IMPROVEMENT AGREEMENT – SANITARY SEWER IMPROVEMENTS

WINE COUNTRY COTTAGES

THIS AGREEMENT is made as of this _____ day of _____, 20___ by and between Pearl Avenue Partners, L.P., a California limited partnership ("DEVELOPER") and the Napa Sanitation District, a California special district ("DISTRICT") with reference to the following facts.

RECITALS

A. In connection with the development of certain real property located in the City of Napa commonly referred to as **Assessor's Parcel No.(s) 035-110-034 and 035-110-015** (Subject Property") Developer has been required by the City of Napa (the "City") to construct certain sanitary sewer improvements described in paragraph 1 below (the "Sanitary Sewer Improvements") as a condition of approval of Developer's development project for the Subject Property. The Sanitary Sewer Improvements are to be constructed to the satisfaction of the District.

B. To satisfy said condition of approval Developer has submitted to the City and the District, and the District has approved, improvement plans (the "Improvement Plans") setting forth the Sanitary Sewer Improvements proposed to be constructed by Developer in connection with the development of the Subject Property.

C. In addition to the Sanitary Sewer Improvements, the Improvement Plans include certain water system improvements (the "Water System Improvements") and road and storm drain improvements (the "Road and Storm Drain Improvements"). All three categories are referred to collectively herein as the "Development Improvements."

D. Developer wishes to proceed with the development project without prior completion of the Sanitary Sewer Improvements.

E. District is willing to accommodate Developer's wish to proceed with the development project without having completed the Sanitary Sewer Improvements so long as the District has assurance that the Sanitary Sewer Improvements will be completed within the time and in the manner specified in this agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the District allowing the Developer to proceed with the development project, and in order to insure satisfactory performance by Developer of Developer's obligations, the parties hereto agree as follows:

1. Construction of Improvements.

(a) Developer, for and in consideration of approval to proceed with the development project and the other things set forth herein agrees, at Developer's own cost and expense, within eighteen months of the date of this Agreement to furnish all engineering, labor, equipment and materials necessary to perform and complete, and to perform and complete in good and workmanlike manner, the Sanitary Sewer Improvements as designated in the Napa Sanitation District Components Bond Amount Estimate Sanitary Sewer System attached as Exhibit "A", in accordance with those Improvement Plans for said development project that have been approved by the District and are on file with the City and the District, and to do all work incidental thereto in accordance with the applicable standards set forth in the Sanitary Sewer and Recycled Water Standards, Napa Sanitation District (the "Standard Specifications"). Said Improvement Plans are entitled **"Improvement Plans for Wine Country Cottages" dated February 19, 2016**, and by this reference are hereby expressly made a part of this contract as though set forth herein in full. In the event of any conflict between the Improvement Plans and the above referenced Standard Specifications the more extensive and stringent provisions shall govern.

(b) The work to be performed hereunder does not include the work necessary to complete the Water System Improvements and the Road and Storm Drain Improvements although such improvements are shown on the Improvement Plans. These improvements shall be contracted for, secured and completed pursuant to the provisions of separate development agreements with the City of Napa, covering this additional work.

(c) Developer shall perform any changes or alterations in the installation of the Sanitary Sewer Improvements required by the District in connection with unanticipated conditions and/or to resolve potential conflicts with other utilities, prior to approval and acceptance of the Improvements as set forth in paragraph 5 below. All costs for said changes and alterations shall be borne by Developer as set forth in this agreement.

2. Cost of Improvements. The estimated cost of the above required Sanitary Sewer Improvements is the sum of **One Hundred Twenty Six Thousand One Hundred Thirty dollars ($126,130.00)** as more particularly set out in Exhibit A.

3. Completion of Work; Notification by District.

(a) All of the Sanitary Sewer Improvements shall be done under the inspection of and to the satisfaction of the District and shall not be deemed complete until determined to be complete by the District. Upon completion of the required Sanitary Sewer Improvements in conformance with this Agreement the District shall forward to the Developer a written acknowledgment that the District considers the Sanitary Sewer Improvements complete subject to the requirements of Section 5 of this Agreement.

(b) Neither the written acknowledgment of completion of the Sanitary Sewer Improvements pursuant to subparagraph (a), nor any periodic or progress inspection or

approval by any person, shall be construed as requiring the District to accept the Sanitary Sewer Improvements for maintenance or otherwise prior to the expiration of the one year period in paragraph 5 below, nor shall it constitute a waiver of any other breach of this Agreement including but not limited to the requirement that the Developer complete or correct any portion of the Sanitary Sewer Improvements that are later determined to be defectively completed.

4. Fees. Developer shall pay to the District plan check fees, inspection fees, and other development fees as required by District Code, based on the rates in effect at the time they are paid, to reimburse the District for its costs in performing engineering, inspection, and other services relative to said development. These fees are non-refundable.

