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**DEVELOPMENT AGREEMENT
BY AND BETWEEN**

NAPA COUNTY

AND

NAPA REDEVELOPMENT PARTNERS, LLC

TABLE OF CONTENTS

	<u>Page</u>
1. Incorporation of Exhibits and Recitals	10
2. Definitions	10
2.1 Adjacent Infrastructure	10
2.2 Adoption Date	10
2.3 Agencies	10
2.4 Annual Review Date	10
2.5 Board	10
2.6 CalBRE	10
2.7 CC&Rs	10
2.8 CCRC	10
2.9 CEQA	10
2.10 City	10
2.11 City/County Agreements	10
2.12 City Land Use Regulations	10
2.13 Claims	11
2.14 Community Facilities Space	11
2.15 Complaining Party	11
2.16 Consent	11
2.17 County Executive Officer	11
2.18 County Land Use Regulations	11
2.19 Default	11
2.20 Design and Construction Standards	11
2.21 Design Guidelines	11
2.22 Development Fees and Exactions	11
2.23 Development Plan	11
2.24 Development Agreement Statute	11
2.25 Eastern Parcel	11
2.26 Effective Date	12
2.27 EIR	12
2.28 Enacting Ordinance	12
2.29 Existing City Exactions	12
2.30 Existing City Land Use Regulations	12
2.31 Existing County Land Use Regulations	12
2.32 Existing Development Fees and Exactions	12
2.33 Final Map	12
2.34 Finally Granted	12

TABLE OF CONTENTS *(continued)*

		<u>Page</u>
2.35	First Phase.....	12
2.36	Flood District.....	12
2.37	General Plan.....	12
2.38	Governing Documents.....	12
2.39	GPA.....	12
2.40	gsf.....	12
2.41	Individual Map.....	12
2.42	Industrial Zoning District.....	13
2.43	LAFCO.....	13
2.44	Landowner.....	13
2.45	Law(s).....	13
2.46	Liquid Asset.....	13
2.47	Local Agency and Local Agencies.....	13
2.48	Local Agency Costs.....	13
2.49	Local Agency-wide.....	13
2.50	Lot.....	13
2.51	Low Income Household.....	13
2.52	Map Approval.....	13
2.53	Master Map.....	13
2.54	Membership Warehouse Store.....	13
2.55	Minor Amendment.....	14
2.56	Mitigation Measures.....	14
2.57	MMRP.....	14
2.58	Mortgage.....	14
2.59	Mortgagee.....	14
2.60	MOU.....	14
2.61	Napa Pipe Zoning District.....	14
2.62	Net Worth.....	14
2.63	New Development Fees and Exactions.....	14
2.64	NPIIP.....	14
2.65	Open Space.....	14
2.66	Owners' Association.....	14
2.67	Party.....	14
2.68	Party in Default.....	14
2.69	Permitted Delay.....	14
2.70	Person.....	14
2.71	Phase.....	14
2.72	Phase Infrastructure.....	15
2.73	Plan Review Procedures.....	15

TABLE OF CONTENTS *(continued)*

		<u>Page</u>
2.74	Planning Director	15
2.75	Prevailing Party	15
2.76	Pre Zoning Actions	15
2.77	Processing Fee	15
2.78	Project	15
2.79	Project Approvals.....	15
2.80	Project Infrastructure	15
2.81	Property.....	15
2.82	Public Benefits.....	15
2.83	R&D.....	15
2.84	Required Transferee.....	16
2.85	Responsible Owners Association.....	16
2.86	RHNA	16
2.87	RUL.....	16
2.88	SEA	16
2.89	SOI Effective Date.....	16
2.90	Subdivision Rules	16
2.91	Subsequent Approvals	16
2.92	Subsequent Rule.....	16
2.93	Substantive Amendment.....	16
2.94	Term.....	16
2.95	Transfer	16
2.96	Transferee	16
2.97	Transferred Property	16
2.98	Vested Rights	16
2.99	UPRR	16
2.100	Very Low Income Household.....	16
2.101	Western Parcel	17
2.102	Zoning Ordinance	17
3.	Parties to the Development Agreement.....	17
4.	Description of Property	17
5.	Interest of Landowner	17
6.	Relationship of Local Agencies and Landowner.....	17
7.	Execution and Recording; Effective Date; Term.....	18
7.1	Execution and Recording.....	18
7.2	Effective Date	18

TABLE OF CONTENTS *(continued)*

		<u>Page</u>
7.3	Term	18
7.4	Extension of Term Due to Litigation	18
7.5	Term of Subdivision Maps.....	18
7.6	Automatic Termination Upon Completion of Lots.....	18
7.7	Rights and Obligations Upon Expiration of the Term or Earlier Termination.....	19
8.	Vested Rights.....	19
8.1	Vested Rights and Permitted Uses.....	19
8.2	Exactions.....	20
8.3	[intentionally left blank]	21
8.4	Rules Regarding Design, Engineering and Construction for Project Infrastructure.....	21
8.5	Uniform Codes Applicable	22
8.6	Industrial Zoning District.....	22
9.	Subsequent Rules and Approvals.....	22
9.1	Conflicting Actions.....	23
9.2	Change in State or Federal Law.....	24
9.3	Moratorium, Quotas, Restrictions or Other Growth Limitations.....	24
9.4	Subsequent Approvals	24
9.5	Subsequent Environmental Review	25
10.	Other Governmental Permits; Water Supply	25
10.1	Other Governmental Permits	25
10.2	Water Supply	26
11.	Easements; Right-of-Entry	26
11.1	Easements	26
11.2	Permits to Enter.....	26
12.	Subdivision of Property; Future Tentative Maps.....	26
13.	Affordable Housing Plan.....	26
14.	[intentionally deleted]	26
15.	Project Summary and Public Benefits	26
15.1	Project Summary.....	26
15.2	Public Benefits.....	28
15.3	[intentionally omitted]	30
15.4	Traffic and Intersection Improvements; Parking	30

TABLE OF CONTENTS *(continued)*

		<u>Page</u>
15.5	Stormwater Management Requirements.....	30
15.6	Floodgates.....	30
16.	Project Infrastructure; Owners' Associations	31
16.1	Landowner Responsibilities.....	31
16.2	Local Agency Action; Reimbursement of Local Agency Costs.....	31
16.3	Conditions, Covenants & Restrictions Providing for Public Use and Maintenance of Project Infrastructure	32
16.4	Budget Review.....	36
16.5	Local Agency as Third Party Beneficiary.....	37
17.	No Development Obligation; Phasing	37
17.1	No Development Obligation.....	37
17.2	Phasing.....	38
18.	Permit Processing/Costs	38
18.1	Permit Processing.....	38
18.2	Local Agency Cost Recovery and Landowner Reimbursement Obligations.....	38
19.	Transfers and Assignments.....	39
19.1	Transfers Generally.....	39
19.2	Assignment and Release of Project Infrastructure Obligations	40
20.	Lender Obligations and Protections.....	42
20.1	Encumbrances on the Property	42
20.2	Mortgagee Obligations.....	42
20.3	Mortgagee Protection.....	42
20.4	Notice of Default to Mortgagee; Right of Mortgagee to Cure.....	42
21.	Estoppel Certificate	43
22.	Annual Review	43
22.1	Review Date.....	43
22.2	Required Information from Landowner.....	43
22.3	Local Agency Report	43
22.4	Non-compliance with Agreement; Hearing	44
22.5	Appeal of Determination.....	44
22.6	Costs.....	44
22.7	Effect on Transferees	44
22.8	No Limit on Remedies for Default	45

TABLE OF CONTENTS *(continued)*

	<u>Page</u>
23. Indemnification	45
24. Amendment, Cancellation or Suspension	46
24.1 Modification Because of Conflict with State or Federal Laws	46
24.2 Amendment by Mutual Consent	46
24.3 Substantive Amendments.....	46
24.4 Minor Amendment.....	46
24.5 Amendment Exemptions.....	47
24.6 Cancellation by Mutual Consent.....	47
24.7 Suspension by Local Agency.....	47
25. Default.....	47
26. Remedies for Default	47
27. Procedure Regarding Defaults.....	48
27.1 Notice; Meet and Confer.....	48
27.2 Notice.....	48
27.3 Cure.....	48
27.4 Failure to Assert.....	49
27.5 Procedure for Terminating Agreement upon Default	49
27.6 No Cross Default.....	49
28. Attorneys’ Fees and Costs In Legal Actions by Parties to the Agreement.....	49
29. Attorneys’ Fees and Costs In Legal Actions by Third Parties.....	49
30. Third Party Court Action/Limitation on Action.....	50
31. Eminent Domain	50
32. Agreement Runs with the Land.....	50
33. Bankruptcy	50
34. Insurance	51
34.1 Liability and Property Damage Insurance	51
34.2 Workers’ Compensation Insurance.....	51
34.3 Evidence of Insurance.....	51
35. Excuse for Nonperformance	51
36. Third Party Beneficiary	52

TABLE OF CONTENTS *(continued)*

	<u>Page</u>
37. Notice.....	52
38. Severability	53
39. Waiver; Remedies Cumulative	53
40. Applicable Law and Venue	53
41. Further Assurances.....	53
42. Approvals.....	54
43. Not a Public Dedication	54
44. Entire Agreement.....	54
45. Form of Agreement; Entirety; Recordation; Exhibits	54
46. Construction of Agreement.....	54
47. Signature Pages	55
48. Time.....	55

Exhibits

Exhibit A-1	Legal Description
Exhibit A-2	Map of Property
Exhibit A-3	General Plan Land Use Designation
Exhibit B	Affordable Housing Plan
Exhibit C	Napa Pipe Intersection Improvement Plan
Exhibit D	Phasing Plan
Exhibit E	MMRP
Exhibit F	Plan Review Procedures
Exhibit G	Existing City Exactions
Exhibit H	Land Use Plan
Exhibit I	Subdivision Procedures
Exhibit J	Standards for Maintenance and Security of Streets, Parks and Open Space
Exhibit K	Landowner Indemnification
Exhibit L	Assignment and Assumption Agreement

October 9, 2014

DEVELOPMENT AGREEMENT NAPA PIPE

This Development Agreement (the “**Agreement**”) is entered into as of this ___ day of _____, 2014, by and between **Napa County**, a political subdivision of the State of California (“**County**”) and **Napa Redevelopment Partners, LLC**, a Delaware limited liability company (“**Landowner**”). County and Landowner and their respective successors and Transferees are hereinafter collectively referred to as the “**Parties**” and singularly as “**Party**.”

RECITALS

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

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

C. **Property.** Landowner holds legal or equitable interests in two (2) parcels of real property in unincorporated Napa County located at 1025 Kaiser Road designated by Assessor’s Parcel Numbers (APNs) 046-412-005 and 046-400-030, which parcels comprise a total of approximately 154 acres, and are more particularly described in the legal description attached hereto as Exhibit A-1 (the “**Property**”). The two parcels are separated by Union Pacific Railroad (“**UPRR**”) tracks and right-of-way, which run roughly north-south through the Property and, as indicated below and illustrated on Exhibit A-2 hereto, serve as a dividing line between the portions of the Property with a Waterfront (W) zoning designation and those without a Waterfront (W) zoning designation. For purposes of this Agreement, the portion of the Property to the west of the UPRR tracks and right-of-way, designated by APN 046-412-005, may be referred to as the “**Western Parcel**,” and the portion of the Property to the east of the UPRR tracks and right-of-way, designated by APN 046-400-030, may be referred to as the “**Eastern Parcel**.”

D. **Background.**

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

D.2. **County Housing Element.** On June 23, 2009 (Resolution No. 09-88), the Board certified the County's Housing Element Environmental Impact Report and adopted a General Plan amendment updating the Housing Element which identified the Property as a location for multifamily housing and contained the program to, among other things, rezone 20 acres of the Property to allow housing development at a minimum density of 20 dwelling units per acre (Housing Element Program H-4e). The Housing Element identified Program H-4e as the likely first phase of a larger development, and required the County to rezone at least 20 acres of the Napa Pipe property, allowing at least 304 units (202 of them by right) to fulfill its Housing Element commitment.

