

RECORDED AT THE REQUEST OF AND
RETURN TO:

Napa Sanitation District
1515 Soscol Ferry Road
Napa, CA 94558

Exempt from Recording Fees
Per G.C. 27383

RE: APN 003-164-024-000
APN 003-164-025-000
APN 003-164-027-000

PRIVATE SANITARY SEWER MAIN AGREEMENT

THIS AGREEMENT is made as of this _____ day of _____, 20____ by and among SNC Retail Condos LLC, a Delaware limited liability company and NTC Shops LLC, a Delaware limited liability company (individually, "Owner," and together, "Owners") and the Napa Sanitation District, a California special district ("District") with reference to the following facts.

RECITALS

A. SNC Retail Condos LLC is the fee simple owner of certain real property located within the City of Napa, California, known as assessor's parcel numbers of APN 003-164-024-000 and APN 003-164-025-000. NTC Shops LLC is the fee simple owner of certain real property located within the City of Napa, California, known as assessor's parcel numbers of APN 003-164-027-000. The three parcels (individually, a "Parcel," and collectively, the "Parcels") referenced in this paragraph are referred to herein as "the Property."

B. Due to the configuration of the subject Parcels, the parties have agreed that the Owners will own and maintain a private sanitary sewer main on the Property (the "Private Sanitary Sewer Main"). The parties have agreed that this private ownership arrangement is preferable to a public sanitary sewer main owned and maintained by the District, which would require an easement dedicated to the District and certain setback and access requirements.

C. This Agreement is to clarify the rights, duties and obligations of the parties regarding the maintenance of the Private Sanitary Sewer Main and the private laterals that connect each Parcel to the Private Sanitary Sewer Main.

AGREEMENT

1. Construction of Private Sanitary Sewer Main and Laterals. Except for the setbacks and access requirements, the design and construction of the Private Sanitary Sewer

Main and Laterals, as shown on Exhibit A attached hereto and incorporated herein by this reference, shall be carried out in full accordance with all District specifications.

2. Maintenance of the Private Sanitary Sewer Main. The Owners, on behalf of themselves and for the benefit of each future owner or owners of the Parcels comprising the Property and the District, hereby agree to require all future owners of the Parcels (the Owners and all future owners, collectively, the "Parcel Owners") to agree to maintain, repair and replace as necessary the Private Sanitary Sewer Main. The costs of this obligation shall be borne by the Owners.

3. Maintenance of Sewer Laterals. The Owners, on behalf of themselves and for the benefit of the Parcel Owners and the District, hereby agree to require all Parcel Owners to agree to maintain, repair and replace as necessary all portions of any private sewer lateral improvements, which are the private laterals that connect each Parcel Owner's building to the Private Sanitary Sewer Main.

4. Performance of Required Maintenance by Managing Parcel Owner. Prior to June 30th of each calendar year, the Parcel Owners shall select by majority vote (each Parcel Owner entitled to one vote for each Parcel owned) one of the Parcel Owners to serve as the "Managing Parcel Owner" for the following calendar year.

(a) The Managing Parcel Owner shall be responsible for contracting with appropriate licensed contractors to perform the inspection and maintenance work required hereunder and for ensuring that any required documentation is submitted to the District. The Managing Parcel Owner also shall be responsible for distributing proof of inspection to all Parcel Owners who shall retain copies of such proof. The Managing Parcel Owner shall promptly notify all Parcel Owners of the estimated cost of any maintenance, operation, repair or replacement which is identified by the contractor(s). The Manager Parcel Owner may also have such other responsibilities as agreed upon by a majority of the Parcel Owners.

(b) As an alternative to the Managing Parcel Owner directly employing contractors, the Parcel Owners may authorize the Managing Parcel Owner to select and contract with a certified property management company ("Management Company") experienced in managing real property in the North Bay Area to work with the Managing Parcel Owner and performing all or a portion of its responsibilities. Any contract with a Management Company shall not exceed three (3) years in length and shall be terminable for cause. The cost of employing the Management Company shall be shared equally by the Parcel Owners.

