Council of the City of Napa.

"***City Manager***" means City's City Manager or his or her designee.

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

"***Claims***" means liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including attorneys' fees and costs.

"**Covenant Holder**" means Napa County Landmarks, Inc. a non-profit corporation who holds the Preservation Covenant on the Post Office Parcel.

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

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

“***Developer***” means, collectively, James F. Keller, Keller Yountville LLC, Young Building LLC, and 1351 Second Street LLC, and permitted successors and assigns.

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

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

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

“**Development Approvals**” means all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property including, but not limited to:

(a) specific plans and specific plan amendments;

(b) tentative and final subdivision and parcel maps;

(c) development plan review;

(d) conditional use permits, public use permits and plot plans;

(e) zoning, a copy of PD-37 is attached hereto as Exhibit I and incorporated herein by this reference;

(f) grading and building permits.

“***Development Milestone***” is defined in Section 4.3.2.1.

“***Development Milestone Outside Date***” is defined in Section 4.3.2.2.

“**Development Plan**” means the Project Approvals, Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

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

“***Effective Date***” is defined in Section 3.1.

“***EIR***” is defined in Recital L.

"***EIR Addendum***" is defined in Recital Q.

"***Enacting Ordinance***" refers to the Ordinance identified in Recital V.

"***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 Land Use Regulations**" means all Land Use Regulations in effect on the Effective Date, pursuant to California Government Code Section 65866.

"***Extended Term***" is defined in Section 3.2.2.

"***Force Majeure Delay***" is defined in Section 3.2.5.

"Franklin Station Post Office Building" is defined in Recital A.

"***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.

"**For-Sale Hotel Unit**" means individually owned units that are developed, conveyed, and operated as part of a hotel and that rely upon the hotel's management, services, staffing, and amenities for their use and operation. For purposes of land use, zoning, and regulatory classification, For-Sale Hotel Units shall be deemed part of a Hotel use and shall not constitute dwelling units, regardless of the separate ownership of such units.

"***Further Extended Term***" is defined in Section 3.2.2.

"***General Plan***" means the City of Napa's 2040 General Plan, as amended from time to time.

"**Gross Square Feet Floor Area**" means the sum of the gross horizontal floor areas of a building measured from the exterior face of exterior walls, or from the center line of a wall separating two buildings.

"***Keller***" means James F. Keller.

"***Keller Yountville LLC***" means Keller Yountville Vineyard, LLC, a Delaware limited liability company.

"Historic Preservation Requirements or Conditions" means any condition, requirement, mitigation measure, restriction, covenant, or other obligation imposed by the City, any City commission, or any City official that physically affects the historic façade of the Franklin Station Post Office Building, any character-defining exterior feature, or any historic materials, including any obligation relating to the preservation, repair, restoration, rehabilitation, alteration, removal, replacement, protection, or treatment of the same. All Historic Preservation Requirements or Conditions shall be applied in a manner consistent with the Secretary of the Interior's Standards and the Preservation Covenant.

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

"***Initial Term***" is defined in Section 3.2.1.

"**Land Use Regulations**" means all ordinances, resolutions, codes, rules, regulations and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests which provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain.

"**Lock-Off Unit**" means a hotel room, hotel unit, or For-Sale Hotel Unit that is designed and constructed with a lockable internal door or connection that permits a portion of the hotel room or For-Sale Hotel Unit to be separated and occupied independently as a separate hotel room, with independent ingress and egress. A Lock-Off shall not constitute a separate dwelling unit, lot, condominium unit, or other separately conveyable real property interest.

"***Litigation Challenge***" is defined in Section 10.3.

"***Major Amendment***" is defined in Section 9.2

"***Minor Amendment***" is defined in Section 9.3.

"**Mixed use Development**" is defined in Recital P.

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

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

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

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

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

“***Original Project***” is defined in Recital H.

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

“**Parking Development Impact Fee**” means the fee charged for parking as set forth in Napa Municipal Code Chapter 15.104.

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

“***Parking Lot Parcel PSA***” means the Amended and Restated Agreement No. C2017-037 (Amendment 3) Agreement of Purchase and Sale and Joint Escrow Instructions (Surface Parking Lot at Southeast Corner of Second and Randolph APN 003-212-001) dated September 16, 2025 James F. Keller, as buyer, and the City of Napa, as seller.