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

D.4. **Revised Project.** Subsequently, on or about June, 2012, Landowner submitted a revised project proposal contemplating 700 to 945 housing units, a continuing care retirement community of up to 150 suites with up to 225 beds, a 150-room hotel, an approximately 154,000 square foot Membership Warehouse Store and associated gas station and related facilities, and a wide variety of other uses including approximately 40,000 square feet of neighborhood-serving retail and restaurants, community facilities, research and development ("**R&D**"), light industrial, warehousing and office space, and parks, public open space and other public amenities. The revised project was analyzed in a Supplemental Environmental Analysis ("**SEA**") to the Final EIR dated September 19, 2012. The SEA described the revised project proposal and how its impacts would be mitigated. On October 3, 2012, the Planning Commission recommended the Board take the necessary actions to approve Landowner's revised project proposal.

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

E. **The GPA and Zoning Ordinance, Development Plan and Design Guidelines.** On June 4, 2013, by Resolution 2013 60, the Board of Supervisors adopted CEQA findings, including a Statement of Overriding Considerations, mitigation measures, a Water Supply Assessment that included an evaluation of the feasibility of using City of Napa water supplies to serve the Project (as defined in Recital K), and a General Plan Amendment (the "**GPA**"), and by

Ordinance No. 1382 adopted the zoning ordinance (the “**Zoning Ordinance**”) to add Chapter 18.66 to the Napa County Zoning Code to create the Napa Pipe Zoning District, covering approximately 80 acres of the Property.

E.1. **The General Plan Amendment.** As shown on Exhibit A-3 (General Plan Land Use designations for South County Industrial Lands) attached hereto, the GPA designated the entire Property as the “Napa Pipe Mixed Use” area, with the exception of a 19-acre portion of the Eastern Parcel which was designated as “Study Area.” The GPA allows Urban Residential, Commercial, Industrial, office, and open space and recreational uses on the Property. On the Western Parcel, the GPA allows up to 700 residential dwelling units (or up to 945 residential dwelling units with a state-required density bonus), up to 50,000 square feet of enclosed non-residential uses, one hotel with up to 150 suites and associated uses such as meeting space and spa, and a continuing care retirement and assisted living facility for seniors with up to 150 units (containing up to 225 beds). On the Eastern Parcel, outside of the Study Area, the GPA allows up to 319,000 gross square feet (“**gsf**”) of enclosed non-residential uses, including approximately 154,000 gsf of Membership Warehouse Store, 90,000 gsf of office use and 75,000 gsf of warehouse and R&D uses. As specified in Policy AG/LU-52 of the General Plan, the “Study Area” designation allows industrial uses to continue pursuant to existing zoning, but signals the need for further site- or area-specific planning to assess the potential for a mix of uses within the Study Area.

E.2. **The Zoning Ordinance.** As shown on the map of the Property attached hereto as Exhibit A-2, the Napa Pipe Zoning District is divided into three (3) distinct areas carrying three (3) different zoning designations: (1) the Napa Pipe - Mixed Use Residential Waterfront:Airport Compatibility (NP-MUR-W:AC) designation; (2) the Napa Pipe - Industrial/Business Park Waterfront:Airport Compatibility (NP-IBP-W:AC) designation; and (3) the Napa Pipe – Industrial/Business Park:Airport Compatibility (NP-IBP:AC) designation. As further shown on Exhibit A-2, roughly 63 acres of the Napa Pipe Zoning District (the areas designated NP-MUR-W:AC and NP-IBP-W:AC) comprise all of the Western Parcel that lies west of the UPRR tracks and right-of-way, and the remaining roughly 17 acres of the Napa Pipe Zoning District (the area designated NP-IBP:AC) that lies east of the UPRR tracks and right-of-way. Consistent with the GPA, the Napa Pipe Zoning District allows for development of a mixed-use neighborhood on a portion of the Western Parcel, and 154,000 square feet of Membership Warehouse Store on a portion of the Eastern Parcel.

E.3. **Industrial Zoning District.** The remaining approximately 74.5 acres of the Eastern Parcel, as shown on Exhibit A-2, are designated Industrial:Airport Compatibility (I:AC) under the County’s Zoning Code. For purposes of this Agreement, this approximately 74.5-acre area is referred to as the “**Industrial Zoning District**.” The Zoning Ordinance did not affect the Industrial Zoning District (which includes the 19-acre “**Study Area**”).

E.4. **Development Plan and Design Guidelines.** Development within the Napa Pipe Zoning District must conform to a development plan and design guidelines approved by the County. In accordance with the Zoning Code, on _____, 2014, the Planning Commission recommended Board approval of the Napa Pipe Design Guidelines (“**Design Guidelines**”) and the Napa Pipe Development Plan (the “**Development Plan**”), each dated as of

_____, 2014. Concurrently with the approval of this Agreement, the Board adopted the Development Plan and Design Guidelines by Ordinance No. _____.

F. **Site Remediation, County Growth Management System and Water Service.** The Napa Pipe Zoning District requires environmental remediation of the Property and grading to raise the elevation of the Western Parcel and a portion of the Eastern Parcel out of the flood plain. Neither the GPA, Napa Pipe Zoning District or this Agreement exempt the Project from the County’s Growth Management System (annual permit limit) (General Plan Policy AG/LU-119). The Zoning Ordinance provides that approval by the County of a development plan or tentative map for the Project be conditioned upon a “‘will serve’ approval from the City of Napa or an alternate source for the provision of water, and evidence that groundwater will not be used.”

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

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

I. **Potential Annexation to City of Napa.** The Parties anticipate, but not as a condition or term of this Agreement, and subject to City voter approval of a proposal to modify the City’s Rural Urban Limit (“**RUL**”) Line (which has been authorized by City Council to be placed on City ballot for November 4, 2014 and approval by the Napa County Local Agency Formation Commission (“**LAFCO**”) of City applications to amend its Sphere of Influence and to annex the Property in phases, that (i) the commercial portions of the Property zoned NP-IBP-W:AC and NP-IBP:AC will annex to the City as soon as is practical following City voter approval of the RUL line modification; (ii) the residential portions of the Property will annex to the City generally in phases as they are developed and contiguous to City boundaries; and (iii) any remaining Property not annexed prior to December 31, 2022 will annex as of that date. If the City, County and Landowner reach agreement to facilitate the annexation of the Property to City jurisdiction, it is anticipated that the City would take the following actions

I.1. Submit an application to LAFCO to (a) amend the City’s Sphere of Influence boundary to include the Property; and (b) provide water service to the Property;

I.2. Approve and enter into an Annexation Consent, Protest Waiver and Water Service Agreement with Landowner, setting forth terms and conditions under which the City would provide water service and take certain actions related to annexation of the Property;

I.3. Adopt pre-zoning controls for the Property consistent with the GPA, Zoning Ordinance, Development Plan and Design Guidelines, and such other actions as are necessary to conform with this Agreement, including, without limitation, appropriate revisions to the City's Subdivision Code as applied to the Project as reflected in Exhibit I attached hereto ("**Pre-Zoning Actions**");

I.4. Approve various agreements between the City and County related to annexation, public services, tax sharing agreements and development coordination, which may include the following (collectively, the "**City/County Agreements**"):

- (i) An agreement regarding the allocation of property tax and other tax revenues generated by the Napa Pipe Site;
- (ii) An agreement regarding the provision of municipal services for the Napa Pipe Project;
- (iii) An agreement regarding RHNA for future housing element planning periods;
- (iv) Agreements regarding plan check and permit inspection services; and
- (v) An agreement regarding City annexation obligations and roles of City and County with respect to the processing of development applications and building permits, payment of fees and administration of this Agreement.

J. **Planning Commission Public Hearing.** On October 15, 2014, at a duly noticed public hearing, the Planning Commission of Napa County, serving as the County's planning agency for purposes of development agreement review pursuant to Government Code Section 65867, considered this Agreement. The Planning Commission recommended that the Board approve the Development Plan, Master Map and recommended approval of this Development Agreement. On October 29, 2014, at a duly noticed public hearing, the Planning Commission also recommended that the Board approve the Design Guidelines.

K. **Project and Project Approvals.** The County has adopted the following land use approvals (together the "**Project Approvals**") for a mixed use project known as Napa Pipe (the "**Project**") located on the Property, which Project Approvals include and are the subject of this Agreement:

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

K.2. Ordinance No. 1382, approved by the Board on June 4, 2013, adding chapter 18.66 to the Napa County Code to create the Napa Pipe Zoning District, as described in Recital E.2 above, and specifying conditions of approval for future development in the Napa Pipe Zoning District;

K.3. Resolution No. _____, approved by the Board of Supervisors on _____, 2014, approving a Tentative Map for the Project (the “Master Map”);

K.4. Ordinance No. _____, approved by the Board on _____, 2014, approving the Development Plan for the Napa Pipe Zoning District portion of the Property;

K.5. Ordinance No. _____, approved by the Board on _____, 2014, approving the Design Guidelines for the Napa Pipe Zoning District portion of the Property; and

K.6. Ordinance No. _____, approved by the Board on _____, 2014, approving this Agreement (the “**Enacting Ordinance**”).

L. **Project Approvals Consistent with the General Plan.** The Project Approvals are consistent with and implement the goals and policies of the County’s General Plan, and satisfy the necessary requirements and goals of all other applicable laws of the County. In particular, the GPA, Zoning Ordinance, Master Map, Design Guidelines and the Development Plan provide balanced and diversified land uses in order to maintain the overall quality of life and the environment within the County, to impose appropriate requirements with respect to land development and usage, and to provide substantial amounts of open space for the public’s use and enjoyment. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the County found that this Agreement satisfies the Government Code Section 65867.5 requirement of general plan consistency.

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

N. **Appropriateness of Development Agreement.** County has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the County’s land use planning process and secure

orderly development of the Project consistent with the Project Approvals, assure progressive and timely installation of necessary improvements and mitigation appropriate to each stage of development of the Project, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. The Project is highly capital intensive, especially in its initial phases, which, in order to make the Project economically and fiscally feasible, requires major commitment to and investment in public facilities and on-site and off-site improvements prior to the construction and sale or leasing of the residential, retail and commercial units. In order to enable the Landowner to expend the necessary sums to prepare the plans referred to in this Agreement and to pursue other various pre-development work associated with the development of the Project, the County desires to provide certainty through this Agreement with respect to specific development criteria to be applicable to the Property in order to provide for appropriate utilization of the Property in accordance with sound planning principles.

O. Public Benefits Provided Pursuant to the Development Agreement. The Board determined that the development of the Project will afford the County and its citizens and the surrounding region with the following primary benefits (all as set further forth in Section 15 of this Agreement), which include both public benefits provided by the Project in accordance with the Project Approvals and public benefits in excess of those which could be expected from the Napa Pipe Project in absence of this Agreement (collectively, the “**Public Benefits**”):

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

O.2. Payment to the County of an Affordable Housing Contribution (as defined in the Affordable Housing Plan) in excess of that required under County Code Chapter 18.107, through the payment of \$1,000,000 into the County’s affordable housing trust fund established pursuant to Section 18.107.020 of the Napa County Code . \$750,000 of this amount will be provided by the County to the Qualified Housing Developer (as defined in the Affordable Housing Plan attached as Exhibit B hereto) of the first low- and very-low income development project on the Property and \$250,000 will be used by the County to fund the County’s Proximity Housing Assistance Program to provide homebuyer assistance for affordable residential ownership units developed on the Property.

O.3. Anticipated construction in Phase One of the Project of an approximately (but not to exceed) 154,000 square foot Membership Warehouse Store, such as a Costco, or, if good faith efforts fail to result in a purchase agreement for a Membership Warehouse Store within two years after the Effective Date of the Development Agreement, fiscal impact payments if development of a Membership Warehouse Store is delayed or not constructed (as more particularly described in the Phasing Plan attached hereto as Exhibit D).