5. Maintenance of Improvements. Developer agrees to maintain the Sanitary Sewer Improvements for a period of one (1) year following the date Developer is notified by the District in writing that the Sanitary Sewer Improvements have been deemed complete. During this one (1) year period the Developer shall repair or replace, to the satisfaction of the District, any defective work or labor done or defective materials furnished. If the Developer has complied with the terms of this Agreement in all respects, the District shall, upon the expiration of said one (1) year maintenance period, notify Developer in writing that the Developer's contractual duty to construct and maintain the improvements has been satisfied, consent to a release of all sureties posted hereunder, and shall accept the Sanitary Sewer Improvements for maintenance, repair and replacement by the District thereafter.

6. Effect of Failure to Construct or Maintain Improvements.

(a) In the event Developer or his agents or employees fail to comply with any of the provisions of this Agreement; fail to prosecute the work with such diligence as to ensure its completion within the time specified in Paragraph One, or within such extensions of time as have been granted by the District; fail to maintain the Sanitary Sewer Improvements for the required one (1) year period; or refuse or fail to perform satisfactorily any of the provisions of the applicable Improvement Plans, specifications or standards, Developer shall be in default of this Agreement and notice in writing of such default shall be mailed to him. Such notice shall specify the default and shall demand that same be remedied within such reasonable period of time as is set forth in the notice, such period having been determined by the District; provided, however, that the reasonable period of time shall not exceed one hundred and twenty (120) calendar days.

(b) In the event of the failure of the Developer to comply with any demand made pursuant to subparagraph (a) the District may, in addition to all other legal remedies available, after not less than ten (10) business days prior written notice to Developer, terminate all rights of the Developer to complete the construction or maintain the Sanitary Sewer Improvements for the required one (1) year period and elect to complete construction, repair or replace any defects in the work, or cause to have same completed on behalf of and at the expense of the Developer. This right of the District is permissive and shall not be construed as requiring the District to terminate the rights of the Developer, complete the construction or

maintain the Sanitary Sewer Improvements for the required one year period. This notice shall be in addition to, and separate from, any notice that may be given pursuant to subparagraph (a). In such a case, and if the District completes the construction or repairs or replaces any defects in the work or causes same to be completed on behalf of and at the expense of the Developer, the District shall be entitled to recover from Developer, or from any security provided by the Developer, its actual cost of completing said Sanitary Sewer Improvements.

(c) In the event Developer, or its surety, fails to reimburse the District for expenses it incurs within a period of ten (10) business days after written demand is mailed by certified mail to the Developer requesting payment, the actual cost of completing the Sanitary Sewer Improvements shall become a lien against the Subject Property. Nothing herein is intended to waive the right of the District to recover from any security or deposit that is established to ensure completion of the Sanitary Sewer Improvements for the required one-year period or, to limit any other remedy the District may have in law or in equity.

(d) The District may also exercise any other remedy available to the District under law including but not limited to requiring any surety or other guarantor to complete the Sanitary Sewer Improvements or pay for the cost of same.

7. Encroachment Permit Required. Developer must apply for and be granted by City an encroachment permit for all facilities which are to be constructed, operated and maintained by others within the City right-of-way.

8. Installation of Utilities. Developer is solely responsible for making all arrangements and assuming all expenses as may be required in connection with the furnishing and installing of utility service facilities.

9. Notices to the Public and to the District.

(a) Developer agrees at all times until the end of the one (1) year maintenance period identified in paragraph 5 to give good and adequate warning to the traveling public of each and every dangerous condition caused by the construction of the Sanitary Sewer Improvements and to protect the traveling public from such defective or dangerous conditions.

(b) Developer or his agents or employees shall give notice to the District at least seventy-two (72) hours before beginning the construction of the required Sanitary Sewer Improvements and shall furnish the District with all reasonable facilities for obtaining full information respecting the progress and completion of the Sanitary Sewer Improvements.

10. Right of Entry. Developer hereby grants to the District, and to any agent or employee of the District, the irrevocable permission to enter upon the Subject Property or the lands upon which the Sanitary Sewer Improvements are to be located, if other than the Subject Property, for the purpose of inspecting the Sanitary Sewer Improvements and, if necessary, to

complete the Sanitary Sewer Improvements pursuant to paragraph 6(b) of this Agreement. Developer shall ensure that any agreement Developer enters into for the completion of required Sanitary Sewer Improvements to be located on property not under the control of Developer shall contain appropriate provisions granting to the District the above right of entry. This right of entry shall terminate when Developer has completed the Sanitary Sewer Improvements to the satisfaction of the District and the one (1) year maintenance period has expired.

