



A Tradition of Stewardship
A Commitment to Service

Planning, Building & Environmental Services

1195 Third Street, Suite 210
Napa, CA 94559
www.countyofnapa.org

David Morrison
Director

MEMORANDUM

To: Ann Cottrell	From: Don Barrella
Date: September 17, 2019	Re: Agenda Item #7A Bremer Family Winery Use Permit Exception #P19-00153-UP

Attached per your request is the Settlement Agreement that is referenced in the staff report for the referenced item. The Settlement Agreement will also be circulated to the Planning Commission.

If you should have any questions or need any additional information please let me know.
Thank you.

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of this ^{6th} day of ~~January~~ ^{February}, 2019, by and between Napa County, a political subdivision of the State of California (“County”), and John Alex Bremer and Laura Joyce Bremer, trustees of the Bremer Family 1995 Living Trust dated August 23, 1995 (the “Bremers”), and the Bremer Group, LLC (collectively, with the Bremers, “Defendants”). The County and Defendants will, from time to time hereinafter, be referred to individually as “Party” and collectively as “Parties.”

RECITALS

A. The Bremers are the owners of the real property commonly known as 975 Deer Park Road in unincorporated Napa County, California, and bearing Napa County Assessor’s Parcel Number 021-400-002 (“Property”). Defendants own and operate the Bremer Family Winery (the “Winery”) on the Property.

B. In or around August 2016, the County discovered that Defendants were allegedly operating the Winery in a manner that the County believed exceeded the scope of Defendants’ use permit. The Winery was permitted through Use Permit #U-697879 (the “Use Permit”), issued by the County to Defendants’ predecessor in interest in 1979. After an investigation, the County determined that, in its view, violations of the County’s Zoning Code, Building Code, and Conservation Regulations were present on the Property.

C. On or about January 19, 2017, in response to the County’s demands, Defendants submitted an application to modify the Use Permit to address the violations and increase permitted visitation to 40,320 visitors per year.

D. On August 4, 2017, the County filed a Complaint in the Napa County Superior Court, Case Number 17CV000884, (the “Complaint”) against Defendants instituting the present action (the “Action”). The Complaint requested an injunction against Defendants’ alleged non-compliant activity, recovery of costs of abatement and attorneys’ fees, and a civil penalty, pursuant to the Napa County Code.

E. The County alleged in its Complaint, inter alia, as follows (the “County’s Contentions”):

1. Defendants expanded their permitted visitation level without a use permit, allowing, on average, up to approximately 650 visitors per month (7,800 per year);
2. Defendants exceeded their hours and days of operation, operating the Winery on weekends and after 5:00 pm;

3. Defendants violated the Zoning Code by conducting winery operations outside the scope of the 6,780 square foot winery building;
4. Defendants violated the Zoning Code and Building Code by using a dwelling on the Property (the "Farmhouse") for Winery purposes;
5. Defendants violated the Zoning Code and Building Code by allowing wine tastings and other events in the wine storage cave;
6. Defendants violated the Zoning Code by renting the Winery for private parties, receptions, or other events;
7. Defendants violated the Zoning Code by allowing food service for wine tastings and events;
8. Defendants violated the Building Code by constructing walls, stairs, catwalks, and other structures without building permits; and
9. Defendants violated the Napa County Conservation Regulations by constructing or maintaining structures within a creek setback.

F. Defendants contend, inter alia, as follows ("Defendants' Contentions"):

1. Defendants operated the Winery with a good faith belief that their use was consistent with, and within the scope of, the Use Permit;
2. Any potential violation was unintentional and not a willful violation;
3. The Use Permit does not contain any limitation on private visitation, marketing, food service, or hours of operation;
4. Winery operations, including private visitation and the use of the Farmhouse, were established by the prior owner of the Property prior to the enactment of the Winery Definition Ordinance ("WDO") in 1990, and therefore are allowed to continue without a modification to the Use Permit;
5. Any events occurring at the Winery were marketing events, not private rental of the Property, and any improper use of the cave was isolated and not intentional; and
6. Some walls and other structures do not require building permits, nor do they violate the conservation regulations.

G. Over the course of the Action, Defendants provided information and evidence to the County showing the nature and extent of Winery operations prior to the enactment of the WDO in 1990:

1. Visitation levels at the Winery, at the enactment of the WDO, were 5,200 visitors per year;
2. The Winery operated seven days a week;
3. The office on the bottom floor of the Farmhouse was used for Winery purposes;
4. The second floor of the main Winery building was used for storage or production of wine and not visitation; and
5. The Winery employed more than three employees.

H. The County declines to accept or allow today the pre-WDO visitation level at the Winery set forth in Paragraph G.1, above. The County has instead negotiated and Defendants have agreed to reduced visitation as set forth in Paragraph 3, below. The Parties have entered into this Settlement Agreement based on the unique facts, circumstances, and evidence presented regarding the Use Permit, the Winery, and the Property. This Settlement Agreement is made as a compromise and settlement of disputed issues. The Parties and their representatives expressly covenant that the County's determination does not establish a precedent for consideration of the scope of entitlements on any other properties.

I. In addition to the claims made in the Action, the County has asserted that Defendants are in violation of the requirements of Napa County Code chapter 18.108 by exceeding the scope of Erosion Control Plan P11-0317-ECPA (the "ECP") on a separate parcel with Assessor's Parcel Number 021-400-005 (the "Vineyard Parcel") including, but not limited to, property line setbacks. Defendants have asserted that they have constructed the vineyard and used their property in good faith compliance with applicable requirements, and that any potential violation was unintentional and not willful. The County's claims regarding the ECP and the Vineyard Parcel shall be referred to below as the "ECP Claims." In November 2016, the Vineyard Parcel became the subject of a Notice of Violation issued by the San Francisco Regional Water Quality Control Board (the "State Water Board"). The State Water Board required the submission of a Corrective Action Workplan (the "CAW") to correct the violations of the California Water Code. The corrections contemplated by the CAW would also require an amendment to the ECP to ensure compliance with Napa County's conservation regulations. As of the execution of this Stipulation, the State Water Board has not approved a final CAW for the Vineyard Parcel; however, the Parties wish to, and hereby do, resolve any outstanding dispute as between the Parties regarding the ECP Claims in this Stipulation.