O.4. Reservation and dedication of an approximately 10-acre school site to the Napa Valley Unified School District pursuant to a separate agreement between Landowner and Napa Valley Unified School District.

O.5. Construction of approximately 15,600 square feet of various community facilities at Landowner’s sole cost and expense, including the following:

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

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

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

(iv) Construction of a neighborhood-serving day care facility of approximately 3,600 gsf of indoor space and 4,500 gsf of outdoor space integrated into the neighborhood center.

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

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

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

O.6. Implementation of an outreach and marketing program applicable to all market rate and inclusionary moderate-income units that provides persons who live or work in the County with preferential access to units for sale;

O.7. Creation of a wide variety of homeownership opportunities in a wide range of price points;

O.8. Creation of substantial property tax revenue;

O.9. Construction of, and payments towards, traffic and transportation improvements identified in the NPIIP (also referred to as the Napa Pipe Traffic Mitigation Fee Program in the MMRP) attached hereto as Exhibit C;

O.10. Creation of right-of-way improvements, streets and roads within the property, public utilities infrastructure, pedestrian and bicycle paths, fair share Mitigation Measures and other infrastructure improvements and facilities required by the MMRP;

O.11. Creation of sustainable storm water treatment system and features designed to naturally reduce or avoid water quality and hydrologic impacts, such as green roofs, bio-retention areas, vegetated swales, cisterns, pervious pavements and flow-through planters;

O.12. Creation of provisions in the Zoning Code and Development Plan which would permit future development of a hotel on the Property when the market demand exists for a new hotel;

O.13. Development of a community farm of approximately four acres;

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

O.15. Site remediation of the entire Property pursuant to an approved Remedial Action Plan; and

O.16. Development of multifamily housing consistent with Housing Element Program H-4e that will fully satisfy the County's Regional Housing Needs Allocation requirements under State law.

O.17 If demand requires, construction of a neighborhood serving day care facility of approximately 3,600 gross square feet of indoor space and 4,500 gross square feet of outdoor space integrated into the center of the neighborhood.

P. Reasons for this Agreement.

P.1. Extraordinary Benefits/County Housing Element Consistency. The County is entering into this Agreement in consideration of the Public Benefits described above, as well as for purposes of achieving consistency with the Housing Element. Consistent with the County's inclusionary and density bonus ordinances, this Agreement provides that 20% of the units must be deed-restricted to be affordable to low-, very low- and moderate-income households, and entitles Landowner to a density bonus by providing more affordable units and/or greater levels of affordability than required. Landowner has agreed to make 20% of the units affordable (including 50 moderate-income units and 140 combined low- and very low-income units, of which at least 70 shall be very low-income units) and to institute an outreach and marketing program to promote the availability of housing to members of the local workforce, which commitments are documented in this Agreement. As set forth in this Agreement, the Project includes significant affordable housing at greater levels of affordability than required under the County Code and will address the County's RHNA by implementing Housing Element Program H-4e (requiring the County to rezone 20 acres of the Napa Pipe property to allow housing development at a minimum density of 20 dwelling units per acre for 304 dwelling units with associated public open space and neighborhood serving retail, of which between 152 and 202 owner-occupied or rental dwelling units will be allowed by right (i.e., without a use permit or other discretionary approval except subdivision approval if required).

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

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

AGREEMENT

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

2. Definitions

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

2.1 Adjacent Infrastructure. Defined in Section 2 of the Phasing Plan.

2.2 Adoption Date. _____, 2014, the date the Board adopted the Enacting Ordinance.

2.3 Agencies. Defined in Section 26.

2.4 Annual Review Date. Defined in Section 22.1.

2.5 Board. Defined in Recital D.

2.6 CalBRE. Defined in Section 16.3.1.

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

2.8 CCRC. A continuing care retirement community project to be developed on the Property in the location identified as Senior Housing on the Land Use Plan.

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

2.10 City. The City of Napa, a municipal corporation.

2.11 City/County Agreements. Defined in Recital I.5.

2.12 City Land Use Regulations. The ordinances, resolutions, codes, rules, regulations and official policies of the City governing the permitted uses of land, density, design, improvement and construction standards and specifications to the extent applicable to the Property (or portion thereof) and property upon which required off-site Project Infrastructure will be constructed in the event that the Property (or portion thereof) is annexed into the City, as any of the foregoing may be amended by the Pre-Zoning Actions. Specifically, but without limiting the generality of the foregoing, City Land Use Regulations shall include (i) the City of Napa General Plan, (ii) Title 17 (Zoning) of the City's Municipal Code, (iii) the City's Subdivision

Ordinance Regulations, (iv) this Agreement to the extent the Property is annexed to the City, and (v) all other ordinances, resolutions, regulations, and official policies of the City governing land use development and building construction, as any of the foregoing or their application may have been amended by the Pre-Zoning Actions or this Agreement.

2.13 Claims. Defined in Section 23.

2.14 Community Facilities Space. Defined in Section 15.2.4.

2.15 Complaining Party. Defined in Section 27.

2.16 Consent. Defined in Section 42.

2.17 County Executive Officer. The Napa County Executive Officer or his or her designee.

2.18 County Land Use Regulations. The ordinances, resolutions, codes, rules, regulations and official policies of the County, governing the permitted uses of land, density, design, improvement and construction standards and specifications to the extent applicable to the development of the Property and property upon which required off-site Project Infrastructure will be constructed. Specifically, but without limiting the generality of the foregoing, County Land Use Regulations shall include the County's General Plan (including the GPA), the County's Zoning Code (including the Zoning Ordinance and the County's Growth Management System Ordinance (General Plan Agricultural Preservation and Land Use Element, Policy AG/LU-119)), and the County's Subdivision Code regulations, all as may be amended by the Development Plan, the Design Guidelines, this Agreement and all other Project Approvals.

2.19 Default. Defined in Section 25.

2.20 Design and Construction Standards. Defined in Section 8.4.

2.21 Design Guidelines. Defined in Recital E.4.

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

2.23 Development Plan. Defined in Recital E.4.

2.24 Development Agreement Statute. Defined in Recital A.

2.25 Eastern Parcel. The 91-acre portion of the Property lying to the east of the UPRR tracks and right-of-way, as described in Recital C and shown in shown in Exhibit A-2, consisting of the parcels zoned NP-IBP:AC and I:AC under the County of Napa Zoning Code.

2.26 Effective Date. Defined in Section 7.2.

2.27 EIR. Defined in Recital D.5 above.

2.28 Enacting Ordinance. Defined in Recital K.6 above.

2.29 Existing City Exactions. Defined in Section 8.2.

2.30 Existing City Land Use Regulations. As to any annexed Property collectively, the City Land Use Regulations in effect as of the Adoption Date, as may be subsequently amended by the Pre-Zoning Actions.

2.31 Existing County Land Use Regulations. The County Land Use Regulations in effect as of the Adoption Date.

2.32 Existing Development Fees and Exactions. Defined in Section 8.2.

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

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

2.35 First Phase. The First Phase of Development as shown as Phase One on the Phasing Plan attached hereto as Exhibit D.

2.36 Flood District. The Napa County Flood and Water Conservation District.

2.37 General Plan. The General Plan for the County, adopted by the Board on June 3, 2008, as subsequently amended, and in effect as of the Adoption Date. The term “**General Plan**” as used herein includes the GPA.

2.38 Governing Documents. Defined in Section 16.3.1.

2.39 GPA. Defined in Recital E.

2.40 gsf. Defined in Recital E.1.

2.41 Individual Map. Defined in Section 2.54.

- 2.42 Industrial Zoning District.** Defined in Recital E.3 and described in Exhibit A-2.
- 2.43 LAFCO.** Defined at Recital I.
- 2.44 Landowner.** Napa Redevelopment Partners, LLC, and its Transferees, as applicable and as determined at the time in question.
- 2.45 Law(s).** The laws of the State of California, the Constitution of the United States and any codes, statutes, regulations or mandates in any court decision, state or federal, thereunder.
- 2.46 Liquid Asset.** Defined in Section 19.2.2.
- 2.47 Local Agency and Local Agencies.** Defined in Section 3.
- 2.48 Local Agency Costs.** Defined in Section 18.2.1.
- 2.49 Local Agency-wide.** All (a) privately owned property in the territorial limits of Local Agency, and (b) privately owned property within a designated use district or classification of the Local Agency, so long as (i) any such use district or use classification includes a substantial amount of affected private property other than the affected portion of the Property, and (ii) the use district or use classification includes substantially all private property within the use district or use classification that receives the general or special benefits of, or cause the burdens that occasion the need for the new or increased Development Fees or Exactions.
- 2.50 Lot.** As defined in Section 7.6.
- 2.51 Low Income Household.** A household whose income does not exceed the low income limits applicable to Napa County, as published and periodically updated by HCD pursuant to Section 50079.5 of the California Health and Safety Code, or successor provision, with adjustments for household size.
- 2.52 Map Approval.** Any parcel map or tentative tract map approved by the County Planning Commission or the Board (or upon annexation, by the City Planning Commission or City Council) at any time in the future, which subdivides all or a portion of the Property. Each such map shall be called an “**Individual Map**.”
- 2.53 Master Map.** The tentative subdivision map, approved by the Board on _____, 2014, by Resolution No. _____, and also described in Recital K.3, that subdivides the Property consistent with the Land Use Plan attached hereto as Exhibit H, and as set forth in the Development Plan.
- 2.54 Membership Warehouse Store.** The use described and permitted as “General Wholesale Sales Commercial Activities” under Section 18.66.250 of the Napa County Code of Ordinances as of the Adoption Date of this Agreement, and specifically including operations such as Costco, or such other wholesale sales commercial user of similar type and

quality, not to exceed 154,000 square feet, and an associated gas station, convenience store, and related facilities and improvements as reasonably approved by the Local Agency.

2.55 Minor Amendment. Defined in Section 24.4.

2.56 Mitigation Measures. The mitigation measures applicable to the Project developed as part of the EIR process and adopted as part of the Project Approvals, and reflected in the MMRP, and to be implemented as provided in the MMRP.

2.57 MMRP. The Mitigation Monitoring and Reporting Plan adopted as part of the Project Approvals, adopted by the Board on June 4, 2013, by Resolution No. 2013-60, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference.

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

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

2.60 MOU. Defined in Recital G.

2.61 Napa Pipe Zoning District. Defined in Recital E and Exhibit A-3.

2.62 Net Worth. Defined in Section 19.2.2.

2.63 New Development Fees and Exactions. Defined in Section 8.2.8.

2.64 NPIIP. Defined in Section 15.4.1.

2.65 Open Space. Defined in Section 2.79.

2.66 Owners' Association. Defined in Section 16.3.2(d)(i).

2.67 Party. County, Landowner, and their respective successors, assignees or Transferees, determined as of the time in question, and collectively they shall be called the "**Parties**."

2.68 Party in Default. Defined in Section 27.

2.69 Permitted Delay. Defined in Section 35.

2.70 Person. An individual, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.

2.71 Phase. Defined in Section 1.2 of the Phasing Plan attached hereto as Exhibit D.

2.72 Phase Infrastructure. Defined in Section 1.2 of the Phasing Plan attached hereto as Exhibit D.

2.73 Plan Review Procedures. Those procedures governing review and approval of buildings within the Project set forth in Exhibit F attached hereto.

2.74 Planning Director. The County's Director of Planning, Building and Environmental Services, or in the case of any annexed Property, the City's Community Development Director.

2.75 Prevailing Party. Defined in Section 28.

2.76 Pre Zoning Actions. Defined in Recital I.4.

2.77 Processing Fee. A Local Agency wide fee payable upon the submission of an application for a permit or approval which covers only the estimated actual and non-duplicative or supplemental costs to Local Agency of processing that application in accordance with regular practices on a Local Agency wide basis, and is not a Development Fee or Exaction.