“***PD***” is defined as the Planned Development Overlay District .

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

“***Post Office Parcel***” is defined in Recital C.

“***Post Office Redevelopment***” is defined in Recital O.

“**Preservation Covenant**” means the Preservation Covenant between William R. Keller and Dorothy C. Keller, as Trustees of the Bill and Dottie Keller Revocable Trust dated October 10, 2000 (Grantee) and Napa County Landmarks, Inc. a non-profit corporation (“Covenant Holder”). A copy of the Preservation Covenant is attached here to as Exhibit E.

“***Processing Fees***” means all fees for processing development project applications, including any required supplemental or other further environmental review, plan checking and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the

Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

"***Project Approvals***" is defined in Recital R and includes the 2018 Approvals, as modified by the Project Approvals.

"***Project***" is defined in Recital P.

"***Property***" is defined in Recital G.

"***Rezoning***" is defined in Recital M.5.

"***SHPO***" is defined in Section 6.1.1.

"***Subsequent Development Approvals***" means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

"***Term***" means the Initial Term plus the Extended Term and Further Extended Term, if applicable.

*"**TOT**"* means Transient Occupancy Tax.

*"**Wine Valley Box Unit Parcel**"* is defined in Recital E.

*"**Young Building LLC**"* means Young Building LLC, a California limited liability company.

*"**Young Building Parcel**"* is defined in Recital F.

ARTICLE 2
GENERAL PROVISIONS

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of the Project Approvals and this Agreement.

2.2 Ownership of Property. As of the Effective Date, Developer represents and covenants that Developer has either a fee interest or an equitable interest in all of the parcels comprising the Property by virtue of Developer's fee ownership of the Post Office Parcel, the Wine Valley Box Unit Parcel, and the Young Building Parcel and Developer's contractual rights to purchase the Parking Lot Parcel pursuant to the Amendment 3 of the PSA. To the extent Developer does not own fee simple title to the Property, Developer shall obtain written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof. ; City, as the current fee owner of the Parking Lot Parcel, consents to the terms of this Agreement and the recordation hereof, prior to the transfer thereof to Developer, if such transfer occurs pursuant to Amendment 3 of the PSA. At no time while City is owner of Parking Lot Parcel, shall City be subject to Developer's duties and obligations under this Agreement. Should such transfer to Developer of the Parking Lot Parcel fail to occur in accordance with the terms of PSA and any amendments thereto, City to shall have the right to remove recordation of Agreement on Parking Lot Parcel.

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

2.3.1 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.

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

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

2.3.4 During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause of 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 Developer.

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

2.4.1 1351 Second Street LLC 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.

2.4.2 Keller Yountville Vineyard LLC 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.

2.4.3 Young Building LLC 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.

2.4.4 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.

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

2.4.6 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.

2.4.7 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 2.4 not to be true, immediately give written notice of such fact or condition to City.

ARTICLE 3
EFFECTIVE DATE AND TERM

3.1 Effective Date. The Effective Date 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 Parties acknowledge that Section 65868.5 of the Development Agreement Statute requires that this Agreement be recorded with the County Recorder no later than ten (10) days after the City enters into this Agreement, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

3.2 Term of Agreement.

3.2.1 Initial Term. The "**Initial Term**" of this Agreement shall commence on the Effective Date and shall expire October 1, 2030 of this Agreement, unless earlier terminated.

3.2.2 Extended Term. Provided City and Developer have closed escrow for sale of the Parking Lot Parcel on or before the expiration of the Initial Term, the Term shall be automatically extended to October 1, 2033 ("**Extended Term**"). The Term may be further extended until October 1, 2034 ("**Further Extended Term**") at the sole discretion of the City Council. Developer must submit a written request to City to further extend the Term no later than 120 days prior to the expiration of the Extended Term. If the condition for the Extended Term is met, and/or if City agrees to approve a Further Extended Term, City and Developer agree to execute, acknowledge and record in the Official Records of Napa County a memorandum evidencing approval of the Extended Term or Further Extended Term, as applicable.