J. This Settlement Agreement and the proposed Stipulated Judgment attached hereto settle and conclude all issues, claims and defenses between the Parties as raised in the Action, all claims and defenses between them for civil penalties, costs, fees, and attorneys' fees relating to the allegations set forth in the Complaint in the Action, the County's Contentions, Defendants' Contentions, and all issues, claims and defenses as between the Parties regarding the ECP Claims. The Parties acknowledge that entry of Judgment will not and cannot affect the State Water Board's jurisdiction or authority regarding the CAW or the Notice of Violation issued by the State Water Board.

K. The Parties, without admitting any liability whatsoever and desiring to avoid any further claims, litigation, or controversies arising from the disputes referenced above and the matters alleged in the Complaint, have agreed to be bound by the terms of this Settlement Agreement.

NOW, THEREFORE, based on the foregoing, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. The foregoing Recitals are incorporated herein by this reference.

2. Within fifteen (15) calendar days of full execution of this Settlement Agreement, the Parties shall execute and file the Proposed Stipulated Judgment (the "Judgment") attached hereto as Exhibit A, as well as a stipulation for entry of the Judgment if required by the Court. The Judgment shall fully and accurately reflect the terms of this Agreement. Each Party's trial counsel shall approve the Judgment as to form and facilitate compliance with this Paragraph.

Alleged Use Permit Violations

3. Immediately upon entry of Judgment pursuant to this Settlement Agreement, Defendants shall reduce and limit visitation at the Winery by members of the public to no more than 3,600 visitors per year. In addition to the annual limitation, Defendants shall also limit daily visitation to no more than 70 visitors on any given day. Defendants shall abide by these limits unless and until the County approves a Use Permit modification allowing greater levels of visitation. No hearing on a Use Permit modification pertaining to the Winery will occur prior to December 1, 2019. The limitation of December 1, 2019 does not apply to minor Use Permit modifications.

4. In addition to the visitation limits set forth above, immediately upon entry of Judgment pursuant to this Settlement Agreement, and unless and until authorized by a Use Permit modification that modifies one or more of the below restrictions, Defendants are hereby enjoined and ordered as follows:

- a. Defendants shall limit winery visitation to between the hours of 8:00 am and 5:00 pm Monday through Sunday.
- b. Defendants shall not use the main floor of the Farmhouse or the surrounding deck for winery purposes.
- c. Defendants shall not hold marketing events, as those events are defined in Napa County Code section 18.08.370.
- d. Defendants shall not rent the winery for private events.
- e. Defendants shall not serve food at the winery.
- f. Defendants shall not use the cave in a manner that is inconsistent with the Type II designation in their Use Permit, which prohibits Hosted Events, as defined in Napa County Code section 15.12.060(B).
- g. Defendants shall not use the bocce ball court, pizza oven, and tractor shed areas for winery purposes.

5. No later than the tenth calendar day of each month following the month in which the Judgment pursuant to this Settlement Agreement is entered, until such time as a Use Permit modification is granted that obviates the need for such reporting, Defendants shall provide to the County a declaration signed under penalty of perjury by Defendants or by their representative(s) who are authorized to bind Defendants attesting to the fact that they have complied with the conditions of Paragraphs 3 and 4, *supra*, including that their visitation levels are not on pace to exceed the annual limit set forth in Paragraph 3, *supra*. Such declarations shall attach logs or appointment books documenting the actual number of visitors.

6. Defendants may submit an application for a Use Permit Modification prior to December 1, 2019, and the County will process and review the application in the ordinary course of the County's business. Defendants expressly understand that if they submit an application prior to one year from entry of the Judgment pursuant to this Settlement Agreement, any environmental review by the County, as required by the California Environmental Quality Act (CEQA), will use the lesser of the permitted activities in Paragraphs 3 and 4, *supra*, or actual activities as determined from the declarations submitted pursuant to Paragraph 5, *supra*, as the baseline against which any potential environmental impacts will be assessed. The County does not and cannot make any representation or promise that any applications for use permit modifications submitted pursuant to the Judgment entered pursuant to this Settlement Agreement will be approved in whole or in part.

Alleged Building Code Violations

7. Within sixty (60) calendar days after entry of Judgment pursuant to this Settlement Agreement, Defendants shall submit complete applications for building permits for all of the following:

- a. To take all steps required by the County for a change in the permitted occupancy of the bottom floor of the Farmhouse to reflect winery occupancy.
- b. To legalize or demolish the construction and installation of framing and electrical on the second floor of the winery building, provided the use of the second floor is limited to storage or an office.
- c. To legalize or demolish the fermentation tanks and catwalks on the east side of the winery building.
- d. To legalize or demolish the external stairs on the east side of the crush pad and on the west side of the winery building.
- e. To legalize or demolish all handrails installed on the property, including those associated with the stairs identified in subparagraph 7(d), *supra*.
- f. To legalize or demolish the plumbing to the outdoor sink.
- g. To legalize or demolish any walls that are taller than four feet or that bear a surcharge.

8. Defendants shall diligently pursue all the permits required by Paragraph 7, *supra* by responding within fourteen (14) calendar days to any request by the County for corrections or modifications to the permit applications.

9. Upon issuance of any permit pursuant to Paragraph 7, *supra*, Defendants shall complete all authorized work and contact the County Planning, Building & Environmental Services for a final inspection within sixty (60) calendar days of permit issuance. If Defendants are unable to complete authorized work due to an occurrence beyond Defendants' reasonable control, including but not limited to an act of God or nature, Defendants shall immediately notify the County, and Defendants' 60-day deadline for performance hereunder shall be extended by the actual time of delay caused by such occurrence.