2.78 Project. Defined in Recital K.

2.79 Project Approvals. Defined in Recital K.

2.80 Project Infrastructure. The lands and facilities, both on the Property and off-site, to be improved and constructed by Landowner, and publicly dedicated or made available for public use, as provided by the Project Approvals and this Agreement. Except as provided in the Development Plan, all Project Infrastructure on the Property is located in the Napa Pipe Zoning District. More specifically, Project Infrastructure includes improvements constructed for public use and dedicated or conveyed to a public agency (such as the County, the City, a public utility service provider, or any other public agency) to be operated and maintained by such public agency, as well as improvements on private property that will, pursuant to this Agreement, be constructed, operated and maintained by Landowner or its successor owners' associations(s), but will be held open and made available to the public for public uses in accordance with the CC&Rs. Project Infrastructure includes, without limitation, all right-of-way improvements, streets and roads; all utilities facilities (such as gas, electricity, cable television and communications, water, sewer and storm drainage); pedestrian and bicycle paths and trails, parks and other open space ("**Open Space**"); the community facilities described in Recital O.5; and all other improvements and facilities required or called for by the Development Plan, the Mitigation Measures and this Agreement to be constructed or installed by Landowner. The Project Infrastructure in the Napa Pipe Zoning District that will be constructed, installed, operated and maintained by Landowner (or its successors owners' associations) on private property and held open and made available to the public for public uses is described in the Development Plan.

2.81 Property. Defined in Recital C.

2.82 Public Benefits. Defined in Recital O above.

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

2.84 Required Transferee. Defined in Section 22.1.

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

2.86 RHNA. Defined in Recital G.

2.87 RUL. Defined in Recital I.

2.88 SEA. Defined in Recital D.4.

2.89 SOI Effective Date. Defined in Section 8.2.

2.90 Subdivision Rules. Defined in Section 1.2 of the Phasing Plan.

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

2.92 Subsequent Rule. Defined in Section 9.

2.93 Substantive Amendment. Defined in Section 24.3.

2.94 Term. Defined in Section 7.3.

2.95 Transfer. Defined in Section 19.1.

2.96 Transferee. Defined in Section 19.1.

2.97 Transferred Property. Defined in Section 19.1.

2.98 Vested Rights. Defined in Section 8.1.

2.99 UPRR. Defined in Recital C.

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

2.101 Western Parcel. The approximately 63-acre portion of the Property lying to the west of the UPRR tracks and right-of-way consisting of the parcels zoned NP-MUR-W:AC and NP-IBP-W:AC under the County of Napa Zoning Code on the Adoption Date, as described in Recital C and shown on Exhibit A-2.

2.102 Zoning Ordinance. Defined in Recital E.

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

(a) Napa County, a political subdivision of the State of California exercising general governmental functions and power. The principal place of business of the County is located at 1195 Third Street, Suite 310, Napa, CA 94559.

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

(c) Upon annexation of all or any portion of the Property to the City, the City of Napa will immediately become a Party to this Agreement with respect to the annexed portion of the Property and County will be fully released from all obligations hereunder as to the annexed portion arising from and after the effective date of the annexation, except as specifically provided herein or in the City/County Agreements.

For purposes of this Agreement, the term “**Local Agency**” means the County as to any portion of the Property that is within County jurisdiction, and City as to any portion of the Property that is annexed to the City, and the term “**Local Agencies**” means the County and the City.

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

5. Interest of Landowner. The Landowner hereby represents and warrants that it presently has a legal or equitable interest in the entire Property sufficient to satisfy the requirement of California Government Code section 65865.

6. Relationship of Local Agencies and Landowner. The Parties specifically acknowledge that the Project is a private development, that no Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Landowner, the affairs of a Local Agency, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Local Agencies and Landowner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making a Local Agency and Landowner joint venturers or partners.

7. Execution and Recording; Effective Date; Term.

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

7.2 Effective Date. Provided that no referendum applicable to the Enacting Ordinance or any other Project Approval has been timely filed and submitted to the County, then the Effective Date of this Agreement shall be _____, 2014, which is the effective date of County Ordinance No. _____ adopting this Agreement (the “**Effective Date**”). If such a referendum has been timely filed and submitted, then this Agreement shall remain binding upon all of the Parties but all of the Parties’ respective rights and obligations shall be suspended until the date upon which the Enacting Ordinance is Finally Granted, which date shall then be the Effective Date.

7.3 Term. The term of this Agreement shall commence on the Effective Date and extend for a period of twenty (20) years (“**Term**”), unless said Term is terminated, modified or extended by the terms of this Agreement. Notwithstanding the foregoing, consistent with Government Code Section 65865.3, the Term of this Agreement shall be modified upon annexation of any portion of the Property to City as to such annexed portion of the Property for (i) the duration of such twenty (20) year Term or eight (8) years from the effective date of such annexation, whichever is earlier, or, (ii) pursuant to the agreement of City and Landowner in an Annexation Consent, Protest Waiver and Water Service Agreement, the later of the period described in subsection (i) above or fifteen (15) years from the effective date of the annexation of the Property or portion thereof. Following the expiration of the Term or any extension thereof this Agreement shall have no force and effect, except as specifically provided herein.

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

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

7.6 Automatic Termination Upon Completion of Lots. This Agreement shall be terminated with respect to any single-family, condominium attached or detached residential or commercial lot created under any recorded Final Map (in each case, a “**Lot**”,

without any further action by any Party or need to record any additional document upon the issuance of a final certificate of occupancy or similar certificate for the applicable Lot.

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

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

7.7.2 Termination shall not affect any right of Landowner arising from any previously granted Project Approval and Subsequent Approval for development of all or any portion of the Project, including, without limitation, Landowner's right to complete and/or occupy any Project Infrastructure, building or other improvement authorized by such Project Approval or Subsequent Approval, provided that any such Project Infrastructure, building or improvement is completed in accordance with all previously granted Project Approvals and Subsequent Approvals in effect at the time of such termination.

8. Vested Rights.

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

permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes).

8.2 Exactions. Except as otherwise provided in this Agreement, including, without limitation, Sections 8 and 9 hereof, Local Agency shall not impose any further or additional Development Fees or Exactions on the development of the Project, whether through the exercise of the police power, the taxing power, design review, conditions of approval or any other means other than (i) the County’s Non-Residential Affordable Housing Impact Fee (Napa County Zoning Code, Chapter 18.07 or such replacement provision in effect from time to time), (ii) from and after the effective date of LAFCO’s approval of a modification to the City’s Sphere of Influence boundary to include the Property (the “**SOI Effective Date**”), if at all, the Development Fees and Exactions described in Exhibit G (“**Existing City Exactions**”), and (iii) all other Development Fees and Exactions set forth in the Project Approvals, the Mitigation Measures and this Agreement. Landowner shall pay the County’s Non-Residential Affordable Housing Impact Fee directly to County in connection with the issuance of all non-residential building permits issued for development of the Property, regardless of whether such permits are issued for a portion of the Property that has been annexed to the City or for a portion of the Property that remains in an unincorporated area of the County. From and after the SOI Effective Date until the date that a particular portion of the Property annexes to the City, Landowner shall, in connection with the applicable Subsequent Approval for development of such portion of the Property, provide evidence of payment to the City of each applicable Existing City Exaction in accordance with standard procedures or actions that would make such payment due (e.g., at time of issuance of building permit or certificate of occupancy) and that would normally be collected by City for such Subsequent Approval if the applicable portion of the Property were in City jurisdiction. Such payment shall be in lieu of any comparable or other Development Fee and Exactions imposed by the Local Agency, of whatever kind or nature, except as specifically provided in this Agreement. Local Agency and Landowner acknowledge that the provisions contained in this Section 8.2 are intended to implement the intent of the Parties that Landowner has the right to develop the Project pursuant to specified and known criteria and rules, and that Local Agency receive the benefits which will be conferred as a result of such development without abridging the right of Local Agency to act in accordance with its powers, duties and obligations. Notwithstanding the foregoing, the limit on new Development Fees and Exactions hereunder shall not include the following, all of which shall apply to the Project:

8.2.1 terms of water service separately negotiated between Landowner and the water service provider;

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

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

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

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

8.2.6 The first increase to the County's Non-Residential Affordable Housing Impact Fee that occurs during the first ten (10) years after the Effective Date so long as such increase is applicable on a Local Agency-wide basis;

8.2.7 Increases to Existing City Fees and Exactions occurring any time after the date that is five (5) years after the Effective Date, so long as such increases are applicable on a Local Agency-wide basis;

8.2.8 New Development Fees and Exactions imposed by the County that are either in effect as of the date that is ten (10) years after the Effective Date, or enacted ten (10) years or more after the Effective Date, and New Development Fees and Exactions imposed by the City that are either in effect as of the date that is five (5) years after the Effective Date, or enacted five (5) years or more after the Effective Date (collectively, "**New Development Fees and Exactions**"), so long as such New Development Fees and Exactions (a) are imposed on a Local Agency-Wide basis, (b) are at identical levels as imposed against other Local Agency-Wide private property and (c) are not for purposes of funding affordable housing, street, traffic, transportation or transit improvements or park or open space development and acquisition. Nothing in this Agreement shall limit a Local Agency's right and power to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, against the Property, or any portion thereof, that is enacted in accordance with all applicable laws and applies to all similarly-situated property on a Local Agency-wide basis, provided (i) a Local Agency shall not institute on its own initiative proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 et seq.) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Property unless the new district is on a Local Agency-wide basis or Landowner gives its prior written consent to or requests such proceedings, (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at any or all of the Property, and (iii) the governing body of a Local Agency shall not institute on its own initiative proceedings for any new or increased tax for purposes of funding affordable housing, street, traffic, transportation or transit improvements or park or open space development, programming or acquisition with respect to the Property or Project.

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

8.2.10 Local Agency wide General Plan update fees.

8.3 [intentionally left blank]

8.4 Rules Regarding Design, Engineering and Construction for Project Infrastructure. Except as otherwise provided herein for water and sewer service infrastructure

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

8.5 Uniform Codes Applicable. The Project shall be constructed in accordance with the provisions of the California Building Standards (including, without limitation, the California Green Building Standards), Building, Mechanical, Plumbing, Electrical and Fire Codes, the standard construction specifications of the Local Agency issuing the applicable building or improvement permit (whether or not the applicable work of construction is thereafter annexed to the City prior to issuance of a Certificate of Occupancy or notice of completion for Project Infrastructure) and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project. Without limiting the foregoing, the then-current California Green Building Standards Code, or some or all of the Amendments to the California Green Building Standards Code, as set forth in Section 15.04 of the City’s Municipal Code, whichever standard is more stringent, shall apply to the Project.

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

9. Subsequent Rules and Approvals. Except as set forth in Sections 8.2 and 8.4 above and 9.1 through and including 9.3 below, during the Term of this Agreement, no Local Agency ordinances, resolutions, rules, regulations or official policies enacted after the Adoption

Date (“**Subsequent Rule**”) that conflict with the Vested Rights of Landowner set forth in this Agreement, shall be applicable hereunder without Landowner’s written consent; provided, however, that nothing herein shall prevent Local Agency from taking such action as may be necessary and appropriate to protect the physical public health and/or safety impacts caused by the Project or to protect residents of the Local Agency against specific physical health and/or safety impacts.

