

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 052-080-026

<b>DEFERRED IMPROVEMENT AGREEMENT – SANITARY SEWER IMPROVEMENTS</b>
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THIS AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Allison 410 LLC, a California limited liability company ("OWNER") and the Napa Sanitation District, a California special district ("District") with reference to the following facts.

**RECITALS**

A. Owner owns certain real property located in the County of Napa, State of California, commonly referred to as Assessor's Parcel No(s). 052-080-026 and more particularly described in Exhibit A attached hereto. The parcel is commonly referred to as 410 Stonecrest Drive and is hereinafter referred to as the "Subject Property".

B. The Subject Property is outside the boundaries of the Napa Sanitation District but holds an Agreement for Outside Service dated March 12, 2018.

C. Conditions of outside service require the Owner to install a sanitary sewer main in Stonecrest Drive from the end of the existing system to the current District sphere of influence line. The conditions also require the Owner to enter into a deferred improvement agreement that requires Owner, and its successors and assigns, to further extend the sewer main in Stonecrest Drive to the east property line of the Subject Property in the future. Owner shall be responsible for the cost of designing and constructing the Sanitary Sewer Improvements when requested by the District as outlined in Section 2 below.

D. District requires Owner to enter into this Agreement to ensure that the Sanitary Sewer Improvements shall be designed and constructed by Owner pursuant to the terms hereof. District also requires Owner to obtain all necessary permits for access and construction of the Sanitary Sewer Improvements.

E. Upon demand by the District, in accordance with the District's standards then in effect, under the terms and conditions set forth herein, Owner shall design and construct the Sanitary Sewer Improvements as outlined in Section C above.

F. Owner is willing to enter into this Agreement to design and construct the Sanitary Sewer Improvements at a later date under the terms and conditions set forth herein.

### **AGREEMENT**

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

1. **Improvements to be Constructed.** Owner agrees to design and construct or cause to be constructed the Sanitary Sewer Improvements as outlined in Recital C above. The Sanitary Sewer Improvements shall conform to all applicable local, state and federal laws, and standards in effect at the time of construction, and shall be completed in a manner satisfactory to the District's General-Manager.
2. **Time of Construction.** Owner shall design and construct or cause to be constructed the Sanitary Sewer Improvements within the time set forth in a written demand from District's General-Manager or his or her duly authorized representative, who shall have the sole and exclusive right and power to determine the date at which construction of the Sanitary Sewer Improvements shall commence and be completed; provided however, that the Owner shall be given at least 240 days after notification to complete the work.
3. **Cost of Improvements.** The Sanitary Sewer Improvements shall be designed and constructed at the sole cost and expense of Owner, and Owner shall pay such connection, inspection, and other fees as shall at the time be required by any ordinance and resolutions of the District, the City of Napa or the County of Napa.
4. **Approval by the District.** All work required under this Agreement shall be subject to inspection by the District and shall not be deemed complete nor accepted until the District has indicated in writing that the Sanitary Sewer Improvements has been completed in a satisfactory manner and in accord with all applicable local, state, and federal standards then in effect.
5. **Bonds.** Owner will be required, at the time that District notifies Owner it is to construct the Sanitary Sewer Improvements as specified in paragraph 2, above, and at the sole discretion of District, to enter into an Improvement Agreement with the District for the construction of the Sanitary Sewer Improvements. The Improvement Agreement will require the Owner to execute and deliver to District a faithful performance bond and a payment bond in an amount, not to exceed the then cost of constructing and installing the Sanitary Sewer Improvements, and form acceptable to District to be released by District upon completion of the Sanitary Sewer Improvements and payment of all persons furnishing labor and materials in the construction of the Sanitary Sewer Improvements. The Improvement Agreement will establish the conditions of maintenance and acceptance of the Sanitary Sewer Improvements by the Owner and the District.

6. Owner's Warranty. The undersigned warrants to District that Owner is the sole titleholder and lease holder to the Subject Property, and the signatory is authorized to execute this Agreement on behalf of the Owner.

7. Hold Harmless. Owner shall hold harmless and, upon request, promptly and fully protect, defend and indemnify District and its officers, agents, and employees from any liability or claims, including any actions at law or equity, for personal injury, including death, to any person or damage to any property arising out of the acts or omissions of Owner or of any officer, agent or employee of Owner or any contractor or subcontractor of Owner during (i) the construction or subsequent use of the Sanitary Sewer Improvements or (ii) caused in whole or in part by any activity authorized or required by this Agreement, including those matters arising out of the deferment of permanent facilities, or the adequacy, safety, use or non-use of temporary facilities, or the performance or nonperformance of the work. This obligation shall apply regardless of whether or not District or its officers, agents or employees shall have prepared, supplied, or approved of any plans or specifications for the Sanitary Sewer Improvements, and regardless of whether or not insurance policies may be determined to be applicable to any such damages or claims for damages.