(c) Costs of Maintenance.

(1) Allocation of Costs. The costs of inspection, maintenance, repair, or replacement of the Private Sanitary Sewer Main shall be borne by the Parcel served by the Private Sanitary Sewer Main. In the event of damage to the Private Sanitary Sewer Main caused by the sole negligence or willful action of a Parcel Owner or its invitee, then that Parcel Owner shall be solely responsible for arranging for the repairs, including

payment of the cost of repairs. The work shall be promptly commenced and diligently pursued to completion.

(2) Enforcement of Nonpayment. In accordance with California law, and in addition to all other remedies provided by law, each Parcel Owner may enforce the obligations of this Agreement, including the obligation of other Parcel Owners to pay the costs or special charges provided for in this Agreement, including interest thereon at the maximum rate allowed by law in any manner provided by law including, but not limited to, by maintaining a suit at law against any Parcel Owner personally obligated to pay a cost or charge. Any judgment rendered in any action shall include the amount of the delinquency, accumulated interest and any other amounts as the court may award.

5. Grant and Establishment of Reciprocal Easements. Owners grant to each Parcel and each Parcel Owner as the dominant tenements the following mutual, perpetual, and reciprocal easements:

(a) Access Easement. A nonexclusive easement over and under the private roads and any other portion of each Parcel under which the Private Sanitary Sewer Main is situated, encumbering each Parcel to provide vehicular and equipment ingress and egress.

(b) Maintenance Easement. Each Parcel as a servient tenement is subject to an easement in favor of each other Parcel as the dominant tenement for the purpose of providing each Parcel Owner and their agents such access as may be necessary to perform the maintenance duties described herein.

The easements granted herein shall be deemed to be established upon the recordation of this Agreement, whether or not they are set forth in the granting deed to the Parcels, and shall thenceforth be deemed to be and are enforceable as equitable servitudes and covenants running with the land for the use and benefit of the Parcel Owners.

6. Notice to Subsequent Owners. In the event that ownership of the Property is transferred to a subsequent owner(s), the Parcel Owner of that Parcel agrees to notify in writing the subsequent owner(s) a minimum of thirty (30) days prior to the close of escrow on the subject Parcel, of the existence of this recorded agreement.

7. 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 construction, operation or maintenance of the Private Sanitary Sewer Main or any sewer laterals except for accident, loss, damage, injury, death and claims for property damage caused by the negligence or intentional misconduct of the District, its agents or employees.

(b) Owners agree to, and shall hold harmless and indemnify the District and its elective or appointive boards, commissions, officers, agents or employees 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 in the course of construction, operation, or maintenance of the Private Sanitary Sewer Main or sewer laterals except for accident, loss, damage, injury, death and claims for property damages caused by the negligence or intentional misconduct of the District, its agents or employees.

(c) Owners agree to require Parcel Owners to hold harmless and indemnify the District and its elective or appointive boards, commissions, officers, agents or employees 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 in the course of construction, operation, or maintenance of the Private Sanitary Sewer Main or sewer laterals except for accident, loss, damage, injury, death and claims for property damages caused by the negligence or intentional misconduct of the District, its agents or employees.

(d) Owners agree to, and shall upon request, promptly and fully defend the District and its elective or appointive boards, commissions, officers, agents or employees, from any suits or actions at law or in equity for damages caused or alleged to have been caused, by reason of any activities for which Owners are indemnifying the District under paragraph 7(b) above.

(e) The provisions of this section shall apply to all damages and claims for damage of every kind suffered or alleged to have been suffered, in the course of construction, operation, or maintenance of the Private Sanitary Sewer Main or sewer lateral improvements 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 Private Sanitary Sewer Main or sewer lateral 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.

8. Covenants Running with the Land. The provisions of this Agreement shall be equitable servitudes and covenants running with the land, binding upon and inure to the benefit of each Parcel and each successive Parcel Owner. The provisions of this Agreement are enforceable by any Parcel Owner and the District against any other Parcel Owner, tenant or occupant of a Parcel. Each Parcel Owner shall have the right to enforce, in any manner permitted by law or in equity, including by arbitration, any and all of the provisions of this Agreement upon other Parcel Owners.