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

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

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

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

9.1.4 requiring the issuance of Subsequent Approvals other than those required or contemplated under the Existing County Land Use Regulations or, as to annexed portions of the Property, Existing City Land Use Regulations;

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

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

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

9.1.8 Changing or limiting Project Approvals.

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

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

9.3 Moratorium, Quotas, Restrictions or Other Growth Limitations. Landowner and Local Agency intend that, except as otherwise provided in this Agreement, this Agreement shall vest the Project Approvals against subsequent Local Agency resolutions, ordinances, initiatives, and other actions, of whatever nature, that would limit the rate, timing, or sequencing of development (except as provided for herein), or prevent or conflict with the permitted uses, and the density and intensity of uses as set forth in the Project Approvals; provided, however, Landowner shall be subject to any growth limitation ordinance, resolution, rule, regulation or policy which (a) is adopted or applied on a Local Agency-wide basis, and (b) directly concerns an actual and serious risk to health and safety arising solely from one of the following: (i) inability to obtain required water supply for the Project; or (ii) changes mandated and required by Laws, in which case Local Agency shall treat Landowner in a uniform, Local Agency-wide, equitable and proportionate manner with all properties, public and private, which are impacted by that actual and serious risk to safety. Without limiting the foregoing, the Parties acknowledge that the County's Growth Management System (General Plan Policy AG/LU-119) applies to the Property, and prior to annexation of any affected residential portion of the Property to the City, the number of residential building permits issued shall not exceed the number permitted under the County's Growth Management System, which number shall be calculated to include, without limitation, any unused remainder of annual allocations of residential building permits issued by the County which shall be cumulated and carried over from the three prior years.

9.4 Subsequent Approvals.

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

9.4.2 Development applications for new development that require review and approval for consistency with the Development Plan and Design Guidelines shall be processed in accordance with the Plan Review Procedures attached hereto as Exhibit F. In the processing of Subsequent Approvals, the Local Agency may retain a third party permit review consultant having experience and ability to review the application. Such reviews shall be conducted in accordance with this Agreement, including the Plan Review Procedures in Exhibit F hereto. Landowner shall pay all applicable Processing Fees and reimburse the Local Agency issuing the applicable Subsequent Approval for the Local Agency's actual costs incurred in the permit review and inspection process including, but without duplication of reviews or costs, by any third-party consultant, subject to Landowner's right to dispute such costs by the procedure set forth in Section 18.2.3.

9.5 Subsequent Environmental Review.

9.5.1 Subsequent Environmental Review. The provisions of CEQA, as they may be amended from time to time, shall apply to any Subsequent Approval for the Project. The Parties acknowledge, however, that the EIR contains a thorough analysis of the Project and Project alternatives and specifies the feasible Mitigation Measures necessary to eliminate or reduce to an acceptable level adverse environmental impacts of the Project, and acknowledge that the Board issued a statement of overriding considerations in connection with the Project Approvals, pursuant to 14 California Code of Regulations (CEQA Guidelines) Section 15093, for those significant impacts which could not be mitigated. For these reasons, no further review or mitigation under CEQA shall be required by Local Agency for any Subsequent Approvals unless the standards for further environmental review under CEQA are met for reasons as specified in California Public Resources Code Section 21166.

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

10. Other Governmental Permits; Water Supply.

10.1 Other Governmental Permits. Landowner shall apply for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Local Agency shall reasonably cooperate with Landowner

in its efforts to obtain such permits, agreements, entitlements or approvals as may be necessary or desirable for the development, operation and use of the Project.

10.2 Water Supply. The Napa Pipe Zoning District requires that as a condition of County approval of the Master Map and Development Plan, the Landowner must provide a “will serve” approval from the City of Napa or an alternate source for the provision of water, and evidence that groundwater will not be used.” The County has included this requirement as a condition to approval of the Master Map and Development Plan.

11. Easements; Right-of-Entry.

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

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

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

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

14. [intentionally deleted].

15. Project Summary and Public Benefits.

15.1 Project Summary. The Project shall be consistent with the Land Use Plan attached hereto as Exhibit H and more particularly described in the Development Plan, and

includes the following improvements (and to the extent the following is inconsistent with the Development Plan, the Development Plan shall control):

15.1.1 Up to 945 residential housing units, of which approximately 20% would be deed restricted, as described in the Affordable Housing Plan, as affordable to moderate, low- and very-low income households;

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

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

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

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

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

15.1.7 Approximately 34.4 acres of parks and open space;

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

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

15.1.10 Grading to raise the elevation of the Western Parcel and a portion of the Eastern Parcel, as shown in the Master Map; and

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

15.2 Public Benefits.

15.2.1 Parks/Open Space. Landowner shall, at its sole cost and expense, acquire all property for and construct all Open Space, parkland and other Open Space improvements included in the Development Plan, including any dedicated parking for the parks and installation of art and artifacts. Such improvements shall include a trail connection from Kennedy Park to the Property, and through the Property to connect to the future region-wide San Francisco Bay Trail, in accordance with the standards and specifications in the Development Plan. If Landowner is not able to obtain property rights needed for such trail connection, Landowner shall pay all of the costs actually incurred by the Local Agency in its acquisition of necessary property rights, subject to Landowner's right to dispute such costs by the procedure set forth in Section 18.2.3. All parkland and open space improvements shall be constructed in accordance with the Phasing Plan attached hereto as Exhibit D. Landowner's construction of the trail improvements described in this Section 15.2.1 and the other park and open space improvements described in the Development Plan shall be deemed full compliance with all Local Agencies' parks or open space requirements including the City's Park Dedication and Park Development fee program or any other current or future City park or Open Space requirements, and City, in the event it succeeds to the interests of County hereunder, shall not be entitled to require any separate payments or dedications under the City's Park Dedication and Park Development fee program or otherwise.

15.2.2 Affordable Housing. Landowner shall comply with the Affordable Housing Plan attached hereto as Exhibit B. Among other things, the Affordable Housing Plan requires that approximately twenty percent (20%) of all residential units to be affordable to very low, low and moderate income households, as follows: (i) one hundred forty (140) residential units affordable to a combination of Very Low Income Households and Low Income Households (of which, a minimum of seventy (70) units will be affordable to Very Low Income Households) to be built on land to be contributed by the Developer to Qualified Housing Developers; and (ii) fifty (50) residential units affordable to Moderate Income Households to be developed as Inclusionary Units integrated with the market rate units

15.2.3 School Site. Landowner shall dedicate an approximately 10-acre School Site to the Napa Valley Unified School District in accordance with a separate agreement between Landowner and the Napa Valley Unified School District.

15.2.4 Continuing Care Retirement Community Obligations.

(a) Affordability. Landowner shall meet the requirements of the County's affordable housing ordinance for the CCRC units through the payment of an amount equivalent to the in-lieu fee determined in accordance with Napa County Zoning Code Section 18.107.090 in effect as of the applicable payment date. For purposes of calculating the in-lieu fee applicable to the CCRC, the gross square foot of residential floor area shall include only the gross square footage of rooms that are designed or used for living by one or more occupants and that contain a sleeping unit, as defined by the California Building Code, whether or not the unit contains provisions for sanitation or kitchen facilities, and shall not include common areas.

(b) Paramedic Services. Any CCRC facility developed on the Property shall be subject to a condition of approval that the CCRC facility, at no cost to the Local Agencies, contract with or hire the state licensed provider(s) of advanced life support paramedic services, i.e., Emergency Medical Technician-Paramedics (“**EMT-Ps**”) as defined in the California Code of Regulations Section 1797.84 (“**Paramedic Services Provider**”) that is then either currently the Paramedic Services Provider to the City or such other qualified service provider or Paramedic Services Provider as is reasonably approved by the City. The CCRC shall demonstrate that it is supported, via contract services or employment contracts, by an on-site Paramedic Service Provider(s), including all equipment and facilities, necessary to provide such services during a 911 emergency on the CCRC site, and that the on-site Paramedic Services Provider is located on-site twenty-four (24) hours per day, seven (7) days per week for the duration of the CCRC use. The condition of approval shall require that any such contract(s) provide for annual reporting, as may be required by the City Fire Department, to demonstrate compliance with these requirements. The foregoing requirements will be documented as a condition of approval to the Department Plan and shall be included in a Notice of Special Restrictions to be recorded against the CCRC parcel as a condition of approval of the certificate of occupancy for the CCRC parcel.

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

15.2.5 Community Facilities Space. Landowner shall provide an approximately 1,000 gsf “warm shell” space for community facilities (the “**Community Facilities Space**”) within a building project on Block 21 on Kaiser Road. The Community Facilities Space shall be operated and maintained by the Responsible Owners Association or a successor Owners Association (as those terms are defined in Section 16) and may include, without limitation, a community space that can accommodate a variety of uses, such as public meeting space, rentable space for private events, child-care facilities, environmental or historical education, and various recreational events, or may serve City emergency service providers (such as a police substation or communications center).

15.2.6 Historic Artifacts/Public Art. The Project includes artifacts to be located in an artistic manner in accordance with the Development Plan within various areas of the Project’s public parks and open space as more particularly described in the Development Plan (collectively, the “**Historic Artifacts**”), including artifacts specifically for placement at the entrance to the Membership Warehouse Store property and other commercial properties. The Project shall comply with the City’s Buildings and Construction Code Section 15.108 (the “**Public Art Ordinance**”); provided, however, that Landowner shall be permitted to provide public art within the Site in lieu of payment of a fee and Landowner may provide information regarding the aggregate value, quality, display and merit of the Artifacts, including the cost of acquisition, preservation and installation, which may be appropriately considered by the Local Agency’s Planning Director in determining whether the purpose and intent of the Public Art Ordinance have been met for Public Art Projects, as that term is defined in the City’s Public Art Ordinance, on the Property and whether any additional contribution might be required under the Public Art Ordinance. The Historic Artifacts or any other Public Art Projects located in public

parks or open space in the Project shall be maintained by the Responsible Owners Association in accordance with its recorded CC&Rs, or a separate maintenance agreement in a form approved by the Local Agency's attorney. The Responsible Owners Association shall maintain the Historic Artifacts and Public Art Projects in good condition, normal wear and tear excepted, and shall secure appropriate insurance coverage, including fire and vandalism coverage. Except as provided above, Landowner shall have no further obligations for public art with respect to the Project.

15.3 [intentionally omitted]

15.4 Traffic and Intersection Improvements; Parking.

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

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

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

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

15.6 Floodgates. Consistent with the requirements of the Zoning Ordinance, Landowner shall construct the floodgates in accordance with the Development Plan, subject to obtaining all necessary regulatory approvals, including without limitation, approval by the Public Utilities Commission and the Director of Public Works of the County, and the Napa County Flood and Water Conservation District (the "**Flood District**"). Without limiting the foregoing, it is anticipated that Flood District approval will require Flood District review and approval over the planning, design and construction of the floodgates operation and maintenance of the floodgates and an obligation for Landowner (and upon transfer, the Responsible Owners Association described in Section 16) to reimburse Flood District for costs incurred by it in connection with the review, approval and oversight of the floodgate planning, design and construction. The Development Plan shall include a condition of approval that will require the Flood District to accept the dedication of the floodgates and associated real property interests prior to the issuance of the first residential building permit on the Property, and further require the Landowner or the successor Responsible Owners' Association to pay the Flood District for

the costs of maintaining and operating the floodgates in perpetuity, which obligation shall be included in the CC&R's recorded against the Property.

