

PAYMENT PLAN AND LIEN AGREEMENT
BY AND BETWEEN
THE NAPA SANITATION DISTRICT AND 910 ENTERPRISES LLC
RELATIVE TO THE PAYMENT OF SEWER SERVICE CHARGES

This Payment Plan and Lien Agreement ("Agreement") is entered into as of June 21, 2017 ("Effective Date") by and between the Napa Sanitation District ("NapaSan") and 910 Enterprises LLC ("Owner") (collectively, the "Parties").

RECITALS

- A. Mi Sueño Winery/Enterprise Wine Company ("MSW/EWC") is located at 910 Enterprise Way in Napa, California ("Property"). The Property is more particularly described as APN 046-531-030-000. 910 Enterprises LLC is the owner of the Property.
- B. MSW/EWC is a Winery-Related Operation and an Industrial User, as defined by Napa Sanitation District Code Section 1.02.010.
- C. MSW/EWC discharged winery-related industrial waste to the sanitary sewer during calendar years 2015, 2016 and 2017. MSW/EWC was invoiced for discharged waste at a strength factor of 11.25, in accordance with District Code Section 5.01.061. Owner has paid for sewer charges for 2015 on the property tax roll, but neither MSW/EWC nor Owner has paid sewer charges for industrial discharges from January 2016 through December 2016.
- D. In August 2016, the NapaSan Board of Directors approved placing the unpaid sewer service charges for calendar year 2015, including accumulated late fees, on the property tax roll, in accordance with District Code Section 5.01.075.A, for collection as a property assessment during the 2016-17 tax year. The amount placed on the tax roll was \$39,346.32. Owner paid half of the amount due in December 2016.
- E. In February 2017, Owner and MSW/EWC appealed the application of the 11.25 strength factor to its discharged waste, and appealed the inclusion of the unpaid 2015 sewer service charges on the tax roll to the NapaSan Board of Directors. After a full hearing, the Board voted to deny the appeal, and directed MSW/EWC, Owner and NapaSan staff to develop a payment plan for all unpaid sewer service charges, to be paid by March 2019. The Board indicated that if the payment plan was negotiated and signed in sufficient time to allow the tax collector to

remove the April 2017 payment from the property tax roll, NapaSan would include that amount in the payment plan along with unpaid 2016 sewer service charges. An agreement on a payment plan was not reached prior to the April 2017 property tax payment date, and Owner made the tax payment in April 2017.

F. A memorandum of this Agreement, substantially in the form attached hereto as Exhibit A, dated as of the Effective Date and executed by the Parties will be recorded against the Property in the official records of Napa County.

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

AGREEMENT

1. Deferred Payment of Sewer Service Charges. In consideration for Owner's commitments in Section 2, NapaSan hereby agrees, subject to the terms, conditions and limitations of this Agreement, to allow unpaid sewer service charges and associated accrued interest charges from January 1, 2016 up through December 31, 2016 to be paid over a period of time as herein specified. This Agreement shall be effective from the Effective Date until the obligations specified in Section 2.1 are fully satisfied through either payment or NapaSan's perfection of a lien securing payment of the amounts specified in Section 2.3.

2. Owner's Obligations.

2.1 Owner, on behalf of itself and its successors and assigns, agrees to pay for sewer service charges accumulated by MSW/EWC in 2016 (\$26,960.71) and associated accrued late fees from 2016 (\$1,757.04), **for the total amount of \$28,717.75.** Payments of \$1,367.51 shall be made monthly, over a single 20-month period at 0% annual interest, and \$1,367.55 in the 21st month, as follows:

<u>Date Due</u>	<u>Principal</u>	<u>Interest</u>	<u>Payment</u>
July 1, 2017	1,367.51	0	1,367.51
Aug. 1, 2017	1,367.51	0	1,367.51
Sept. 1, 2017	1,367.51	0	1,367.51
Oct. 1, 2017	1,367.51	0	1,367.51
Nov. 1, 2017	1,367.51	0	1,367.51
Dec. 1, 2017	1,367.51	0	1,367.51
Jan. 1, 2018	1,367.51	0	1,367.51
Feb. 1, 2018	1,367.51	0	1,367.51
March 1, 2018	1,367.51	0	1,367.51
April 1, 2018	1,367.51	0	1,367.51
May 1, 2018	1,367.51	0	1,367.51
June 1, 2018	1,367.51	0	1,367.51
July 1, 2018	1,367.51	0	1,367.51
Aug. 1, 2018	1,367.51	0	1,367.51