3.2.3 Rehabilitation of Historic Structure. Parties agree that the preservation and rehabilitation of the historic Franklin Station Post Office Building was material to entering into this Agreement. Should the City Council determine, after a public hearing and based upon substantial evidence in the record, that the preservation or rehabilitation of the façade of Post Office building in its entirety is infeasible, then this Development Agreement shall be terminated, and shall be of no further force and effect.

3.2.4 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; provided, however, Developer will retain any vested rights established under common law.

3.2.5 Force Majeure Delay. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party's control, (including the Party's employment or labor force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the Party's control. If any such event occurs and the Party claiming the delay provides preponderance of the evidence that the event actually prevented or delayed performance of an obligation under this Agreement to the satisfaction of the other Party, the applicable time for performance shall be automatically extended for the period of actual delay caused by such event, provided that the Term shall not be extended under any circumstances for more than three (3) years.

ARTICLE 4
DEVELOPMENT OF THE PROPERTY

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

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

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

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

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

4.2.4 New City Laws that revise City's uniform construction codes, including City's building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit issuance, provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

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

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

4.2.7 New City Laws mandated by Changes in the Law as provided in Section 4.6 below; and

4.2.8 Any City Laws governing:

4.2.8.1 the conduct of businesses, professions, and occupations;

4.2.8.2 taxes (special or general) and assessments;

4.2.8.3 the control and abatement of nuisances;

4.2.8.4 the granting of encroachment permits and the conveyance of rights and interests that provide for the use of or the entry upon public property;

4.2.8.5 the exercise of the power of eminent domain.

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

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

4.3.1 Timing of Development. The Parties acknowledge that Developer cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, (1984) 37 Cal.3d 465, that the failure of the Parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such

Parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in the Development Plan or this Agreement.

4.3.2 Phasing Plan. Development of the Project shall be subject to all timing and phasing requirements established by the Development Plan. In addition, Developer agrees that the following timing and phasing requirements shall apply to development of the Property:

4.3.2.1 To ensure Developer is proceeding expeditiously to meet the foregoing requirements, Developer shall meet each of the following milestones (each, a "**Development Milestone**"):

(i) Submit to City complete applications (with completeness determined by City in its reasonable discretion) for necessary Subsequent Approvals required to develop all components of the Post Office Redevelopment by no later than September 1, 2029; and

(ii) No later than April 1, 2028, submit to City either a signed commitment letter from an Upper Upscale hotel development partner by no later than April 1, 2028; or a financing plan setting forth the equity and debt will be structured to fund construction of the Post Office Redevelopment and operation of the Hotel no later than April 1, 2028.

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

4.3.2.3 Construction Schedule. Developer commence construction of the Project no later than the date that is six (6) months after the commencement of the Extended Term; and, (ii) subject to extension for Force Majeure Delay, substantially complete construction of the Post Office Redevelopment within thirty-six (36) months after commencement thereof.

4.3.3 Phased Project Option. Consistent with the Project construction schedule (as set forth in Section 4.3.2.3), Developer may elect to construct the Project in two phases (the "**Phased Project Option**"). The first phase shall consist solely of the Post Office Redevelopment and related improvements in accordance with the Historic Preservation Covenant and the public benefits of the Project set forth in Section 6.1.1("**Phase One**"). The second phase shall consist of the Mixed Use Development and related improvements necessary to complete the Project ("**Phase Two**"). The Parties acknowledge that the Phased Project Option advances community objectives associated with the preservation and protection of a City-designated historic landmark. It enables for the most expedient seismic stabilization of the Franklin Station Post Office through seismic bracing, foundation work, and building envelope weatherproofing and mitigates exposure to the total loss of a historic resource in the event of impacts from a natural disaster. In addition to the foregoing, the Phased Project Option decreases overall construction impacts by allowing the Parking Lot Parcel to serve as a temporary construction staging area, if Developer enters into a lease agreement with City for the use of the Parking Lot Parcel for a temporary construction staging area before acquiring the parcel. .

4.3.4 Developer shall not request City to issue a Certificate of Occupancy for Phase Two unless and until Phase One has received the Certificate of Occupancy from the City.

4.4 Parking. In the event that Developer cannot provide all required parking for the Project on the Property, the Parties may negotiate a parking agreement in good faith for the Project's use of nearby City-owned lot or garages.