Alleged Conservation Regulation Violations and ECP Claims

10. Within sixty (60) calendar days after entry of Judgment pursuant to this Settlement Agreement, Defendants shall submit a complete application for an exception to the Conservation Regulations, as provided in Napa County Code section 18.108.040, to allow the walls and bridge structures within the creek setback. Defendants shall respond within fourteen

(14) days to any request by the County for corrections or modifications to the permit application. County staff shall reasonably recommend approval of the exception if it is consistent with the Napa County Code and will not result in any significant adverse environmental impact. Defendants shall complete any work authorized pursuant to this paragraph and shall contact County Planning, Building & Environmental Services for a final inspection within a reasonable time, using best efforts, of the approval.

11. Defendants shall work in good faith and with all deliberate speed to obtain a Final Corrective Action Workplan ("Final CAW") from the State Water Board by April 2019, so that corrective action may be undertaken in the spring and summer of 2019. Within sixty (60) calendar days after the State Water Board approves the Final CAW, Defendants shall submit a complete application for a modification to the ECP on the Vineyard Parcel, consistent with the Final CAW. Defendants shall respond to any request by the County for further information or documentation to support the application submitted pursuant to this Paragraph within fourteen (14) calendar days of receipt of any such request by the County. Defendants shall ensure that all work required to conform the Vineyard Parcel to the scope of any approved modification to the ECP is completed within one hundred eighty (180) calendar days from approval by the County.

Additional Terms

12. Defendants shall pay to the County, by checks made payable to "The County of Napa," \$271,464 as a compromised amount to partially reimburse the County for its attorneys' fees and costs incurred in the Action. Defendants shall pay this amount as follows. Defendants shall pay \$32,000 within thirty (30) calendar days after entry of Judgment pursuant to this Settlement Agreement. Defendants shall pay the remainder in two equal installments of \$119,732, with the first before July 1, 2019, and the second before December 31, 2019. The County shall not object to Defendants' characterization of these payments as tax-deductible business or similar expenses but makes no representation regarding the supportability of such characterization.

13. Within sixty (60) calendar days after entry of Judgment pursuant to this Settlement Agreement, to secure performance of Defendants' obligations in this Settlement Agreement, Defendants shall individually and jointly execute a promissory note to the County in the amount of \$320,658.00 secured by a deed of trust on the Property that Defendants shall promptly record. The form of promissory note to be executed by Defendants is attached hereto and incorporated herein by this reference as Exhibit B. The form of deed of trust to be executed and recorded by Defendants is attached hereto and incorporated herein by this reference as Exhibit C. The County's position shall be secured by no less than a second position security interest in the collateral. The sum of indebtedness cannot exceed 80% of the Property value. If on December 31, 2019, Defendants have complied with all the requirements of this Settlement Agreement, including Paragraphs 3, 4 and 5; have obtained all the permits and approvals

required by Paragraphs 7, 10 and 11 of this Settlement Agreement; and have completed all the work required by Paragraphs 9, 10 and 11 of this Settlement Agreement, then the promissory note shall be cancelled without any payment and the County shall execute any reasonable documents to clear title and reconvey the deed of trust on or shortly after December 31, 2019. If on December 31, 2019, Defendants have substantially complied with the requirements of this Settlement Agreement but have been unable to complete authorized work due to an occurrence beyond Defendants' reasonable control, including but not limited to an act of God or nature or unforeseen delay by the State Water Board, then the December 31, 2019 deadline for performance hereunder shall be extended by the actual time of delay caused by such occurrence, as determined in the County's sole discretion, and, upon performance, the promissory note shall be cancelled without any payment and the County shall execute any reasonable documents to clear title and reconvey the deed of trust. If on December 31, 2019, Defendants have not complied with the requirements of this Settlement Agreement and the delay in their compliance was not caused by an occurrence beyond Defendants' reasonable control, then the County shall enforce the secured promissory note.

14. Defendants shall make good faith efforts to educate their employees and contractors and ensure compliance with the Judgment entered into pursuant to this Settlement Agreement. Defendants shall ensure that the obligations and conditions in the Judgment are communicated to each existing or new agent, employee, officer, assign, servant, or representative, and shall specifically inform them of the limitations on daily and annual visitation set forth in Paragraph 3, and the limitations set forth in Paragraph 4. Defendants shall require all current and future employees to sign a notice acknowledging that they have received the executed Judgment and understand its contents.

15. The harm or injury to the County that would result from violation of any provisions of the Judgment pursuant to this Settlement Agreement is difficult to ascertain or generally not capable of calculation. Therefore, if Defendants violate any of the provisions set forth in the Judgment pursuant to the Settlement Agreement, the Parties agree to the following consequences:

- a. The County may reset the restriction on a hearing on a Use Permit Modification pertaining to the Winery, set forth in Paragraph 3, *supra*, from December 1, 2019, to one year from the date that the County provides notice of the material violation of the Judgment pursuant to this Settlement Agreement;
- b. In the event of a material violation, Defendants shall cease all operation of the Winery for a period of one (1) month from the date that the County provides notice of the material violation of the Judgment pursuant to this Settlement Agreement; and

- c. The County shall enforce the secured promissory note pursuant to Paragraph 13.
- d. For purposes of this paragraph, “material” violations shall include but not be limited to any violation of Paragraphs 3 and 4, *supra*, including the daily and annual visitation limits set forth in Paragraph 3.

16. Reasonable attorney’s fees will be awarded to the prevailing Party in any action or on any motion filed to enforce or interpret this Agreement or the Judgment pursuant to this Settlement Agreement.

17. The County and its officers, agents, or employees, or persons duly authorized to act on its behalf, may enter the Property during normal business hours upon two (2) days’ notice to Defendants, notifying them of the date and time of inspecting the Property for compliance with the Judgment pursuant to this Settlement Agreement. The Property shall not be locked and shall be accessible to the County at the date and time set forth in the notice. The Napa County Sheriff may send such deputies as staff deems appropriate to enforce this directive and to protect and supervise the County officers, agents, employees, and persons duly authorized to act on its behalf.