9. Failure to Maintain. In the event the District believes that Parcel Owners have failed to comply with the requirements of this Agreement, or if the District believes that lack of proper maintenance has created the potential for adverse impacts to public health and safety, the District is hereby granted the right to enter upon the Property to access the Private Sanitary Sewer Main and perform whatever work is reasonably necessary to correct the situation. In such case, the District may bill Parcel Owners for the entire cost and expense of such

maintenance, including administrative costs, and interest to the maximum amount permitted by law from and after 30 days from the date the maintenance expense bill is mailed by the District to Parcel Owners. In the event any such maintenance expense bill is not paid within said 30 days, the District may initiate a civil action to recover the amount owed, and the prevailing party in such action shall be entitled to recover its costs, including reasonable attorney's fees. The District also shall be entitled to cause a lien for any such unpaid maintenance expense bill to be recorded against the Property or Parcel whose Parcel Owner has not paid the bill. In addition, the District shall be entitled to have the unpaid amount of the maintenance expense bill placed as a special assessment on the next regular tax bill levied against the Property or an individual Parcel, after which such assessment shall be collected in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and same procedures under foreclosure and sale in the case of delinquency as provided for ordinary municipal taxes. The actions described in this section are in addition to and not in lieu of other legal remedies provided by law. Notwithstanding the above, it is understood that the District is under no obligation to repair or maintain the Private Sanitary Sewer Main or the sewer lateral improvements and in no event shall this Agreement be construed to impose any such obligation on the District.

10. Pollution Liability. The Parcel Owners are responsible for impacts from sanitary sewer overflows from the Private Sanitary Sewer Main or Laterals. The Parcel Owners shall be liable for cleanup and repair costs and for fines, if imposed by regulatory agencies from sanitary sewer overflows.

11. General Provisions. This Agreement contains the entire agreement of the parties and cannot be amended or modified except by written agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. This Agreement shall run with the property and the parcels comprising it, and be binding on and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the parties. Except for its own obligations to indemnify and hold harmless the District, an Owner may assign its rights and delegate its obligations under this Agreement to a Parcel Owner without the consent of the District, whereupon the Owner shall have no further liability to the District hereunder.

* * * * *

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

OWNERS:

SNC Retail Condos LLC
a Delaware limited liability company

By: Napa Center Preferred, LLC,
a California limited liability company
its sole member

By: Napa Center Holdings, LLC,
a Delaware limited liability company
its sole member

By: 1300 First Street Partners, LLC
a Delaware limited liability company
its sole member

By: 
Todd C. Zapolski
Manager

NTC Shops LLC
a Delaware limited liability company

By: Napa Center Preferred, LLC,
a California limited liability company
its sole member

By: Napa Center Holdings, LLC,
a Delaware limited liability company
its sole member

By: 1300 First Street Partners, LLC
a Delaware limited liability company
its sole member

By: SNC Partners, LLC
a California limited liability company
its sole member

By: Zapolski Real Estate, LLC
a North Carolina limited liability
company
its Managing Member

By: 
Todd C. Zapolski
Manager

NAPA SANITATION DISTRICT:

Napa Sanitation District, a California Special District

By: _____
Jill Techel
Chair, Board of Directors

ATTEST:

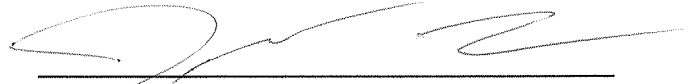
By: _____
Cheryl Schuh
Secretary, Board of Directors

All signatures must be notarized.

Attachments: Exhibit A

APPROVED AS TO FORM:

By:

A handwritten signature in black ink, appearing to read 'John Bakker', written over a horizontal line.

John Bakker

District Legal Counsel

EXHIBIT A

PRIVATE MAIN LINE EXHIBIT

RSA⁺

1515 FOURTH STREET
NAPA, CALIF. 94559
OFFICE | 707 | 252.3301
+ www.RSAcivil.com +

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