Sept. 1, 2018	1,367.51	0	1,367.51
Oct. 1, 2018	1,367.51	0	1,367.51
Nov. 1, 2018	1,367.51	0	1,367.51
Dec. 1, 2018	1,367.51	0	1,367.51
Jan. 1, 2019	1,367.51	0	1,367.51
Feb. 1, 2019	1,367.51	0	1,367.51
<u>March 1, 2019</u>	<u>1,367.55</u>	<u>0</u>	<u>1,367.55</u>
Total	\$28,717.75	\$0	\$28,717.75

2.2 Owner agrees to make all payments within 30 calendar days of the date due. Failure to pay within the 30 days shall subject the amount due to interest payments of 1% per month.

2.3 In the event that Owner fails to make the payments in Section 2.1 above as scheduled, the payment schedule in Section 2.1 shall be terminated and the entire principal amount plus accrued interest to that date shall become immediately due and payable, and subject to monthly interest payments of 1% per month. In such event, Owner agrees that NapaSan may treat such amounts as delinquent charges and proceed as authorized under California Health and Safety Code Section 5473 *et seq.*, as may be amended from time to time, for the collection of delinquent and unpaid sewer charges, including placing unpaid charges on the property tax roll as allowed under District Code Section 5.01.075. As a material inducement to NapaSan's entering into this Agreement, Owners agree not to challenge NapaSan's ability to use the tax roll for collection of any amounts payable under this Agreement that are not paid when due under Section 2.2.

2.4 Owner understands and agrees that while these payments are being made, that additional sewer service charges shall be charged for the current discharge activities of MSW/EWC. During this effectiveness of this Agreement, Owner also agrees to pay all applicable sewer service charges imposed by NapaSan that are not paid by MSW/EWC. Those current charges are due and payable upon receipt of invoice and are not subject to this Payment Plan. If MSW/EWC and Owner fail to pay any such sewer service charges when due, NapaSan may terminate the payment schedule in Section 2.1 and accelerate and declare the entire principal amount plus accrued interest to that date immediately due and payable, and subject to monthly interest payments of 1% per month. In the event that payment is made to NapaSan that is insufficient to cover both the current sewer service charges and the payments due in this Payment Plan, the payment made shall first be applied to the current charge and the remainder applied to the amounts due under this Payment Plan.

2.5 During this effectiveness of this Agreement, Owner also agrees to pay all applicable sewer service charges imposed on MSW/EWC by NapaSan. If Owner fails to pay any such sewer service charges when due, NapaSan may terminate the payment schedule in Section 2.1 and accelerate and declare the entire principal amount plus accrued interest to that date immediately due and payable, and subject to monthly interest payments of 1% per month.

2.6 MSW/EWC agrees to enter into an Industrial User (IU) agreement with NapaSan that covers winery-related operations at the Property, within sixth (60) calendar days of the execution of this Agreement by all parties. Failure to enter into an IU agreement constitutes a material breach of this Agreement; NapaSan will interpret this action as if Owner failed to make payments identified in Section 2.1 and subject to the termination of the payment plan as described in Section 2.3.

3. Security/Lien.

3.1 A memorandum of this Agreement shall be recorded in the Office of the Napa County Recorder and shall constitute a lien for the payment specified in Section 2.1 binding upon, and running with, the Property. If Owner sells the Property, that Property shall not be released of any obligations under this Agreement.

3.2 The burden of this Agreement shall be released from title to the Property upon the payment of the Sewer Service Charges or upon the effectiveness as to a bona fide purchaser for value of a lien created as a result of NapaSan placing any delinquent charges on the tax roll pursuant to Section 2.3. Within thirty (30) days following payment of all of the sewer service charges identified in Section 2.1 above or the date on which the first installment of the general taxes that includes the delinquent charges appear on the assessment roll, NapaSan shall execute a lien release which shall be in a standard form releasing the burden of this Agreement from the title to the Property.