18. The Judgment pursuant to this Settlement Agreement shall be recorded against the Property. The Judgment pursuant to this Settlement Agreement, and the covenants and conditions contained therein, shall run with the land, apply to, be binding upon, and inure to the legatees, devisees, administrators, executors, legal representatives, assignees, successors in interest, buyers, and agents of the Parties hereto, and may not be altered, amended, modified, or otherwise changed except by a writing executed by County and Defendants.

19. Except as provided above, each Party shall bear its own attorneys’ fees and costs incurred in the Action.

20. This Agreement contains the entire agreement between the Parties regarding the matters set forth herein and any amendment must be in writing and signed by the Parties.

21. The Parties hereby waive the right to appeal, to attempt to set aside or vacate, or otherwise to attack, directly or collaterally, the Judgment entered pursuant to this Settlement Agreement.

22. The Parties, and each of them, acknowledge that they have either been advised to seek, or been represented by, legal counsel throughout all of the negotiations which preceded the execution of this Agreement and the Judgment, and that they have executed this Agreement after seeking and receiving the advice of such counsel, or have voluntarily waived seeking such advice.

23. The Bremers, individually and on behalf of their family trust, agree to be bound as of the date of their signatures on this Agreement, and the Bremer Group, LLC, agrees to be bound as of the date of its authorized signatory's signature on this Agreement, by the provisions of the proposed Stipulated Judgment as though ordered by the Court, though the terms of the proposed Judgment cannot be enforced until on or after the date the Judgment is entered by the Court. The County shall serve by mail on all Defendants the Judgment entered pursuant to this Settlement Agreement when it is filed and each of the Parties waives any further notice or service of the final Judgment.

24. The filing of this Settlement Agreement and the proposed Judgment may be made by the ex parte appearance of the County **without** further notice to Defendants.

25. This Agreement may be executed by facsimile signatures and in counterparts, which when taken together shall constitute one and the same Agreement.

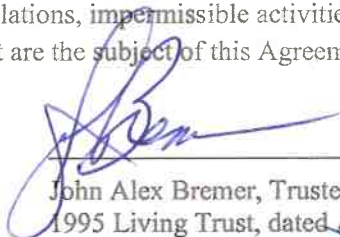
26. If any provision or part of any provision of this Agreement is for any reason held to be invalid, unenforceable or contrary to public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

27. The Parties agree that any legal rule or maxim to the effect that ambiguities are to be resolved against the drafting Party shall not apply to any interpretation of this Agreement.

28. The Parties shall request that the Court retain jurisdiction to enforce the Judgment entered pursuant to this Settlement Agreement under Code of Civil Procedure section 664.6.


29. Nothing in this Agreement shall be construed as precluding the County from commencing future litigation or administrative enforcement actions against Defendants for any **unrelated existing** or future Code violations, **impermissible** activities, or occurrences that are not part of the County's Contentions that are the **subject** of this Agreement.

Date: 1-25-19



John Alex Bremer, Trustee of the Bremer Family
1995 Living Trust, dated August 23, 1995

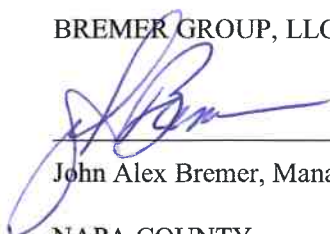
Date: 01/25/19



Laura Joyce Bremer, Trustee of the Bremer
Family 1995 Living Trust, dated August 23, 1995

Date: 1-25-19

BREMER GROUP, LLC



John Alex Bremer, Managing Member

Date: 2-6-19

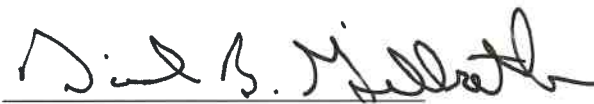
NAPA COUNTY



David Morrison, Director of Planning,
Building & Environmental Services

APPROVED AS TO FORM:

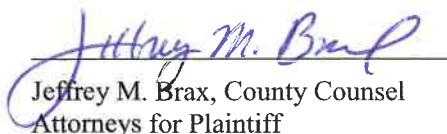
Date: 1/25/19



David B. Gilbreth
Counsel for Defendants

Date: 2/6/19

NAPA COUNTY COUNSEL



Jeffrey M. Brax, County Counsel
Attorneys for Plaintiff

EXHIBIT A

1 JEFFREY M. BRAX, County Counsel (Bar No. 218601)
JEFFREY M. RICHARD, Chief Deputy (Bar No. 105286)
2 JASON M. DOOLEY, Deputy (Bar No. 258570)
SHANA A. BAGLEY, Deputy (Bar No. 169423)
3 NAPA COUNTY
1195 Third Street, Suite 301
4 Napa, California 94559-3001
Telephone: 707 253 4521 / Facsimile: 707 259 8220
5 Email: Jason.Dooley@countyofnapa.org

6 ARTHUR F. COON (Bar No. 124206)
BASIL S. SHIBER (Bar No. 144260)
7 MILLER STARR REGALIA
A Professional Law Corporation
8 1331 N. California Blvd., Fifth Floor
Walnut Creek, California 94596
9 Telephone: 925 935 9400 / Facsimile: 925 933 4126
Email: arthur.coon@mrsrlegal.com
10 bill.shiber@mrsrlegal.com

11 Attorneys for Plaintiff NAPA COUNTY

12 *Exempt from Filing Fees Pursuant to Gov't Code § 6103*

13
14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF NAPA

16 NAPA COUNTY,

17 Plaintiff,

18 v.

19 JOHN ALEX BREMER AND LAURA JOYCE
BREMER, TRUSTEES OF THE BREMER
FAMILY 1995 LIVING TRUST DATED
20 AUGUST 23, 1995;
BREMER GROUP, LLC, A CALIFORNIA
21 LIMITED LIABILITY COMPANY;
and DOES 1 through 10, inclusive,

22 Defendants.
23
24

Case No.: 17CV000884

**[PROPOSED]
JUDGMENT PURSUANT TO STIPULATION
OF PARTIES**

25 It appearing to the Court that all parties to the above-entitled action (the "Parties"), Plaintiff
26 NAPA COUNTY ("County"), on the one hand, and Defendants JOHN ALEX BREMER AND LAURA
27 JOYCE BREMER, Trustees of the Bremer Family 1995 Living Trust dated August 23, 1995 (the
28 "Bremers"), BREMER GROUP, LLC, (collectively with the Bremers, the "Defendants"), on the other

1 hand, have, in a Settlement Agreement filed with the Court and comprising and containing the Parties'
2 stipulation, stipulated and requested the Court in the above-entitled action to enter this Judgment
3 Pursuant to Stipulation, the Court having considered the Parties' Stipulation and the pleadings on file in
4 this action, and good cause appearing therefor;

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

6 1. The Court has jurisdiction over the subject matter hereof and of the Parties hereto.