4.4.1 Topics of negotiation may include, but are not limited to:

4.4.1.1 A proposal to the City Council for an exclusive parking license agreement for no more than 128 striped parking spaces in a City owned parking lot or parking garage.

4.4.1.2 A proposal to the City Council to sell additional City land to the Developer to meet the parking demand for the Project, subject to requirements of the Surplus Lands Act.

4.4.1.3 A proposal to the City Council for a Transient Occupancy Tax sharing agreement for the construction of a new parking garage on City owned property.

4.5 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, Napa Valley Unified School District and the Napa County Environmental 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.

4.6 State and Federal Law. As provided in Section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than City, created or operating pursuant to the laws of the State of California ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude, or render substantially more expensive or time consuming, compliance with one or more provisions of this Agreement, the City and Developer shall meet and confer in good faith in order to determine whether such provisions shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Nothing in this Agreement shall preclude City or Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such Changes in the Law. If Changes in the Law preclude or substantially prevent or preclude, or render substantially more expensive or time consuming, performance of this Agreement in a manner that makes the Project economically infeasible, Developer, in its sole and absolute discretion, may terminate this Agreement by providing written notice thereof to City.

4.7 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.*

4.7.1 Public Works. If Developer constructs any public works facilities which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Developer shall perform such work in accordance with Applicable Law, which may include but is not limited to complying with prevailing wage obligations and bidding requirements.

4.7.2 Prevailing Wages.

4.7.2.1 The Developer acknowledges that the City has not made any representation, express or implied, to the Developer or any person associated with the Developer regarding whether or not laborers employed relative to the construction of the Project must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, *et seq.* The Developer shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to the construction of the Project must be paid the prevailing per diem wage rate for their labor classification. Additionally, in accordance with Section 10.2, the Developer shall indemnify, defend with counsel acceptable to the City and hold the City harmless against any claims pursuant to Labor Code Sections 1726 and 1781 arising from this Agreement or the construction or operation of the Project.

4.7.2.2 THE DEVELOPER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES THE CITY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO IT PURSUANT TO LABOR CODE SECTIONS 1726 AND 1781. THE DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 4.7.2.2, WHICH READS AS FOLLOWS:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

BY INITIALING BELOW, THE DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 4.7.2.

____
Developer's Initials

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

ARTICLE 5
FEES AND EXACTIONS

5.1 Impact Fees. 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. The Impact Fees listed Exhibit H represent the Parties' good faith effort to identify the Impact Fees applicable to the Project. City and Developer agree to amend and restate Exhibit H by operating memoranda, as necessary, in the event one or more Impact Fees have been inadvertently omitted or if any escalation provisions have been inadvertently miscalculated. For the purposes of calculating Impact Fees, the For-Sale Hotel Units will be calculated as hotel rooms and hotel or commercial.

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

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

5.4 Capacity Fees. City may charge and Developer shall pay any Capacity Fee that is lawfully adopted at the rates in effect when due.

5.5 Public Art. Developer's rehabilitation of the historic Franklin Station Post Office building in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and State of California Historic Preservation Office requirements, which is estimated to be approximately Twelve Million Dollars ($12,000,000), shall satisfy the Project's public art requirements under Chapter 15.108 (Public Art) of the Napa Municipal Code.

5.6 Payment to City's Affordable Housing Trust Fund. Prior to the Close of Escrow for each For-Sale Hotel Unit, Developer shall pay to the City an affordable housing fee in an amount of $1.00 per Gross Square Feet Floor Area of the For-Sale Hotel Units and the Lock-Off Unit ("Affordable Housing Fee").

5.7 Exactions. City may impose and Developer shall comply with those Exactions required by this Agreement and the Project 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 5.7 and in Sections 4.2.5, 4.2.7 and 9.4 hereof, the City shall not impose any additional Exactions in connection with the development of the Project.