8. Default. Owner shall be deemed to be in default of this Agreement if Owner or any officer, agent or employee of Owner fails to comply with any of the provisions of this Agreement and to remedy such failure within ten (10) calendar days of receipt of written notice from District specifying the nature of such failure. The determination as to whether such default has occurred shall be made by the District General-Manager.

If the default relates to a failure of Owner to complete the Sanitary Sewer Improvements in accordance with the terms of this Agreement, District may, after first giving the Owner at least ten (10) days prior written notice of its intent to do so, elect to construct or arrange for the construction of the Sanitary Sewer Improvements on behalf of and at the expense of Owner. Should District elect this option, District shall be entitled to recover from Owner the actual cost to District of completing the Sanitary Sewer Improvements, plus an administrative fee of 5% of the actual cost. District shall make a written demand for such costs and fee on or after the time the Sanitary Sewer Improvements is accepted as complete. In the event Owner fails to pay the costs and fee so demanded within ten (10) days of receipt of the demand, the amount of the costs and fee shall become a personal obligation of the Owner and a lien against the Subject Property. District may enforce such a lien by judicial foreclosure or any other proceeding authorized by law. If the Subject Property is subdivided at the time the lien is imposed, the amount of the lien shall be divided proportionately among the various parcels.

9. Attorneys Fees. Should it become necessary for either party hereto to institute legal action against the other to enforce any part of this Agreement or any lien arising thereunder, all reasonable costs and expenses incurred by the prevailing party in successfully enforcing this Agreement or lien shall be paid by the non-prevailing party, including reasonable attorney fees. All such costs, expenses and fees shall be taxed as costs and included in any judgment rendered, and may also become a lien on the Subject Property.

10. Agreement Binding on Successors in Interest. The provisions of this Agreement are for the benefit of the Subject Property as well as for the protection of the health, safety, and welfare of the residents of the District. For this reason, such provisions are intended to bind, and shall bind the heirs, executors, administrators, grantees and any other assignees or successors in interest of the Owner; and any burden imposed by such provisions shall run with the Subject Property.

11. Recordation. Immediately following execution, this Agreement shall be recorded by District in the Official Records of the County Recorder of the County of Napa.

12. Notices. All notices given by District to Owner pursuant to Paragraphs 3 and 11 of this Agreement shall be by personal service or sent by certified or registered mail, return receipt requested, with delivery restricted to addressee only. The date of delivery on the return receipt shall be conclusive upon all parties to this Agreement. All other notices, demands, requests, consents, approvals or communications that either party desires or is required by this Agreement to give to the other shall be in writing and either served personally or sent by prepaid, first-class mail. Notice mailed in this manner shall be conclusively deemed communicated within forty-eight (48) hours from time of mailing. Either party may change its address by notifying the other party in writing. Until notification of such change has been received, all notices sent under this Paragraph shall be addressed as follows:

Owner: Allison 410 LLC, a California Limited Liability Company  
410 Stonecrest Drive  
Napa, CA 94558

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

13. Interpretation. The parties agree that they have carefully reviewed this Agreement, have consulted independent counsel if they saw fit or have independently elected not to do so. The doctrine that any ambiguities in a contract are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. This Agreement shall be interpreted and construed according to the domestic laws of the State of California, without regard to the choice of law doctrine.

14. Severability. If any part, term, or provision of this Agreement is held by any court 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.

15. Modification. This Agreement may be modified or amended only with the prior written consent of the parties, or their successors in interest. Such modifications and amendments shall be executed with the same formality as this Agreement, shall be recorded, and shall be interpreted as provided in this Agreement.

16. Quitclaim Deed. Upon performance of Owner's obligations under this Agreement, District agrees, if requested by Owner, to execute, acknowledge and deliver a quitclaim deed to Owner within thirty (30) days after performance and to execute, acknowledge and deliver any other documents required by any title company to remove the cloud of this Agreement from the title to the Subject Property.

17. Effective Date. This Agreement shall become effective on the date of execution, which shall be deemed to be the date first written above.

\* \* \* \* \*

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

OWNER:

ALLISON 410 LLC

By:

Gregory Austin Allison  
Manager, Allison 410 LLC

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

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Jill Techel  
Chair, Board of Directors


ATTEST:

By:

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Cheryl Schuh  
Secretary, Board of Directors

APPROVED AS TO FORM:

By:

  
\_\_\_\_\_  
John Bakker  
District Legal Counsel

# Exhibit A

The land referred to herein below is situated in the unincorporated area, County of Napa, State of California and is described as follows:

Parcel 'B' as shown on the map entitled, "Record of Survey Map of the Lands of J.H. Schulze," Filed January 26, 1966 in Book 14 of Surveys at Page 81, in the Office of the County Recorder of said Napa County.