7 2. The Court hereby incorporates by reference the terms of the Parties' Settlement
8 Agreement for Entry of Judgment, a true and correct copy of which is attached hereto and incorporated
9 herein by this reference as Exhibit "1" ("Settlement Agreement").

10 3. The Bremers have been, during all relevant time periods, the legal owners of that real
11 property located in the unincorporated area of Napa County identified as 975 Deer Park Road, in
12 unincorporated Napa County (bearing a St. Helena, California mailing address) and identified by
13 Assessor Parcel Number 021-400-002 (the "Property"), and one or more of the Defendants own and
14 operate the Bremer Family Winery (the "Winery") on the Property.

15 4. This action was filed by the County alleging various violations by Defendants of the
16 County Code and the California Building Code in their operation of the Winery on the Property and in
17 their construction and maintenance of certain structures or improvements on the Property.

18 5. The Parties, without admitting any liability whatsoever and desiring to avoid any further
19 claims, litigation, or controversies arising from the disputes referenced above and the matters alleged in
20 the complaint on file herein, have stipulated to the entry of this Judgment through the Settlement
21 Agreement.

22 6. The injunctive portions of this Judgment are applicable to all Defendants, and also to
23 each of their agents, servants, employees, representatives, partners, successors and assigns, and to all
24 persons, employees, and other entities who are acting in concert or participating with Defendants, with
25 actual or constructive notice of this Judgment.

26 **Alleged Use Permit Violations**

27 7. Immediately upon entry of this Judgment, Defendants shall reduce and limit visitation at
28 the Winery by members of the public to 3,600 visitors per year. In addition to the annual limitation,

1 Defendants shall also limit daily visitation to no more than 70 visitors on any given day. Defendants
2 shall abide by these limits unless and until the County approves a Use Permit modification allowing
3 greater levels of visitation. No hearing on a Use Permit modification pertaining to the Winery will occur
4 prior to December 1, 2019. The limitation of December 1, 2019 does not apply to minor Use Permit
5 modifications.

6 8. In addition to the visitation limits set forth above, immediately upon entry of this
7 Judgment, and unless and until authorized by a Use Permit modification that modifies one or more of the
8 below restrictions, Defendants are hereby enjoined and ordered as follows:

- 9 a. Defendants shall limit winery visitation to between the hours of 8:00 am and 5:00 pm
10 Monday through Sunday.
- 11 b. Defendants shall not use the main floor of the Farmhouse or the surrounding deck for
12 winery purposes.
- 13 c. Defendants shall not hold marketing events, as those events are defined in Napa County
14 Code section 18.08.370.
- 15 d. Defendants shall not rent the winery for private events.
- 16 e. Defendants shall not serve food at the winery.
- 17 f. Defendants shall not use the cave in a manner that is inconsistent with the Type II
18 designation in their Use Permit, which prohibits Hosted Events, as defined in Napa
19 County Code section 15.12.060(B).
- 20 g. Defendants shall not use the bocce ball court, pizza oven, and tractor shed areas for
21 winery purposes.

22 9. No later than the tenth calendar day of each month following the month in which the
23 Judgment is entered, until such time as a Use Permit modification is granted that obviates the need for
24 such reporting, Defendants shall provide to the County a declaration signed under penalty of perjury by
25 Defendants or by their representative(s) who are authorized to bind Defendants attesting to the fact that
26 they have complied with the conditions of Paragraphs 7 and 8, *supra*, including that their visitation
27 levels are not on pace to exceed the annual limit set forth in Paragraph 7, *supra*. Such declaration shall
28 attach logs or appointment books documenting the actual number of visitors.

1 10. Defendants may submit an application for a Use Permit Modification prior to December
2 1, 2019, and the County will process and review the application in the ordinary course of the County's
3 business. Defendants expressly understand that if they submit an application prior to one year from entry
4 of this Judgment, any environmental review by the County, as required by the California Environmental
5 Quality Act (CEQA), will use the lesser of the permitted activities in Paragraphs 7 and 8, *supra*, or
6 actual activities as determined from the declarations submitted pursuant to Paragraph 9, *supra*, as the
7 baseline against which any potential environmental impacts will be assessed. The County does not and
8 cannot make any representation or promise that any applications for use permit modifications submitted
9 pursuant to this Judgment will be approved in whole or in part.

10 **Alleged Building Code Violations**

11 11. Within sixty (60) calendar days after entry of this Judgment, Defendants shall submit
12 complete applications for building permits for all of the following:

- 13 a. To take all steps required by the County for a change in the permitted occupancy of the
14 bottom floor of the Farmhouse to reflect winery occupancy.
- 15 b. To legalize or demolish the construction and installation of framing and electrical on the
16 second floor of the winery building, provided the use of the second floor is limited to
17 storage or an office.
- 18 c. To legalize or demolish the fermentation tanks and catwalks on the east side of the
19 winery building.
- 20 d. To legalize or demolish the external stairs on the east side of the crush pad and on the
21 west side of the winery building.
- 22 e. To legalize or demolish all handrails installed on the property, including those associated
23 with the stairs identified in subparagraph 11(d), *supra*.
- 24 f. To legalize or demolish the plumbing to the outdoor sink.
- 25 g. To legalize or demolish any walls that are taller than four feet or that bear a surcharge.

26 12. Defendants shall diligently pursue all the permits required by Paragraph 11, *supra* by
27 responding within fourteen (14) days to any request by the County for corrections or modifications to
28 the permit applications.