16. Project Infrastructure; Owners' Associations.

16.1 Landowner Responsibilities. Landowner shall be solely responsible for all costs necessary to design and construct the Project Infrastructure necessary for development and operation of the Project. In connection with each final map, Landowner shall provide an offer of dedication of (i) the City water service facilities components of Project Infrastructure and associated easements or other rights for access and maintenance to the City, and (ii) the waste water facilities components of Project Infrastructure and associated easements or other rights for access and maintenance to the Napa Sanitation District; provided, however, that such service providers, or Local Agency, as applicable, shall not be required to accept such offers of dedication unless and until the Project Infrastructure at issue has been constructed in accordance with the approved Improvement Plans, and, if applicable, to the reasonable satisfaction of the Local Agency's Director of Public Works and such service providers, as applicable. Landowner shall be responsible for the on-going operation, maintenance and repair associated with all publicly-dedicated Project Infrastructure until the applicable offer of dedication has been accepted, and for all privately-owned Project Infrastructure until such time as all such obligations (other than privately-owned Project Infrastructure in the Industrial Zoning District, if any) are assumed by the Responsible Owners Association in accordance with Section 16.3.2 hereof; provided, however, it is understood that individual lots or parcels containing portions of the privately-owned Project Infrastructure will be transferred to the Responsible Owners Association for operation, maintenance and repair thereof on a time schedule determined by Landowner and that there will be points in time when Responsible Owners Association is responsible for the operation, maintenance and repair of some of the privately-owned Project Infrastructure and Landowner is responsible for the operation, maintenance and repair of the remaining privately-owned Project Infrastructure. Until such time as all such obligations for the Project Infrastructure have been assigned to the Responsible Owners Association in a manner that allows the Local Agencies to enforce such obligations against the Responsible Owners Association, Landowner shall ensure (as a member of the Board of Directors of the Responsible Owners Association, or in its capacity as Landowner) that the Project Infrastructure is operated, maintained and repaired consistent with the Standards for Maintenance and Security for Streets, Parks and Open Space attached hereto as Exhibit J. The obligations for on-going operation, maintenance and repair for the privately-owned Project Infrastructure shall be contained within CC&Rs recorded against the Property as more particularly described in Section 16.3 hereof, and shall be at no cost or expense to Local Agency, or any other public agency. The on-going operation, maintenance and repair obligations of Landowner and the Responsible Owners Association described in this Section 16 shall survive the termination of this Agreement.

16.2 Local Agency Action; Reimbursement of Local Agency Costs. Local Agency shall have the right, but not the obligation, to undertake the maintenance or repair of any privately maintained Project Infrastructure if its Director of Public Works determines in his or her sole discretion that the applicable Project Infrastructure, or Landowner's or the Responsible Owners Association's failure to comply with its obligations under this Agreement or the CC&Rs (including but not limited to a failure to maintain required access so that emergency and utility vehicles can service the property described in the final map(s) and the properties contiguous or

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

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

16.3.1 Approval and Timing of Recordation of CC&Rs. As a condition of approval for each final map for the Project, Landowner shall submit to Local Agency staff, and obtain administrative approval of, CC&Rs, annexations and such other declarations or instruments, which may include deed restrictions, public use easements and maintenance agreements, as reasonably deemed necessary by the Local Agency (collectively, the "**Governing Documents**") as more fully described in this Section 16.3, that are proposed to be recorded against the property shown on such final map. Local Agency shall provide written notice of its approval or disapproval of the CC&Rs to Landowner within sixty (60) days of receipt thereof. In the event of a disapproval, Local Agency shall provide reasonably detailed comments as to the reasons for its disapproval, and Landowner shall revise and re-submit the CC&Rs accordingly until approved by Local Agency. If Local Agency fails to respond to submittal of such CC&Rs within such sixty (60) day period, the CC&Rs shall be deemed approved for the purposes of this Section 16.3.1. Such review by Local Agency staff is intended to ensure that the Governing Documents comply with the Project Approvals (including, without limitation, the requirements of this Agreement) and the conditions of approval for the final map at issue and that the Governing Documents do not, directly or indirectly and intentionally or unintentionally, burden the Local Agency with any costs, obligations or responsibilities that the Local Agency has not agreed to accept pursuant to this Agreement or through the conditions of approval for the final map at issue. If the final map contains only residential property or a combination of residential and commercial property (a mixed-use site), the Local Agency through the County Executive (or after annexation, City Manager), or his or her designee, in consultation with the Local Agency legal counsel, shall approve the CC&Rs and other Governing Documents required by the conditions of approval for such final map prior to the recording of such final map; provided

however, Landowner shall not be required to record the Governing Documents against any residential property shown on such final map until after the California Bureau of Real Estate (“**CalBRE**”) has reviewed all Governing Documents applicable to the residential property and given its approval to record said Governing Documents; and further provided that, in no event shall Landowner record Governing Documents in a form that has not been approved by the Local Agency, or in a form that is different from the form of Governing Documents reviewed and approved by the Local Agency without the consent of the Local Agency. If Local Agency fails to approve, disapprove or conditionally approve the Governing Documents (or any modifications thereto) within sixty (60) days of submittal (subject to extension by mutual agreement of the Parties), the Governing Documents shall be deemed approved by Local Agency. In any event, the applicable Governing Documents shall be recorded against all residential property that is the subject of the final map prior to issuance of the first building permit for any residential or mixed-use site subject to such Governing Documents. If there are Governing Documents required by the Local Agency for a mixed-use site that apply only to the commercial property on that final map, or for a commercial only final map, such Governing Documents shall record with the final map; provided, however, that Landowner may record CC&Rs against the first tract map covering commercial property and annex the remaining commercial property to said CC&Rs in stages that are consistent with the mapping of the commercial property, but in any event, CC&Rs or an annexation instrument shall be recorded against the property within a final map area no later than the issuance of the first building permit for a commercial building in that final map.

16.3.2 CC&Rs Requirements.

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

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

(c) Relationship between Owners’ Associations/Affordable Housing Parcels. If there is more than one Owners’ Association and more than one CC&Rs for the Property, Landowner shall record reciprocal easement and cost sharing

agreements between the different Owners' Associations to set forth the relative obligations of each of the Owners' Associations to ensure that funding for all maintenance and repair obligations of Landowner, Transferees and successors and assigns have been met under this Agreement; provided, however, that the Responsible Owners Association shall be responsible for the on-going operation, maintenance and repair of all privately-owned Project Infrastructure as described in Section 16.3.2(b) and the reimbursement obligations for the Flood District's operation and maintenance of the floodgates described in Section 15.6 hereof. Landowner shall not require any Affordable Housing Project owner to join an Owners' Association, provided, however, that any Affordable Housing Project owner that fails to join an Owners' Association shall be required to enter into a reciprocal easement and cost sharing agreement with the Landowner and Owners' Associations to pay its fair share of the costs associated with maintenance of the Project Infrastructure and other "common area" that principally serves or benefits the Affordable Housing Project.

(d) Contents of CC&Rs.

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

(ii) The Governing Documents shall require each Owners' Association to comply with all requirements of the Governing Documents and applicable state and local laws. The recorded CC&Rs and other Governing Documents for the Responsible Owners Association shall include the text attached hereto in Exhibit J (Standards for Maintenance and Security for Streets, Parks and Open Space), and Exhibit K (Landowner Indemnification of Local Agency), and require the Responsible Owners' Association to provide all necessary and on-going maintenance and repairs required by Section 16.1 and in conformance with the standards set forth in Exhibit J at no cost to the Local Agencies, to reimburse the Flood District for operation and maintenance costs for the floodgates as described in Section 15.6 hereof, to indemnify each Local Agency, as applicable, as to any Claims or costs and expenses incurred by such Local Agency as a result of Landowner's or its successors' failure to comply with its maintenance and repair obligations, except to the extent of the negligence or willful misconduct of the Local Agency or the extent that such actions are undertaken by a Local Agency and reimbursed

under Section 16.2.1, and to obtain and maintain comprehensive general liability insurance in an amount not less than \$3,000,000 or such other amount as may be required in California Civil Code Section 5805, or its successor statute(s) per occurrence combined single limit with the Local Agency, as applicable, and their respective officials, employees and agents identified as additional insureds on the insurance policy. The CC&Rs or applicable Governing Documents shall provide the Local Agency, as applicable, with authority to enter the Property and to repair and maintain the Project Infrastructure as provided in Section 16.2.1.

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

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

The property owners' association established herein shall manage and continuously maintain the 'common area', more particularly described on Exhibit ___, attached hereto, and shall not sell or transfer the 'common area' or any part thereof, absent the prior written consent of the Local Agency's Planning Director.

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

funded, or overfunded at the time the reserve study was conducted and any increase in assessments or special assessments that may be required to bring reserve funding to the appropriate level if the reserves are underfunded.

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

Napa County, or the City of Napa, or both, as the applicable Local Agency, shall be a third party beneficiary to these CC&Rs and shall have the right, but not the duty, to enforce the CC&Rs against the Owners’ Association and to receive copies of all information and documentation that are sent to all of the owners of lots and units pursuant to the requirements of the CC&Rs or required by law related to the ongoing operation and maintenance and of ‘common area’ as provided herein, including without limitation, a copy of (i) the annual budget of the Owners’ Association when it is distributed to the property owners, and (ii) a copy of the reserve study performed by the Owners’ Association (as required in the CC&Rs) when it is distributed to the property owners.

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

16.4 Budget Review. At least forty-five days prior to submittal to CalBRE, the Landowner shall submit to the Community Development Director of the Local Agency for its approval a copy of the draft build-out budget for the Project and any subsequent update to the build-out budget that Landowner intends to submit to CalBRE. The draft build-out budget shall conform to CalBRE requirements, but shall include, at a minimum, anticipated costs of and all sources of revenue for (including anticipated monthly Owners’ Association dues per unit) the maintenance, repair and operation of all privately owned Project Infrastructure (excepting any privately owned Project Infrastructure in the Industrial Zoning District), and other common areas, anticipated reserves, and the Responsible Owners Association’s reimbursement obligations for the Flood District’s ongoing operation and maintenance obligations for the flood gates described in Section 15.6 hereof. Said review and approval shall be limited to ensuring that the build-out budget includes funds for the Responsible Owners Association’s maintenance and repair of the Project Infrastructure, including reserves that are necessary for the replacement of said Project Infrastructure in accordance with the budget guidelines of the CalBRE, reimbursement obligations for the Flood District’s ongoing operation and maintenance obligations for the floodgates described in Section 15.6 hereof, and compliance with any terms of this Agreement or the Project Approvals that Owners’ Association has assumed, including, without limitation, any mitigation measures under the MMRP. Local Agency shall provide

written notice of its approval or disapproval of the build-out budget to Landowner within thirty (30) days of receipt thereof. In the event of a disapproval, Local Agency shall provide reasonably detailed comments as to the reasons for its disapproval, and Landowner shall revise and re-submit the build-out budget accordingly until approved by Local Agency. If Local Agency fails to respond to such build-out budget within such thirty (30) day period, the build-out budget shall be deemed approved for the purposes of this Section 16.4.

16.5 Local Agency as Third Party Beneficiary. The CC&Rs or other Governing Documents required by Section 16.3 shall be subject to reasonable review and approval as to form by the Local Agency's general counsel, and shall expressly provide the Local Agency with a third party right to enforce the Landowners' or its successors' and assigns', including each Owners' Association's, obligations under Section 16.2 and 16.3 hereunder. The Local Agency shall be entitled to receive copies of all information and documentation that are sent to all of the owners of lots and units pursuant to the requirements of the CC&Rs or required by law related to the ongoing operation, maintenance and repair of Project Infrastructure as provided herein, including without limitation, a copy of (i) the annual budget of the Responsible Owners Association when it is distributed to the property owners, (ii) a copy of the reserve study performed by the Responsible Owners Association (as required in the CC&Rs) when it is distributed to the property owners, and (iii) the annual budget of each Owners' Association (other than the Responsible Owners Association) indicating that funds are set aside to pay the Owners' Association's cost sharing obligations to the Responsible Owners Association when such budget is distributed to the property owners. The Local Agency's review of the Responsible Owners' Association's budget and reserve study is intended to provide evidence that the Responsible Owners' Associations' has included in its budget the necessary funding of the Project Infrastructure in compliance with the Project Approvals (including, without limitation, this Agreement) and that reserves are being funded at appropriate levels. The Local Agency's review of the remaining Owners' Associations budgets is intended to provide evidence that the each such Owners' Association has included in its budget the necessary funding for its share of the costs to be paid to the Responsible Owners Association. If the Responsible Owners Association or any Owners' Association breaches its obligations to provide all necessary and ongoing operation, maintenance and repairs in accordance with this Agreement, such breach shall not be considered a breach, Default, justification for a Certificate of Non-Compliance or otherwise be held against the Landowner under this Agreement (except to the extent the applicable Owners' Association is a Transferee of Landowner, the Landowner maintains voting control of such Owners' Association, and the Transferee is in default of its express obligations under this Section 16), and then only as to such Transferee, unless Landowner has failed to record CC&Rs or other appropriate Governing Documents for the property that is the subject of the breach.