11. Hold Harmless; Indemnification.

(a) The District shall not, nor shall any elective or appointive boards, commissions, officers, agents or employees of the District, be liable or responsible for any accident, loss, damage or injury, including death, as well as claims for property damage that may arise in the course of constructing and maintaining the Sanitary Sewer Improvements up to the expiration of the required one (1) year maintenance period.

(b) To the fullest extent permitted by law, Developer agrees to, and shall, hold the District and its elective or appointive boards, commissions, officers, agents or employees (collectively, "Indemnitees") harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise out of the acts or omissions of Developer, its agents or employees, any of the Developer's contractors or subcontractors, or by one or more persons directly or indirectly employed by, or acting as agent of Developer or any of Developer's contractors or subcontractors, in the course of completing the Sanitary Sewer Improvements up to the expiration of the one (1) year maintenance period. All of the liabilities of this paragraph 11(b) are assumed by Developer.

(c) To the fullest extent permitted by law, Developer agrees to, and shall upon request, promptly and fully defend the Indemnitees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the activities for which Developer is indemnifying the District under paragraph 11(b) above.

(d) The provisions of this paragraph shall apply to all damages and claims for damage of every kind suffered or alleged to have been suffered, by reason of the construction of the Sanitary Sewer Improvements or maintenance of said improvements up to the expiration of the required one (1) year maintenance period regardless of whether or not the District has prepared, supplied, or approved of, the Improvement Plans and/or specifications for the land division or the Sanitary Sewer Improvements relating thereto, and regardless of whether or not insurance policies may be determined to be applicable to any of such damages or claims for damages.

12. Pollution Liability. The Developer is responsible for impacts from sanitary sewer overflows from the Sanitary Sewer Improvements during construction and during the warranty period, including but not limited to, cleanup and repair costs and any fines imposed by regulatory agencies for sanitary sewer overflows. To the fullest extent permitted by law,

Developer shall also indemnify, defend and hold Indemnitees harmless from any and all losses, liabilities, damages, costs, claims, demands, penalties, deficiencies, fines, orders, judgments, actions, suits, judicial or administrative proceedings, injunctive or other relief, expenses and charges (including attorneys' fees and court costs) arising from or related to sanitary sewer overflows from the Sanitary Sewer Improvements during construction and during the warranty period.

13. Security Required.

(a) Developer shall file with the District prior to the date the District signs the Final Map and the Improvement Plans, and prior to the date of Developer obtaining permits from the District to construct the sanitary sewer improvements for the subject property, a good and sufficient improvement security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this Agreement and a good and sufficient security for payment of labor and materials equal to the amount of the faithful performance bond to secure the claims to which reference is made in Title 15 of Part 4 of Division 3 of the Civil Code of the State of California (commencing with Section 3082).

(b) Acceptable types of security are:

(1) A bond or bonds by one or more duly authorized corporate sureties: or

(2) A deposit with the District of cash or negotiable bonds of the kind approved for securing deposits of public moneys; or

(3) An instrument of credit, in a form acceptable to the District's counsel, from an agency of the State, Federal, or local government when any such agency provides at least twenty percent of the financing for the portion of the act or agreement requiring security, or from one or more financial institutions subject to regulation by the state or federal government pledging that the funds necessary to carry out the agreement are on deposit and guaranteed for payment.

(4) A letter of credit, in a form acceptable to the District's counsel, issued by a financial institution that is subject to regulation by the state or federal government guaranteeing that all or any portion of the funds available pursuant to the letter of credit will be paid upon written demand of the District and that such written demand need not present documentation of any kind as a condition of payment, including proof of loss.

(c) Developer, if the improvement security is a bond and if the sureties, either on the Faithful Performance Bond or on the Bond securing payment of Labor and

Materials, or both, or the amount of said bonds, in the reasonable opinion of the District becomes insufficient, agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) business days after being notified by the District that the sureties or amount are insufficient. Notwithstanding any other provision herein, if Developer fails to take such action as is necessary to comply with said notice, he shall be in default of this Agreement unless all required Sanitary Sewer Improvements are completed within ninety (90) days of the date on which the District notified the Developer in writing of the insufficiency of the sureties or the amount of the bonds, or both.

(d) Developer, if the improvement security is a deposit or instrument of credit utilizing a deposit, and the deposit in the reasonable opinion of the District becomes insufficient to complete the work, agrees to increase the deposit to an amount that will be sufficient to complete the work within ten (10) business days after being notified by the District that the amount is insufficient and what amount must be deposited. Notwithstanding any other provision herein, if Developer fails to take such action as is necessary to comply with said notice, he shall be in default of this Agreement unless all of the Sanitary Sewer Improvements are completed within ninety (90) days of the date on which the District notified the Developer in writing of the insufficiency of the deposit.