4. Remedies. Upon Owner's failure to pay Sewer Service Charges when due or other breach of this Agreement, in addition to its other rights in this Agreement (including those specified in Section 2.3) , at law, or in equity, NapaSan may exercise any one or more of the following rights and remedies without prior demand:

a) accelerate and declare the entire unpaid Sewer Service Charges due together with all accrued interest thereon, if any, and all other sums owed to NapaSan immediately due and payable; and

b) proceed at law, or in equity, to require Owner to perform its obligations and covenants under this Agreement.

The remedies provided herein are cumulative and not exclusive of, and do not prejudice any other remedy provided by law.

5. No Offset; Owner's Waivers. Owner hereby waives any rights of offset they now have or may hereafter have against NapaSan, its successors and assigns, and agree to make the payments called for hereunder in accordance with the terms of this Agreement. Owner hereby waives diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of nonpayment of this Agreement, and expressly waive any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security

given for the payments hereof, and expressly waive the right to plead any and all statutes of limitation as a defense to any demand on this Agreement.

6. No Waiver by NapaSan; Remedies Cumulative. No waiver of any breach, default or failure of condition under this Agreement, may be implied from NapaSan's failure or delay in declaring a default or exercising any of NapaSan's rights or remedies with respect to such breach, default or failure, or from any previous waiver of any similar or unrelated breach, default or failure. Without limiting the generality of the foregoing, NapaSan's failure to declare any amount due hereunder does not constitute a waiver of NapaSan's right to declare such sum due in the event of any subsequent event that triggers Owner's payment obligations hereunder. Any waiver of any term or provision of this Agreement, or any of the obligations secured thereby must be made in writing and is limited to the express written terms of such waiver. The rights and remedies of NapaSan are cumulative, and the exercise or failure to exercise one or more of such rights or remedies does not preclude the exercise of any right or remedy for the same default or any other default.

7. No Additional Rights Granted. This Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by NapaSan concerning the operation of a Winery-related Operation, or any other activity by MSW/EWC or Owner within the NapaSan jurisdictional boundaries. This Agreement does not, and shall not be construed to, exempt Owner from paying any fees for any permits, licenses or other approvals which may be required by NapaSan, and (other than the Sewer Service Charges in the Payment Plan) at the time required by NapaSan, concerning the operation of a winery-related operation or other Industrial Discharge by MSW/EWC. This Agreement does not, and shall not be construed to, exempt MSW/EWC or Owner in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance or operation of a Winery-related Operation, or any other project, development, discharge or construction by MSW/EWC or Owner within the NapaSan jurisdictional boundary. This Agreement does not, and shall not be construed to, exempt MSW/EWC or Owner from the application and/or exercise of NapaSan power of eminent domain, nor from the implementation of the NapaSan Enforcement Response Plan.

8. Subsequent Requests. This Agreement only covers the sewer service charges due to NapaSan in calendar year 2016, and does not grant any right, privilege or obligation to MSW/EWC or Owner for any other discharge. For any subsequent discharge and associated sewer service charges that are not covered by this Agreement, MSW/EWC and Owner shall comply with all regulations and amounts applicable to such entitlements at the time of issuance or invoice.

9. Indemnification. Owner agrees to indemnify, defend and hold harmless NapaSan, its elected and appointed officials, employees, contractors and agents (collectively Indemnitees) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the this Agreement, or any other relationship between MSW/EWC or Owner and NapaSan. Owner's obligations under this Section shall survive the making and repayment of the Sewer Service Charges and the expiration or termination of this Agreement. Owner's indemnity obligations shall not apply to

any costs, losses, claims, or liability caused solely by the willful misconduct or sole negligence of NapaSan, its officers, employees or agents.