1 13. Upon issuance of any permit pursuant to Paragraph 11, *supra*, Defendants shall complete
2 all authorized work and contact Planning, Building & Environmental Services for a final inspection
3 within sixty (60) days of permit issuance. If Defendants are unable to complete authorized work due to
4 an occurrence beyond Defendants' reasonable control, including but not limited to an act of God or
5 nature, Defendants shall immediately notify the County, and Defendants' 60-day deadline for
6 performance hereunder shall be extended by the actual time of delay caused by such occurrence.

7 **Alleged Conservation Regulation Violations and ECP Claims**

8 14. Within sixty (60) calendar days after entry of Judgment, Defendants shall submit a
9 complete application for an exception to the Conservation Regulations, as provided in Napa County
10 Code section 18.108.040, to allow the walls and bridge structures within the creek setback. Defendants
11 shall respond within fourteen (14) calendar days to any request by the County for corrections or
12 modifications to the permit application. County staff shall reasonably recommend approval of the
13 exception if it is consistent with the Napa County Code and will not result in any significant adverse
14 environmental impact. Defendants shall complete any work authorized pursuant to this paragraph and
15 shall contact County Planning, Building & Environmental Services for a final inspection within a
16 reasonable time, using best efforts, of the approval.

17 15. Defendants shall work in good faith and with all deliberate speed to obtain a Final
18 Correction Action Workplan ("Final CAW") from the State Water Board by April 2019, so that
19 corrective action may be undertaken in the spring and summer of 2019. Within sixty (60) calendar days
20 after the State Water Board approves the Final CAW, Defendants shall submit a complete application
21 for a modification to the ECP on the Vineyard Parcel, consistent with the Final CAW. Defendants shall
22 respond to any request by the County for further information or documentation to support the
23 application submitted pursuant to this Paragraph within fourteen (14) calendar days of receipt of any
24 such request by the County. Defendants shall ensure that all work required to conform the Vineyard
25 Parcel to the scope of any approved modification to the ECP is completed within one hundred eighty
26 (180) calendar days from approval by the County.

1 **Additional Terms**

2 16. Defendants shall pay to the County, by checks made payable to "The County of Napa,"
3 \$271,464 as a compromised amount to partially reimburse the County for its attorneys' fees and costs
4 incurred in the Action. Defendants shall pay this amount as follows. Defendants shall pay \$32,000
5 within thirty (30) calendar days after entry of this Judgment. Defendants shall pay the remainder in two
6 equal installments of \$119,732, with the first before July 1, 2019, and the second before December 31,
7 2019. The County shall not object to Defendants' characterization of these payments as tax-deductible
8 business or similar expenses but makes no representation regarding the supportability of such
9 characterization.

10 17. Within sixty (60) calendar days after entry of Judgment, to secure performance of
11 Defendants' obligations in this Judgment, Defendants shall individually and jointly execute a
12 promissory note to the County in the amount of \$320,658.00 secured by a deed of trust on the Property
13 that Defendants shall promptly record. The form of promissory note to be executed by Defendants is
14 attached hereto and incorporated herein by this reference as Exhibit 2. The form of deed of trust to be
15 executed and recorded by Defendants is attached hereto and incorporated herein by this reference as
16 Exhibit 3. The County's position shall be secured by no less than a second position security interest in
17 the collateral. The sum of indebtedness cannot exceed 80% of the Property value. If on December 31,
18 2019, Defendants have complied with all the requirements of this Judgment, including Paragraphs 7, 8
19 and 9; have obtained all the permits and approvals required by Paragraphs 11, 14 and 15 of this
20 Judgment; and have completed all the work required by Paragraphs 13, 14 and 15 of this Judgment, then
21 the promissory note shall be cancelled without any payment and the County shall execute any
22 reasonable documents to clear title and reconvey the deed of trust on or shortly after December 31,
23 2019. If on December 31, 2019, Defendants have substantially complied with the requirements of this
24 Judgment but have been unable to complete authorized work due to an occurrence beyond Defendants'
25 reasonable control, including but not limited to an act of God or nature or unforeseen delay by the State
26 Water Board, then the December 31, 2019 deadline for performance hereunder shall be extended by the
27 actual time of delay caused by such occurrence, as determined in the County's sole discretion, and, upon
28 performance, the promissory note shall be cancelled without any payment and the County shall execute
any reasonable documents to clear title and reconvey the deed of trust. If on December 31, 2019,

1 Defendants have not complied with the requirements of this Judgment and the delay in their compliance
2 was not caused by an occurrence beyond Defendants' reasonable control, then the County shall enforce
3 the secured promissory note.

4 18. Defendants shall make good faith efforts to educate their employees and contractors and
5 ensure compliance with this Judgment. Defendants shall ensure that the obligations and conditions in
6 this Judgment are communicated to each existing or new agent, employee, officer, assign, servant, or
7 representative, and shall specifically inform them of the limitations on daily and annual visitation set
8 forth in paragraph 7, and the limitations set forth in paragraph 8. Defendants shall require all current and
9 future employees to sign a notice acknowledging that they have received the executed Judgment and
10 understand its contents.

11 19. The harm or injury to the County that would result from violation of any provisions of
12 this Judgment is difficult to ascertain or generally not capable of calculation. Therefore, if Defendants
13 violate any of the provisions set forth in this Judgment, the Parties agree to the following consequences:

- 14 a. The County may reset the restriction on a hearing on a Use Permit Modification
15 pertaining to the Winery, set forth in Paragraph 7, *supra*, from December 1, 2019 to one
16 year from the date that the County provides notice of the material violation of this
17 Judgment;
- 18 b. In the event of a material violation, Defendants shall cease all operation of the Winery for
19 a period of one (1) month from the date that the County provides notice of the material
20 violation of this Judgment; and
- 21 c. The County shall enforce the secured promissory note pursuant to Paragraph 17.
- 22 d. For purposes of this paragraph, "material" violations shall include but not be limited to
23 any violation of Paragraphs 7 and 8, including the daily and annual visitation limits set
24 forth in Paragraph 7.