ARTICLE 6
PUBLIC BENEFITS

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

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

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

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

6.1.4 Other Economic and Fiscal Benefits. The Project is expected to generate substantial tax revenues for the City beyond the existing use of the Property including sales tax revenues transient occupancy tax (“TOT”) revenue

ARTICLE 7
ANNUAL REVIEW

7.1 Annual Review.

7.1.1 Purpose. As required by California Government Code Section 65865.1, Municipal Code Section 17.52.150 and Section E of the City’s “Procedures and Requirements for Consideration of Development Agreements,” as established under City Resolution number 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 Initial 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. The burden of demonstrating good faith compliance shall rest with the Developer throughout the annual review process.

7.1.2.1 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.

7.1.2.2 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 refer the matter to the City Council and notify Developer in writing at least fifteen (15) business days in advance of the time at which the matter will be considered by the City Council. This notice shall include the time and place of the City Council's public hearing to evaluate good faith compliance with this Agreement, a copy of the City Manager's report and recommendations, 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 shall 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 terminate or modify the Agreement.

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

ARTICLE 8
COOPERATION AND IMPLEMENTATION

8.1 Subsequent Approvals. Certain subsequent land use approvals, entitlements, and permits other than the 2018 Approvals and Project 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 Project Approvals, grading permits, building permits, sewer and water connection permits, certificates of occupancy, lot mergers, lot line adjustments, parcel maps and/or subdivision maps, and any amendments to, or repealing of, any of the foregoing. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

8.2 Processing Applications for Subsequent Approvals.

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

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

ARTICLE 9
AMENDMENT OF AGREEMENT AND PROJECT APPROVALS

9.1 Amendment by Written Consent. Except as otherwise expressly provided herein, this Agreement may be 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. 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.

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

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

9.4 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 Project 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 Project 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. [***pending City's final approval of Addendum to DNSP EIR***]

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

10.1 Insurance Requirements. Prior to commencement of construction of the Project, and in any event by no later than the date that is three (3) months after the commencement of the Extended Term, Developer shall procure and maintain, or cause its contractor(s) to procure and maintain, until the earlier of (a) the expiration of the Term; or (b) the completion of the Project, a commercial general liability policy in an amount not less than Five Million Dollars ($5,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of One Million Dollars ($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 the event that its interests substantially diverge during any Litigation Challenge, elect to be separately represented by the legal counsel of its choice in any such action or proceeding with the reasonable costs of such representation to be paid by Developer; (c) Developer shall reimburse City, within ten (10) business days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge, including City's administrative, legal, and court costs and City Attorney oversight expenses; and (d) Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure Section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation. Any proposed settlement of a Litigation Challenge shall be subject to City's approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so. Developer's obligations under this Section 10.3 shall survive the expiration or termination of this Agreement.

ARTICLE 11
ASSIGNMENT AND TRANSFER

11.1 Assignment. Because of the necessity to coordinate development of the entirety of the Property pursuant to plans for the Project, particularly with respect to the provision of replacement public parking, certain restrictions on the right of Developer to assign or transfer its rights and obligations under this Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Project and this Agreement. Developer agrees to and accepts the restrictions set forth in this Section 11.1 as reasonable and as a material inducement to City to enter into this Agreement. Developer shall have the right to sell or transfer its rights and obligations under this Agreement, in whole or in part, to any person, partnership, joint venture, firm, company, corporation or other entity (any of the foregoing, an "**Assignee**") subject to the written consent of City; provided that the City shall not unreasonably withhold approval of an assignment to a proposed Assignee who in the reasonable opinion of the City Manager can perform the duties and obligations of Developer hereunder by demonstrating that Assignee has (i) a verifiable source of funds/financing for the entirety or the portion of the Project that Assignee would assume hereunder; (ii) experience developing Upper Upscale hotel projects internationally or in the United States and/or mixed use projects of an equivalent nature, (iii) experience with rehabilitation and restoration of historic structures or has retained an consultant with experience with rehabilitation and restoration of historic structures and (iv) if assuming the Post Office Redevelopment, 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 which is controlled by James F. Keller, and "control," for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity ("**Affiliated Party**"). Developer shall provide the City with written notice of any proposed transfer or assignment of Developer's rights and obligations hereunder (each, an "**Assignment**") at least thirty (30) days prior to such Assignment. Each such notice of proposed Assignment shall be accompanied by evidence of Assignee's agreement to assume all of Developer's rights and obligations hereunder. Developer shall pay the actual costs borne by City in connection with its review of the proposed Assignment, including the attorney fees and costs incurred by the City. 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 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring Developer shall continue to be obligated under this Agreement with respect to the transferred Property or any transferred portion thereof, unless such transferring Developer is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring Developer of the following conditions:

11.2.1 Developer no longer has a legal or equitable interest in all or any part of the Property subject to the transfer.

11.2.2 Developer is not then in default under this Agreement.

11.2.3 Developer has provided City with the notice and executed agreement required Section 11.1.

11.2.4 The purchaser, transferee or Assignee provides City with security equivalent to any security previously provided by Developer to secure performance of its obligations hereunder. If Developer has not provided any such security, this condition shall not apply.

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

ARTICLE 12
MORTGAGEE PROTECTION

12.1 Mortgagee Protection. Neither entering into this Agreement nor a breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, unless otherwise required by law. 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 owned by Developer or portion thereof or improvement thereon as security for one or more loans or other financing, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of Mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Developer shall provide the City with a copy of the deed of trust or mortgage within ten (10) days after its recording in the official records of Napa County; provided, however, that Developer's failure to provide such document shall not affect any Mortgage, including without limitation, the validity, priority or enforceability of such Mortgage.

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

12.3 Notice of Breach to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any Notice of Breach given Developer hereunder and specifying the address for service thereof, then City agrees to use its diligent, good faith efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Breach given to Developer. Each Mortgagee shall have the right, but not the obligation, during the same period available to

Developer to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth in City's Notice of Breach. If a Mortgagee is required to obtain possession in order to cure any Default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure, but in no event may this period exceed 180 days from the date the City delivers the Notice of Breach to Developer.

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

ARTICLE 13
DEFAULT; REMEDIES; TERMINATION

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

13.2 Failure to Cure Default Procedure. If after Notice of Breach and expiration of the applicable cure period, the City Manager finds and determines that Developer remains in Default and that the City intends to terminate or modify this Agreement, the City Manager 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 13.2, the Planning Commission shall make a recommendation to the City Council for Termination or Modification. .

13.3 Termination or Modification. The City may terminate or modify this Agreement after the final determination of the City Council.

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. This Section 13.4 shall survive the termination of this Agreement.

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 Remedies in General. It is acknowledged by the Parties that City would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof. In general, each of the Parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that City shall not be liable in damages to Developer, or to any successor in interest of Developer, or to any other person, and Developer covenants not to sue for damages or claim any damages:

13.7.1 For any breach of this Agreement or for any cause of action that arises out of this Agreement; or

13.7.2 For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

13.7.3 Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of 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 Release. Except for non-monetary remedies, Developer, for itself, its successors and assignees, hereby releases City, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth and Fourteenth Amendments to the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon City because it entered into this Agreement or because of the terms of this Agreement. Developer hereby acknowledges that it has read and is familiar with the provisions of California Civil Code Section 1542, which is set forth below:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

By initialing below, Developer hereby waives the provisions of Section 1542 in connection with the matters that are the subject of the foregoing waivers and releases.

____
Developer's Initials

13.9 LITIGATION

13.9.1 Third Party Litigation Concerning Agreement. Developer shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless City, its agents, officers and employees from any claim, action or proceeding against City, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement, or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Developer of any claim, action, proceeding or determination included within this Section 13.9, and Developer shall cooperate in the defense. If City fails to promptly notify Developer of any such claim, action, proceeding or determination, or if City fails to cooperate in the defense, Developer shall not thereafter be responsible to defend, indemnify, or hold harmless City. City may in its discretion participate in the defense of any such claim, action, proceeding or determination.

13.9.2 Environmental Assurances. Developer shall indemnify and hold City, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of Developer, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and Developer shall defend, at its expense, including attorneys' fees, City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such action.