(e) In the event it is deemed necessary to extend the time of completion of the Sanitary Sewer Improvements, extensions of the time may be granted, from time to time, by the District, either at its own option or upon request of the Developer, and such extensions shall in no way affect the validity of this Agreement or release the surety or sureties that have issued the required bonds or other security. Developer agrees to maintain the aforesaid bond or bonds or other security in full force and effect during the term of this Agreement, including such extensions of time as may be granted.

(f) Upon acceptance by the District of the sanitary sewer improvements the developer shall provide security in the amount of 10% of the construction cost of the improvements to guarantee the improvements throughout the one-year warranty period. An acceptable security shall be provided consistent with paragraph 13.b. If no deficiencies are detected at the end of the one year warranty period the maintenance security will be released.

(g) All bonds shall be on a form approved by the District which shall be substantially in a form set forth at Section 66499.1 and 66499.2 of the California Government Code.

14. Determination of District Conclusive. The determination by the District of the question as to whether any of the terms of this Agreement or the plans, specifications and/or standards set forth herein have been violated, or have not been performed satisfactorily, shall be conclusive upon the Developer, and any and all parties who may have any interest in the contract or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to the District under law.

15. Agreement Binding on Successors in Interest. The obligations of Developer hereunder shall not be exonerated or voided by any sale, transfer or assignment by Developer of all or any portion of Developer's interest in or to the Subject Property and/or the Sanitary Sewer Improvements, but shall continue to bind Developer. All such obligations are also the joint and several obligations of each such purchaser, transferee or assignee until such obligations are fully satisfied and to this extent the provisions of this Agreement relating to the construction of said Sanitary Sewer Improvements are intended to bind, and do bind the heirs, executors, administrators, grantees and successors in interest of Developer and said Agreement shall run with the real property until the obligations created by this Agreement are fully satisfied. Developer shall ensure that any agreement to sell any portion of the Subject Property shall contain language substantially similar to the language found in this section.

16. Notices. Any notice, demand, request, consent, approval, or communication that either party desires to give to the other party or to the Napa Sanitation District shall be in writing and either served personally or sent by prepaid, certified or registered first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires to give to the other party shall be addressed to the other party at each of the addresses set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this paragraph.

Developer:
Pearl Avenue Partners, L.P.
21771 Stevens Creek Blvd. Suite 200A
Cupertino, CA 95014

Napa Sanitation District:
Napa Sanitation District
1515 Soscol Ferry Road
Napa, CA 94558

17. Attorneys Fees. In the event suit is brought on this contract or upon bond guaranteeing the completion or maintenance of the Sanitary Sewer Improvements or to enforce any lien created by this Agreement, all costs and reasonable expenses and fees incurred by the prevailing party in successfully enforcing any obligations or rights created by this Agreement shall be paid by the other party, including reasonable attorney fees and upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

18. Severability. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by the courts to be unlawful and void the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

19. Compliance With Sanitary Improvement Plans. Developer covenants and agrees that in the performance of all things to be done hereunder, Developer, its successors, assigns, agents, employees, contractors and subcontractors shall fully comply with and satisfy all conditions of approval of the Sanitary Sewer Improvement Plans.

20. Effective Date. The parties agree that this Agreement shall become effective upon the date first above written.

* * * * * * * * * * * * *

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DEVELOPER: Pearl Avenue Partners, L.P., a California Limited Partnership

By: Edenbridge Master, LLC, a California Limited Liability Company
Its: General Partner

By: Edenbridge Investments, Inc., a California Corporation
Its: Sole Member

By: _____
Patrick J. Geary
Its: President

NAPA SANITATION DISTRICT: Napa Sanitation District, a California Special District

By: _____
Jill Techel
Chair, Board of Directors

ATTEST:

By: _____
Cheryl Schuh
Secretary, Board of Directors

APPROVED AS TO FORM:

By: _____

John Bakker
District Legal Counsel

2609757.1

EXHIBIT A

CHAUDHARY & ASSOCIATES, INC.

ENGINEERS
SURVEYORS
INSPECTORS

WINE COUNTRY COTTAGES
NAPA, CALIFORNIA

ITEM	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	AMOUNT
E) SEWER					
1.	Install Manhole	5	EA	5,000.00	$ 25,000
2.	4" SDR-18 PVC Sewer Pipe	89	LF	150.00	$ 13,350
3.	6" SDR-26 PVC Sewer Pipe	390	LF	200.00	$ 78,000
4.	Lateral with cleanout	11	EA	780.00	$ 8,580
5.	Abandon Sanitary Sewer Service	2	EA	600.00	$ 1,200
	SUBTOTAL SEWER:				$ 126,130