17. No Development Obligation; Phasing.

17.1 No Development Obligation. There is no requirement under this Agreement that Landowner initiate or complete development of the Project, or any portion thereof, except for Project Infrastructure, public benefits or Affordable Housing, to the extent any such obligation has arisen as provided in this Agreement. There is no requirement that development be initiated or completed within any period of time or in any particular order except as provided in Section 17.2. The development of the Project is subject to numerous factors that

are not within the control of Landowner or the Local Agency, such as the availability of financing, interest rates, access to capital and other market conditions and similar factors. Except as expressly required by this Agreement, including without limitation, the applicability of the County's Growth Management System and the requirements of the Phasing Plan, Landowner may develop the Project in such order and at such rate and times as Landowner deems appropriate within the exercise of its sole and subjective business judgment, provided, however, that Local Agency shall have the right to withhold building permits for any proposed development to the extent the proposed sequence of development of Project Infrastructure (including but not limited to the Open Space Phasing) fails to conform to the Phasing Plan set forth in Exhibit D. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The Parties acknowledge that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Landowner's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 of this Agreement.

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

18. Permit Processing/Costs.

18.1 Permit Processing. The City shall accept and process all complete applications for development of any portion of the Property that has been effectively annexed to the City as provided in Government Code Section 57202. County shall accept and process all complete applications for development of any portion of the Property that has not been effectively annexed to the City as provided in Government Code Section 57202.

18.2 Local Agency Cost Recovery and Landowner Reimbursement Obligations.

18.2.1 Local Agency Cost Recovery. Landowner shall timely pay to Local Agency the actual and reasonable costs incurred by the Local Agency, including its outside consultants, contractors and outside counsel, in drafting, reviewing, revising, processing and implementing this Agreement, including, but not limited to, recording fees, ordinance publication fees, special notice or special meeting costs, staff time in preparing staff reports, and staff time, including legal counsel fees, for preparation and review of this Agreement and changes requested by Landowner and to implement the Project Approvals, all Subsequent Approvals, and the provisions herein (collectively, "**Local Agency Costs**"), as determined on a time and materials basis, including any defense costs as set forth in Section 28, but excluding Processing Fees applicable to the processing or review of applications for the Project Approvals or the Subsequent Approvals under applicable laws or as otherwise established under the Project Approvals, or recovery of costs incurred by a Local Agency under Section 16.2.2 hereof, recovery of which shall be governed by that section. In connection with any environmental review relative to a Subsequent Approval, Landowner shall reimburse Local Agency or pay

directly all reasonable and actual costs relating to the hiring of consultants and the performing of studies as may be necessary to perform such environmental review. Local Agency's reasonably detailed invoices shall be provided on a not more frequent than monthly basis (or such alternative period as agreed by the Parties). Developer shall pay to the Local Agency all of Local Agency's actual and reasonable Costs during the Term within forty five (45) days following receipt of a written invoice from the Local Agency. Landowner's obligation to pay previously incurred Local Agency Costs hereunder shall survive the termination of this Agreement.

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

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

18.2.4 Limits on Costs. Landowner shall have no obligation under this Agreement to reimburse City for City costs incurred in reviewing or providing comments on plans, drawings, maps or other submittals provided by Landowner or prospective or actual Transferees in connection with Subsequent Approvals or processing or reviews for any portions of the Property not annexed to the City, other than with respect to water and sewer facility plans, agreements, permits, easements and deductions.

19. Transfers and Assignments.

19.1 Transfers Generally. Subject to the terms of this Section 18, Landowner shall have the right to assign or transfer all or any portion of its interest, rights or obligations under this Agreement to an Affiliate or to third Persons (the "**Transferee**") acquiring an interest or estate in all or a portion of the Property (the "**Transferred Property**"), including, but not limited to, purchasers or long term ground lessees of lots, parcels, or of any of the buildings located within the Property. Any sale, transfer or conveyance of the Property, or portion thereof, shall comply with the state Subdivision Map Act and the Local Agency's Subdivision Ordinance, as amended by the Project Approvals (and after annexation the Pre Zoning Actions). Landowner shall provide thirty (30) days written notice to County (with a copy to City and directly to City as to any annexed Property for which this Agreement is in effect) prior to the effective date of any sale, transfer or assignment (collectively, "**Transfer**") of its interest in all or any portion of the

Property or any of its interests, rights and obligations under this Agreement, and upon giving of such notice and closing the conveyance, transfer, sale or lease, said Transferee shall be deemed a Party.

19.2 Assignment and Release of Project Infrastructure Obligations.

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

19.2.2 Net Worth and Liquid Assets/Experience. It shall be presumptively deemed that the Transferee has the requisite financial resources if the proposed Transferee has a Net Worth or Liquid Assets in an amount that is not less than one hundred twenty five percent (125%) of the reasonably estimated cost to complete the Project Infrastructure associated with the portion of the Property to be transferred. For purposes of the foregoing "**Liquid Asset**" shall mean any of the following, but only to the extent owned individually, free of security interests, liens, pledges, charges or any other encumbrance: (a) cash, (b) certificates of deposit (with a maturity of two years or less) issued by, or savings account with, any bank or other financial institution reasonably acceptable to County, or (c) marketable securities listed on a national or international exchange, marked to market; and "**Net Worth**" shall mean, as of a given date, (x) Transferee's total assets as of such date less (y) Transferee's total liabilities (taking into consideration contingent liabilities) as of such date, determined in accordance with generally accepted accounting principles, consistently applied.

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

19.2.4 Effect of Transfer. If conditions (i) and (ii) in Section 18.2.1 above are satisfied, and any consent required in subsection (iii) is given or if no such consent is required, then Landowner shall be released from any further liability or obligation under this Agreement related to the Transferred Property as specified in the Assignment and Assumption Agreement, and the Transferee shall be deemed to be the Landowner under this Agreement with all rights and obligations related thereto, with respect to such Transferred Property, and the Local Agency shall provide Landowner a written instrument to such effect in a form and substance reasonably satisfactory to Landowner. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such Default shall not constitute a Default by Landowner (or any other Transferee) with respect to any other portion of the Property hereunder and shall not entitle Local Agency to terminate or modify this Agreement with respect to such other portion of the Property.

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

19.2.6 Rights of Landowner. The provisions in this Section 18 shall not be deemed to prohibit or otherwise restrict Landowner from (i) granting easements or licenses to facilitate development of the Property, (ii) encumbering the Property or any portion thereof or of the improvements thereon by any mortgage, deed of trust, or other devise securing financing with respect to the Property or Project, (iii) granting a leasehold interest in portions of the Property, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Property pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage.

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

Provided written notice to the Local Agency is provided in accordance with this Section 19, the Local Agency shall provide Landowner with a written release in a form and substance reasonably satisfactory to Landowner from the obligations so Transferred (but excluding therefrom any default which occurred prior to the date of such Transfer).

20. Lender Obligations and Protections.

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

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

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

20.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If Local Agency receives notice from a Mortgagee requesting a copy of any notice of Default given Landowner under this Agreement and specifying the address for service thereof, then Local Agency shall deliver to such Mortgagee, concurrently with service thereon to Landowner, any notice given to Landowner with respect to any claim by Local Agency that Landowner is in Default and/or Certificate of Non-Compliance. Each Mortgagee shall have the right during the same period available to Landowner to cure or remedy, or to commence to cure or remedy, the Default or non-compliance as provided in this Agreement; provided, however, that if the Default, noncompliance or Certificate of Non-Compliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Default, noncompliance or Certificate of Non-Compliance within ninety (90) days after obtaining possession. If any such Default, noncompliance or Certificate of Non-Compliance cannot, with diligence, be remedied or cured within such ninety (90) day period,

then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Default, noncompliance or Certificate of Non-Compliance (including but not limited to proceeding to gain possession of the Property) if such Mortgagee commences cure during such ninety (90) day period, and thereafter diligently pursues completion of such cure to the extent possible.

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

22. Annual Review.

22.1 Review Date. The annual review date for this Agreement shall occur each year on the anniversary date of the Effective Date of this Agreement (“**Annual Review Date**”). The annual review letter required hereunder shall be submitted by the Landowner and each Transferee pursuant to Section 18 hereof that has assumed any of the obligations or requirements to construct Project Infrastructure (a “**Required Transferee**”).

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

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

21.4. The Local Agency's failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date.

22.4 Non-compliance with Agreement; Hearing. Prior to issuing a Certificate of Non-Compliance, if the Local Agency Planning Director, on the basis of substantial evidence, finds that the Landowner or a Required Transferee has not complied with the terms of this Agreement, it shall specify in writing to such Landowner or Required Transferee, with reasonable specificity, the respects in which Landowner or Required Transferee has failed to comply. The Planning Director shall also specify a reasonable time for Landowner and Required Transferee to respond, provide additional evidence of compliance or to meet the terms of compliance, which time shall be not less than thirty (30) days, and shall be reasonably related to the time necessary for Landowner or Required Transferee to adequately bring its performance into compliance with the terms of this Agreement, subject to any Permitted Delay; provided, however, that if the non-compliance solely involves a monetary Default, then the Planning Director may require payment in thirty (30) days. If after the reasonable time for Landowner or Required Transferee to meet the terms of compliance has passed and the Planning Director, on the basis of substantial evidence, continues to find that the Landowner or Required Transferee has not complied, then the Planning Director shall issue a Certificate of Non-Compliance. Any Certificate of Non-Compliance shall be made in writing with reasonable specificity as to the reasons for the determination, and a copy shall be provided to Landowner and Required Transferee in the manner prescribed in Section 21.3. If the Planning Director issues a Certificate of Non-Compliance, then the Local Agency's legislative body shall conduct a hearing within thirty (30) days of the Planning Director's issuance of the Certificate of Non-Compliance, or at the next available, regularly scheduled hearing thereafter. The Landowner and Required Transferee shall be given not less than ten (10) days written notice of the hearing and copies of the evidence upon which the Planning Director made her/his determination. Landowner and Required Transferee will be given the opportunity to present evidence at the hearing. If the legislative body determines that the Landowner or a Required Transferee is not in compliance with this Agreement, it may proceed to enforce the Local Agency's rights and remedies, including, modifying or terminating this Agreement at a subsequent public hearing.

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

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

22.7 Effect on Transferees. If Landowner has completed a transfer so that its interest in the Property has been divided between Transferees, and an annual review hereunder has been performed with respect to Landowner and one or more Transferees, then the Local Agency Planning Director, and if appealed, its legislative body shall make its determinations and take its actions separately with respect to each Party. If the Planning Director or its legislative

body terminates, modifies or takes such other actions as may be provided by this Agreement in connection with a determination that such Party has not complied with the terms and conditions of this Agreement, such action by the Planning Director, or the legislative body shall be effective only as to the Party as to whom the determination is made and the portions of the Property in which such Party has an interest.

22.8 No Limit on Remedies for Default. The rights and powers of the Local Agency legislative body under this Section 21 are in addition to, and shall not limit, the rights of the Local Agency to terminate or take other action under this Agreement on account of the commission by Landowner or a Transferee of an event of Default.