13.9.3 Reservation of Rights. With respect to Section 13.9.1 and Section 13.9.2 herein, City reserves, the right to either (1) approve the attorney(s) that the indemnifying Party selects, hires or otherwise engages to defend the indemnified party hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense; provided, however, that the indemnifying party shall reimburse the indemnified party forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

13.9.4 Challenge to Existing Land Use Approvals.

13.9.4.1 By accepting the benefits of this Agreement, Developer, on behalf of itself and its successors in interest, hereby expressly agrees and covenants as follows:

(i) Developer, its successor and assigns shall not sue or otherwise challenge (1) any Historic Preservation Requirements or Conditions, (2) sunset dates contained in PD-37; and

(ii) Except for non-monetary remedies, Developer, for itself, its successors and assignees, shall not sue City as it relates to this Project or any approval, action or entitlement related thereto; and

13.9.4.2 With respect to the covenants set forth in Subsection 13.9.4.1such agreement and covenant includes, without limitation, the covenant against any direct suit by Developer or its successor in interest, or any participation, encouragement or involvement whatsoever that is adverse to City by Developer or its successor in interest, other than as part of required response to lawful orders of a court or other body of competent jurisdiction. Developer hereby expressly waives, on behalf of itself and its successors in interest, any claim or challenge to the covenants listed in this Section 13.9.4.1 . In the event of any breach of the covenant or waiver contained herein, City shall, in addition to any other remedies provided for at law or in equity, be entitled to:

(i) impose and recover (at any time, including after sale to a member of the public or other ultimate user) from the Party breaching such covenant or waiver, the full amount of Impact Fees that the breaching Party would have been required to pay in the absence of this Development Agreement; and

(ii) impose any subsequently adopted land use regulation on those land use approvals for which the breaching Party had not, as of the time of such breach, obtained a building permit.

Developer hereby acknowledges that it has read and is familiar with the provisions of California Civil Code Section 1542, which is set forth below:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

By initialing below, Developer hereby waives the provisions of Section 1542 in connection with the matters that are the subject of the foregoing waivers and releases.

____

Developer's Initials

13.9.5 Survival. The provisions of Sections 13.9.1 through 13.9.3 inclusive, shall survive the termination of this Agreement.

13.10 Remedies upon Transfer or Assignment. Notwithstanding anything to the contrary contained in this Article 13, if Developer has transferred all of its interest in the Property pursuant to Article 11 above, then the City may only exercise its remedies under this Article 13 against the defaulting Developer or Assignee and such party's interest in the Property.

13.11 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, 10.3 and 13.9.

ARTICLE 14
GENERAL PROVISIONS

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

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

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

with a copy to:	City Attorney City of Napa City Hall, 955 School Street Napa, CA 94559 Telephone: (707) 257-9516
If to Developer:	1351 Second Street, LLC Attn: James Keller PO Box 546 Napa, CA 94559 Telephone: (707) 927-4280 James Keller P.O. Box 546 Napa, CA 94599 Young Building, LLC P.O. Box 10606 Napa, CA 94581 Keller Yountville Vineyard, LLC, A Delaware Limited Liability Company 1210 Darms Lane Napa, CA 94558
with a copy to (and shall not constitute notice to Developer):	Jeff Dodd Coblentz Patch Duffy & Bass, LLP 700 Main Street, Suite 301 Napa, CA 94559 Telephone: (415) 772-5724

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

14.3 *[Reserved]*.

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

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

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

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

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

14.9 Time is of the Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

14.10 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

14.11 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.

14.12 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.

14.13 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 City Manager 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 City Manager 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.

14.14 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 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

14.18 Successors in Interest. 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. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof.

14.19 Joint and Several Obligations. If at any time during the Term of this Agreement the Property is owned, in whole or in part, by more than one Developer, all obligations of such Developer under this Agreement shall be joint and several, and the default of any such Developers shall be the default of all such Developers. Notwithstanding the foregoing, no

Developer of a single lot that has been finally subdivided and sold to such Developer as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as expressly provided for herein.

14.20 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the development of private property and the owner of such property.

14.21 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

14.22 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain or Developer's rights arising thereunder, including the right to just compensation.

14.23 Agent for Service of Process. In the event Developer is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, Developer shall file with the City Manager, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Developer. If for any reason service of such process upon such agent is not feasible, then in such event Developer may be personally served with such process and such service shall constitute valid service upon Developer. Developer is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto.

14.24 Authority to Execute. The person or persons executing this Agreement on behalf of Developer warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind Developer to the performance of its obligations hereunder.

14.25 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.