25 20. Reasonable attorneys' fees will be awarded to the prevailing Party in any action or on any
26 motion filed to enforce or interpret this Judgment.

27 21. The Court retains jurisdiction to enforce the terms of this Judgment pursuant to Code of
28 Civil Procedure section 664.6, which enforcement may be sought, if necessary, by any of the Parties by
ex parte application for appropriate relief consistent with the terms of this Judgment.

1 22. The County and its officers, agents or employees, or persons duly authorized to act on its
2 behalf, may enter the Property during normal business hours upon two (2) days' notice to Defendants,
3 notifying them of the date and time of inspecting the Property for compliance with this Judgment. The
4 Property shall not be locked and shall be accessible to the County at the date and time set forth in the
5 notice. The Napa County Sheriff may send such deputies as staff deems appropriate to enforce this
6 directive and to protect and supervise the County officers, agents, employees, and persons duly
7 authorized to act on its behalf.

8 23. This Judgment shall be recorded against the Property. This Judgment, and the covenants
9 and conditions contained herein, shall run with the land, apply to, be binding upon, and inure to the
10 legatees, devisees, administrators, executors, legal representatives, assignees, successors in interest,
11 buyers, and agents of the Parties hereto, and may not be altered, amended, modified, or otherwise
12 changed except by a writing executed by County and Defendants.

13 24. Except as provided above, each Party shall bear its own attorneys' fees and costs incurred
14 in this Action.

15 25. This Judgment shall take effect immediately upon entry thereof.

16
17 Date: _____

Judge of the Superior Court

EXHIBIT B

Do not destroy this original note

PROMISSORY NOTE SECURED BY DEED OF TRUST

\$320,658.00
Napa, California
_____, 2019

FOR VALUE RECEIVED, JOHN ALEX BREMER, AS TRUSTEE OF THE BREMER FAMILY 1995 LIVING TRUST, DATED AUGUST 23, 1995, LAURA JOYCE BREMER, AS TRUSTEE OF THE BREMER FAMILY 1995 LIVING TRUST, DATED AUGUST 23, 1995, and THE BREMER GROUP, LLC, (collectively "Promissors/Defendants") hereby promise to pay, on December 31, 2019 (the "Maturity Date"), to the order of NAPA COUNTY, a subdivision of the State of California ("Holder"), the principal sum of Three Hundred Twenty Thousand, Six Hundred, Fifty-Eight Dollars and No Cents (\$320,658.00). Promissors/Defendants also agree to pay any and all interest and other sums owed under this Promissory Note (the "Note") as and to the extent specified below. All sums owed under this Note shall be paid in lawful money at the office of Napa County Counsel located 1195 Third Street, Suite 301, Napa, CA 94559, or such other place as Holder from time to time designates in writing. As specified in the Settlement Agreement (as defined below), the Maturity Date may be extended, but only if evidenced by a writing signed by both Promissors/Defendants and Holder.

1. SECURED BY DEED OF TRUST. Promissors/Defendants' obligations under this Note are secured by that Deed of Trust With Assignment of Rents of even date herewith, duly executed and acknowledged by Promissors/Defendants, as trustors, for the benefit of Holder, and with Placer Title Company, as the trustee thereunder (the "Deed of Trust"). The Deed of Trust is or will be recorded against certain real property located in Napa County, California, and more fully described therein.

2. SETTLEMENT AGREEMENT AND CONDITIONAL OBLIGATION. This Note is being signed and delivered pursuant to that certain Settlement Agreement, dated _____, 2019, entered into by and between Holder and Promissors/Defendants (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto and incorporated herein as Exhibit 1. As specified more fully in the Settlement Agreement, if the obligations of Promissors/Defendants thereunder have been fully performed on or before the Maturity Date (as the same may be extended as provided herein and in the Settlement Agreement), then this Note shall be deemed terminated and cancelled without any payment and Holder shall then take all steps necessary to clear title and cause the Deed of Trust to be reconveyed. In the event of any conflict between this Note and the Settlement Agreement, the Settlement Agreement shall control.

3. EVENT OF DEFAULT / DEFAULT. The failure of Promissors/Defendants to make any payment owed under this Note as and when the same becomes due and payable shall constitute a default by Promissors/Defendants hereunder, and shall entitle Holder to pursue and any and all remedies granted to it under applicable law, including, without limitation, as provided for in the Deed of Trust. No interest will be owed under this Note unless the Note is not paid in full by the Maturity Date (as the same may be extended as provided above and in the Settlement Agreement). From and after said Maturity Date, this Note shall bear interest on the unpaid principal amount hereof at a rate equal to the lesser of (x) seven percent (7%) per annum or (y) the highest rate allowed by law. All interest calculations under this Note shall be made on the basis of a three-hundred-sixty (360) day year and actual days elapsed. Daily interest shall consist of the product of the outstanding principal balance of this Note times the interest rate then in effect divided by 360, then multiplied by the number of days for which the daily interest calculation is made.

4. ATTORNEYS' FEES. In the event that suit be brought in connection with this Note, or an attorney be employed or expenses be incurred to compel payment of this Note or any portion of the indebtedness evidenced hereby, the non-prevailing party agrees to pay all such expenses and attorneys' fees incurred by the other party as a result thereof.