23. Indemnification. Landowner agrees to indemnify, defend and hold harmless Local Agency, and their respective elected and appointed councils, boards, commissions, officers, agents, employees, volunteers and representatives from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death or physical property damage (including inverse condemnation) and from any and all claims, demands and actions in law or equity (including attorneys' fees and litigation expenses) (collectively, "**Claims**") by any Person or entity, directly or indirectly arising or alleged to have arisen out of or in any way related to (1) any third party claim arising from the approval of or Landowner's default or failure to comply with the Project Approvals (including this Agreement) or any Subsequent Approvals; (2) any County or City actions to implement the MOU; (3) failure of the Project Infrastructure to comply with Laws; (4) any development or use of the Property under this Agreement, the Project Approvals or any Subsequent Project Approvals; and (5) any actions or inactions by the Landowner or its contractors, subcontractors, agents, or employees or by any one or more persons directly or indirectly employed by or acting as an agent for Landowner or any of Landowner's contractors or subcontractors in connection with the construction or improvement of the Property and the Project, including Project Infrastructure. Notwithstanding the foregoing, with respect to any Project Infrastructure to be dedicated to a Local Agency, or any other public entity or agency or utility service provider, once the Local Agency or any other public entity or agency or utility service provider accepts the Project Infrastructure, Landowner's indemnification obligation with respect to those improvements shall cease subject to the terms of any ongoing warranty or other improvement agreement obligation.

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

The indemnity under this Section shall survive termination of this Agreement. Landowner shall timely pay all costs incurred by Local Agency in defending any such Claims or challenges, and Landowner shall be solely responsible to pay, in a timely manner and on Local Agency's behalf, any and all awards of money damages, attorney fees and court costs against Local Agency.

24. Amendment, Cancellation or Suspension.

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

24.2 Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto and in accordance with the procedures of State law, the County Code, the City Municipal Code (as to annexed portions of the Property) and this Agreement. Notwithstanding the foregoing, any Substantive Amendments to this Agreement entered into between County and Landowner shall not Substantively Amend this Agreement as to Property that has not been annexed to the City in a manner that would materially and adversely affect the rights or obligations of the City hereunder without the prior written consent of the City, which consent shall not be unreasonably withheld. With respect to any portion of the Property that has been annexed to the City, City, as Local Agency hereunder, and Landowner shall have the right to amend this Agreement as it applies to the annexed Property without the consent of the County, provided, however, that any such amendments shall not affect any portion of the Property not yet so annexed without the County's prior written consent.

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

24.4 Minor Amendment. A "**Minor Amendment**" is any amendment of this Agreement other than a Substantive Amendment. Subject to compliance with the requirements of Section 23.2, a Minor Amendment may be approved by means of a written agreement

approved, without a public hearing, by the County Executive Officer (or the City Manager as to any portion of the Property has been annexed to the City).

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

24.6 Cancellation by Mutual Consent. This Agreement may be terminated in whole or in part by the mutual consent of all the Parties or their successors in interest, in accordance with the provisions of the State law and the Local Agency’s Code. Any fees or payments of any kind paid pursuant to this Agreement prior to the date of mutual termination shall be retained by the Local Agency.

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

25. Default. Subject to Section 26, a Party’s violation of any material term of this Agreement or failure by any Party to perform any material obligation of this Agreement required to be performed by such Party shall constitute a default (“**Default**”). A Default by the Landowner includes, but is not limited to any failure by the Landowner to: (a) pay when due any fee, tax, assessment or other charge applicable to the Project or Property and required pursuant to this Agreement to be paid by Landowner; (b) transfer, reserve or dedicate land for Project Infrastructure; or (c) implement or comply with terms and conditions set out in the Project Approvals, including, but not limited to, Mitigation Measures. While a Landowner is in Default under this Agreement, Local Agency may in its sole discretion, but shall not be obligated to grant to such Landowner any Subsequent Approval with respect to any Property that is owned by such Landowner, until such Landowner cures the Default in accordance with Section 26.3.

26. Remedies for Default. Subject to the notice and opportunity to cure provisions in this Section 26 below, the sole and exclusive judicial remedy for any Party in the event of a Default by the other Party (except with respect to a payment Default) shall be an action in mandamus, specific performance, or other injunctive or declaratory relief. In addition, upon the occurrence of a Default and subject to the procedures described in Section 26, the non-defaulting Party shall have the right to terminate this Agreement, but any such termination shall not affect such Party’s right to seek such remedies as are provided for in this Agreement on account of the

Default for which this Agreement has been terminated, and shall be subject to the procedures specified in this Agreement. Landowner expressly agrees that except in the case of monetary disputes arising under Section 16.2 or Section 18.2.3, neither Local Agency, nor any of their respective elected and appointed councils, boards, commissions, officers, agents, employees, volunteers and representatives (collectively, for purposes of this Section 26, the “**Agencies**”) shall be liable for any monetary damage for a Default by the Agencies or any claims against the Agencies arising out of this Agreement. Except as provided above, Landowner hereby, for itself and all of its officers, agents, employees, volunteers and representatives (collectively, for purposes of this Section 26, “**Landowner**”) expressly waives any such monetary damages against the Agencies, and, except with respect to payment or cost disputes arising under specific terms of this Agreement, the Agencies expressly agree that the Landowner shall not be liable for any monetary damage for a Default by the Landowner or any claims by the Agencies against Landowner arising out of this Agreement. The Agencies hereby expressly waive any such monetary damages against Landowner. Any legal action by a Party alleging a Default shall be filed within one hundred eighty (180) days from the end of the default procedure described in Section 26.

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

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

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

27.3 Cure. The Party in Default shall have thirty (30) days from receipt of the Notice of Default to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged Default is such that it cannot practicably be cured within such thirty (30) day period, then it shall not be considered a Default during that thirty (30) day period so long as:

(a) the cure was commenced at the earliest practicable date following receipt of the notice; (b) the cure was diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (in no event later than thirty (30) days after the curing Party's receipt of the notice), the curing Party provided written notice to the Complaining Party that the cure cannot practicably be completed within such thirty (30) day period; and (d) the cure was completed at the earliest practicable date. The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided such cure, correction or remedy shall be completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be agreed to by the Complaining Party to be reasonably necessary to correct the matter).

27.4 Failure to Assert. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies.

27.5 Procedure for Terminating Agreement upon Default. If the Local Agency desires to terminate this Agreement in the event of a Default that has not been cured pursuant to Section 26.3, the matter shall be set for a public hearing before the Board or the City Council, as applicable. The burden of proof of whether a Party is in Default shall be on the Complaining Party. If the Local Agency's legislative body determines that Landowner is in Default and has not cured to the Local Agency's reasonable satisfaction, or that the Default presents a serious risk to the physical public health, safety or welfare, the Local Agency's legislative body, if appropriate, may terminate this Agreement.

27.6 No Cross Default. Notwithstanding anything to the contrary in this Agreement, if Landowner has completed a Transfer so that its interest in the Property has been divided between Landowner and one or more Transferees, then any determination that a Party is in Default (and any termination of this Agreement or portion thereof, pursuant to Section 26.5) shall be effective only as to the Party to whom the determination is made and the portions of the Property in which such Party has an interest.

28. Attorneys' Fees and Costs In Legal Actions by Parties to the Agreement. If either Party brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against another Party by reason of a Default, or otherwise arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees (including, without limitation, costs and expenses), which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing Party**" within the meaning of this Section 27 shall include, without limitation, a Party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

29. Attorneys' Fees and Costs In Legal Actions by Third Parties. If any Person or entity not a Party to this Agreement initiates an action at law or in equity to challenge the validity

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

30. Third Party Court Action/Limitation on Action. If any court action or proceeding is brought by any third party to challenge any Project Approval or this Agreement, then (a) Landowner shall have the right to terminate this Agreement upon thirty (30) days' notice, in writing to Local Agency, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (b) any such action or proceeding shall constitute a Permitted Delay(s). The Parties agree that if this Agreement is terminated pursuant to the authority in this section, the following Project Approvals shall be terminated and of no further force and effect: the Master Map; the Development Plan approval; and the Enacting Ordinance.

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

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

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

34. Insurance.

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

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

34.3 Evidence of Insurance. Prior to commencing construction of any improvements which will become Project Infrastructure, Landowner shall furnish Local Agency with satisfactory evidence of the insurance required in Sections 34.1 and 34.2 and evidence that the carrier is required to give the Local Agency at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the Local Agency and its agencies and their respective elective and appointive boards, commissions, officers, agents, employees, volunteers and representatives and to Landowner performing work on the Project.

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

36. Third Party Beneficiary. This Agreement is made and entered into solely for the protection and benefit of the Landowner, and Local Agency, and their respective successors and assigns, and no other Person shall have any right of action based upon any provision in this Agreement.

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

County:

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

with a copy to:

Office of the County Counsel
County Administration Building
1195 Third Street, Suite 301
Napa, CA 94559
Attention: County Counsel

Landowner:

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

with a copy to:

Farallon Capital Management, LLC
One Maritime Plaza, Suite 2100
San Francisco, CA 94111

City:

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

with a copy to:

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

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

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

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

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

41. Further Assurances. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to use good faith efforts to take all actions and do all things as may reasonably be necessary or appropriate to carry out this Agreement, the Project Approvals and

Subsequent Approvals, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or appropriate to achieve the purposes and objectives of this Agreement, the Project Approvals and Subsequent Approvals.

42. Approvals. Unless otherwise herein provided, whenever a determination, approval, consent or satisfaction (herein collectively referred to as “**Consent**”) is required of a Party pursuant to this Agreement, such Consent shall not be unreasonably withheld or delayed. If a Party shall not Consent, the reasons therefore shall be stated in reasonable detail in writing. Consent by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary Consent to or of any similar or subsequent acts or requests. Consent given or withheld by the County Executive Officer or the County’s Planning Director may be appealed to the Board. Consent given or withheld by the City Manager or the City’s Planning Director may be appealed to the City Council.

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

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

45. Form of Agreement; Entirety; Recordation; Exhibits. This written Agreement, which consists of ____ pages and 14 exhibits (Exhibits A-1 through K), contains all of the representations and the entire agreement between the Parties with respect to its subject matter. Except as otherwise specified herein, any prior correspondence, memoranda, agreements, warranties or representations by, among and between the Parties are superseded in total by this Agreement. The County shall cause this Agreement, any amendment hereto and any termination of any parts or provisions hereof, to be recorded, at Landowner’s expense, with the County Recorder within ten (10) days of the Adoption Date, the date of the approval of an amendment hereto, or the date of termination of any parts or provisions hereof, as applicable. Any amendment or termination of this Agreement to be recorded that affects less than all of the Property shall describe the portion thereof that is the subject of such amendment or termination. This Agreement is executed in three duplicate originals, each of which is deemed to be an original.

46. Construction of Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning in order to achieve the objectives and purposes of the Parties, and not strictly for or against any Party. The captions and headings are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. The exhibits to this Agreement are intended to be and shall be incorporated into this Agreement as if stated fully herein. The use in this Agreement of the words “including”, “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether

or not language of non-limitation, such as “without limitation” or “but not limited to”, or words of similar import, are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. This Agreement has been reviewed and revised by legal counsel for Landowner and Local Agency, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

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

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

IN WITNESS WHEREOF, Napa County, a political subdivision of the State of California, has authorized the execution of this Agreement in duplicate by the County Executive Officer and attested to by its County Clerk under the authority of Ordinance No. _____, adopted by the Board of Supervisors of Napa County on _____, 2014, and Landowner has caused this Agreement to be executed.

“COUNTY”

NAPA COUNTY,
a political subdivision of the State of California

Name:
Its: Executive Officer

APPROVED AS TO FORM:

County Counsel

“LANDOWNER”

**NAPA PIPE REDEVELOPMENT PARTNERS,
LLC**

By: _____
Name:
Its:

Exhibits

Exhibit A-1	Legal Description
Exhibit A-2	Map of Property
Exhibit A-3	General Plan Land Use Designation
Exhibit B	Affordable Housing Plan
Exhibit C	Napa Pipe Intersection Improvement Plan
Exhibit D	Phasing Plan
Exhibit E	MMRP
Exhibit F	Plan Review Procedures
Exhibit G	Existing City Exactions
Exhibit H	Land Use Plan
Exhibit I	Subdivision Procedures
Exhibit J	Standards for Maintenance and Security of Streets, Parks and Open Space
Exhibit K	Landowner Indemnification
Exhibit L	Assignment and Assumption Agreement