14.26 Recordation. As provided in Government Code Section 65868.5, the City Clerk of the City of Napa shall record a copy of this Agreement and any amendment or cancellation with the Registrar-Recorder of the County of Napa within ten (10) days following its execution by both Parties. Developer shall provide the City Clerk with the fees for recording prior to or at the time of recording, unless the recording of this Agreement is exempt from such fees pursuant to Government Code Section 27383 as set forth on the cover page above. If the Parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the City terminates or modifies the Agreement as provided for herein and in Government Code Section 65865.1 for failure of the Developer to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the Napa County Recorder.

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

Exhibit A: Post Office Parcel Legal Description

Exhibit B: Parking Lot Parcel Legal Description

Exhibit C: Wine Valley Box Unit Parcel

Exhibit D: Young Building Parcel Legal Description

Exhibit E: Preservation Covenant

Exhibit F: Project Description

Exhibit G: [*Reserved]*

Exhibit H: Impact Fees

Exhibit I: Copy of PD-37

[Remainder of Page Intentionally Left Blank]

[Signatures on Next Page]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the Effective Date. [***to add all Developer names to signature block***]

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: ______________________________

APPROVED AS TO FORM:

By: ______________________________

_______________, City Attorney

DEVELOPER:

1351 SECOND STREET, LLC,
a California limited liability company

By: ______________________________

James F. Keller

[Signature must be notarized]

Its: Managing Member

JAMES F. KELLER, a married man

____

[Signature must be notarized]

YOUNG BUILDING LLC,
a California limited liability company

By: ____________________________________
James F. Keller
[Signature must be notarized]
Its: Managing Member

KELLER YOUNTVILLE VINEYARD,
a Delaware limited liability company

By: ____________________________________

[Signature must be notarized]
Its: Managing Member

NOTARY ACKNOWLEDGEMENTS TO BE ATTACHED

EXHIBIT A

POST OFFICE PARCEL LEGAL DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION

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

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

APN: 003-208-001

EXHIBIT B

PARKING LOT PARCEL LEGAL DESCRIPTION

EXHIBIT B

LEGAL DESCRIPTION

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

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

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

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

APN: 003-212-001

EXHIBIT C

WINE VALLEY BOX UNIT PARCEL
LEGAL DESCRIPTION

[forthcoming]

EXHIBIT D

YOUNG BUILDING PARCEL
LEGAL DESCRIPTION

[forthcoming]

EXHIBIT E

PRESERVATION COVENANT

EXHIBIT F

PROJECT DESCRIPTION

[forthcoming]

EXHIBIT G

[Reserved]

EXHIBIT H

IMPACT FEES

Franklin Station Development Impact Fee List

<table>
<tr><th>Description of Fee</th></tr>
<tr><td>Affordable Housing Impact Fee
Hotel Rate (Including For-Sale Hotel Units and Lock-Off Units)- $6.00 per sq ft[2] for Post Office Redevelopment and Mixed Use Development
For-Sale Hotel Units and Lock-Off Unit - $1 per sq ft at close of escrow of each unit</td></tr>
<tr><td>Street Improvement Fee
Hotel (Including For-Sale Units and Lock-Off Units) $1,787 per room/unit
Restaurant-High Turnover Sit Down Downtown- $11,541 per 1,000 sq ft
Restaurant – Quality Sit Down Downtown - $4,647 per 1,000 sq ft
Retail- $6,338 per 1000 sq ft</td></tr>
<tr><td>Utility Underground
Hotel (Including For-Sale Units and Lock-Off Units)- $119 per room
Restaurant-High Turnover Sit Down Downtown- $771 per 1,000 sq ft
Restaurant – Quality Sit Down Downtown - $310 per 1,000 sq ft
Retail- $423 per 1000 sq ft</td></tr>
<tr><td>Fire and Paramedic Impact Fee
Commercial- $0.51 per sq ft for each building
These fees are developed by the Fire Department and are updated annually per Napa Municipal Code Section 15.78 and R2016-164.</td></tr>
<tr><td>Parking Development Impact Fees
$23,000 per non-exclusive parking space</td></tr>
</table>

[2] Developer retains right to propose an Alternative Equivalent in accordance with Napa Municipal Code 15.94.070

EXHIBIT I

<u>COPY OF PD-37</u>