To Form
↔

5. **SEVERABILITY.** If any provision of this Note or any payments pursuant to the terms hereof shall be invalid or unenforceable to any extent, the remainder of this Note and any other payments hereunder shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.
6. **MODIFICATION.** No waiver of any breach of or event of default or failure of condition under the terms of this Note, the Settlement Agreement, and/or the Deed of Trust, or any obligations secured thereby, shall be implied from any failure of Holder to take, or any delay by Holder in taking action with respect to any concurrent or subsequent breach of or event of default or from any previous waiver of any similar or unrelated breach of or event of default. A waiver by Holder of any term of this Note, the Settlement Agreement or the Deed of Trust must be made in writing executed by Holder, shall be limited to the express written terms of such waiver, and shall not be construed as a waiver or release of any subsequent breach or event of default.
7. **JOINT AND SEVERAL OBLIGATIONS.** If this Note is executed by more than one person or entity as Promissors/Defendants, the obligations of each such person or entity shall be joint and several. No such person shall be a mere accommodation maker, and each such person shall be primarily and directly liable hereunder.
8. **HOLDER.** The term "Holder", as used herein, shall mean and include Holder and any successor or assign of Holder, and any holder of this Note shall, upon becoming such holder, be included in the term "Holder" wherever the same appears in this Note.
9. **GOVERNING LAW.** This Note shall be governed by and construed under the laws of the State of California.
10. **COMMERCIAL NOTE.** Promissors/Defendants represent and warrant to Holder that the indebtedness evidenced by this Note was not incurred for personal, family or household purposes.
11. **TIME.** Time is of the essence of this Note and each provision hereof. Whenever in this Note the term "day" is used, it means a calendar day.
12. **BINDING.** This Note shall be binding upon and its successors and assigns, and shall inure to the benefit of Holder and its successors and assigns.
13. **HEADINGS: GENDER.** The headings of the paragraphs of this Note are inserted for convenience only and shall not be deemed to constitute a part hereof. All words and phrases shall be taken to include the singular or plural number, and the masculine, feminine or neuter gender, as may fit the case.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Note as of the date and year first above written.

JOHN ALEX BREMER, TRUSTEE OF THE BREMER FAMILY
1995 LIVING TRUST, DATED AUGUST 23, 1995

LAURA JOYCE BREMER, TRUSTEE OF THE BREMER FAMILY
1995 LIVING TRUST, DATED AUGUST 23, 1995

THE BREMER GROUP, LLC

By: _____
John Alex Bremer, Managing Member



EXHIBIT C

RECORDING REQUESTED BY

Placer Title Company

When Recorded Mail To:

Napa County
C/O Napa County Counsel
Jeffrey M. Brax
1195 Third St., Ste 301
Napa, CA 94559

Order No. P-311235-LB

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST WITH ASSIGNMENT OF RENTS
(With Acceleration Clause)**

This DEED OF TRUST, made _____, 2019, between

John Alex Bremer and Laura Joyce Bremer, Trustees of the Bremer Family 1995 Living Trust dated August 23, 1995, herein called TRUSTOR, whose address is 975 Deer Park Road, St. Helena, CA 94574.

Placer Title Company, a California corporation, herein called TRUSTEE, and **Napa County, a subdivision of the State of California**, whose address is 1195 Third Street, Napa CA 94559, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in Trust, with Power of Sale, that property described as:
The land described herein is situated in the State of California, County of Napa, unincorporated area, described as follows:

A portion of the Southeast quarter of the Southeast quarter of Section 12, and a portion of the Northeast quarter of the Northeast quarter of Section 13, all in Township 8 North, Range 6 West, M.D.B. & M., being in the Carne Humana Rancho, and more particularly described as follows:

BEGINNING at the northeast corner of said Section 13, and running thence along the East line thereof, South 0° 26' 15" West to an iron pipe marked "R.E. 8709", marking the northeast corner of the land described in the Deed to Melvin A. Nelson, et ux, et al, recorded in Book 624 at page 444 of Official Records of Napa County, said point being North 0° 26' 15" East 1702.52 feet from the southeast corner of said Section 13; running thence West 643.02 feet; thence South 72° 36' West 682.15 feet to an iron pipe on the easterly line of Deer Park County Road; thence northerly along said East line to its intersection with the southeast line of the land described in Deed to Otis J. Boyer, et ux, recorded in Book 509 at page 64 of Official Records of Napa County; thence along said southeast line, North 73° 29' East 320.46 feet; thence North 382.11 feet to an iron pipe at the northeast corner of said Boyer parcel; thence North 72° 04' 50" East 239.15 feet to an iron pipe; thence North 28° 51' 40" East 508.17 feet to a hub set by the County of Napa Engineer Station 47+88.93 of the survey of Deer Park Road dated January 19, 1961; thence North 54° 38' 40" East 400.90 feet; thence North 23° 22' 40" East 319.37 feet to an iron pipe on the east line of Section 12 of said Township and Range; thence along said East line southerly 1458.53 feet, more or less, to the point of commencement.

EXCEPTING THEREFROM all that portion contained in the Deed to the County of Napa, recorded May 7, 1980, in Book 1163 at page 225 of Official Records of Napa County.

APN: 021-400-002-000, 021-420-027-000

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

To Form
B. J. B.

For the Purpose of Securing (1) Payment of the sum of **Three Hundred Twenty Thousand Six Hundred Fifty Eight Dollars and No Cents (\$320,658.00)** with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, and (2) the performance of each agreement of Trustor incorporated by reference or contained herein (3) Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

ACCELERATION CLAUSE: If the trustors shall sell, convey or alienate said property or any part thereof or any interest therein, or shall be divested of their title in any manner or way, whether voluntarily or involuntarily; any indebtedness or obligation secured hereby, irrespective of the maturity date expressed in any note evidencing the same, at the option of the holder hereof and without demand or notice, shall immediately become due and payable.

The undersigned Trustor requests that a copy of any Notice of Default and any Notice of Sale hereunder be mailed to Trustor at the address hereinbefore set forth.

A. To protect the security of this Deed of Trust, Trustor agrees:

- (1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumeration's herein not excluding the general.
- (2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- (3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.
- (4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs; fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

- (5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.



B. It is mutually agreed:

- (1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided or disposition of proceeds of fire or other insurance.
- (2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
- (3) That at any time or from time to time, without liability therefor and without notice, upon written request of beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof. That upon written request of Beneficiary stating all sums secured hereby have been paid, and surrender of this Deed and said Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
- (4) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- (5) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of



title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

- (6) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.
- (7) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- (8) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

[Remainder of Page Intentionally Left Blank]

Signature of Trustor(s)

John Alex Bremer and Laura Joyce Bremer, Trustees of the Bremer Family 1995 Living Trust dated August 23, 1995

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF NAPA }ss

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