10. Challenges to Amount of Sewer Service Charges. Owner agrees that by entering into this Agreement and accepting the Payment Plan for Sewer Service Charges as described herein, Owner knowingly and voluntarily waives all such rights to protest the imposition, payment of, or process used to determine the fees or charges identified in this Agreement.

11. Agreement Runs with the Land. All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitude and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the property hereunder, or with respect to any owned property: (1) is for the benefit of such properties and is a burden upon such properties; (2) runs with such properties; and (3) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

12. Attorneys' Fees and Costs. Should either Party bring any action or proceeding against the other that in any way relates to or arises due to the existence of this Agreement, then the prevailing party in that action or proceeding shall be entitled to recover from the other party, in addition to all other relief to which the prevailing party may be entitled, the litigation costs and attorneys' fees, in an amount to be determined by the court. The "prevailing party" shall be as determined by the court in accordance with the provisions of California Code of Civil Procedure section 1032. Recoverable litigation costs and attorneys' fees include those incurred by the prevailing party in the enforcement of any judgment or other judicial order, and during the defense of any appeal taken from such underlying judgment or other judicial order.

13. Severability. If any provision or clause of this Agreement, or any application of it to any person, firm, organization, partnership or corporation, is held invalid, such invalidity shall not affect any other provision of this Agreement, and the Agreement shall be construed as if such provisions or clauses did not exist.

14. Modification. This Agreement shall be amended or modified only by an Agreement in writing signed by each of the Parties.

15. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of Owner and NapaSan and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

17. Time is of the Essence. Time is of the essence in the performance of this Agreement.

18. Notices. All notices required to be delivered under this Agreement or applicable law shall be in writing and delivered in person, or sent by express mail or by United States mail, certified, postage prepaid.

Notice required to be given NapaSan shall be addressed as follows:

NAPA SANITATION DISTRICT
1515 Soscol Ferry Road
Napa, CA 94558
Attn: Jeff Tucker, Chief Financial Officer

Notice required to be given to MSW/EWC shall be addressed as follows:

Mi Sueño Winery/Enterprise Wine Company
910 Enterprise Way, Suite M
Napa, CA 94558
Attn: Rolando Herrera

Notice required to be given to Owner shall be addressed as follows:

910 Enterprises LLC
c/o Mi Sueño Winery
910 Enterprise Way, Suite M
Napa, CA 94558
Attn: Rolando Herrera

Either Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address.

19. Recordation. NapaSan shall cause this Agreement to be recorded with the Napa County Recorder's Office.

NAPA SANITATION DISTRICT

By: _____
Jill Techel, Chair of the Board

OWNER

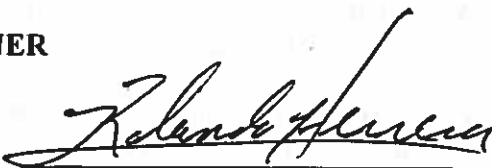
By: 
Rolando Herrera, Owner

EXHIBIT A
FORM OF MEMORANDUM

OFFICIAL BUSINESS
Exempt from recording fees per
Government Code Section 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Napa Sanitation District
1515 Soscol Ferry Road
Napa, CA 94558

(SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE)

APN: 046-531-030-000

MEMORANDUM OF AGREEMENT
TO PAY SEWER SERVICE CHARGES

This Memorandum of Agreement to Pay Sewer Service Charges (this "Memorandum") dated as of June 21, 2017, is entered into by and between the Napa Sanitation District ("NapaSan") and 910 Enterprises LLC ("Owner").

1. Owner and NapaSan have entered into an Agreement (the "Agreement") to evidence the obligation to pay certain sewer service charges with respect to the property located known as APN 046-531-030-000 (the "Property") as more generally known as 910 Enterprise Way, Napa, CA.
2. Owner and NapaSan have executed and recorded this instrument to give notice of the Agreement and NapaSan's rights thereunder. Copies of the Agreement are available at the offices of the Napa Sanitation District, 1515 Soscol Ferry Road, Napa, California, and the Agreement is incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the Agreement, the Agreement shall control.
3. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws.
4. The Agreement shall bind and inure to the benefit of NapaSan and its respective successors and assigns. **SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date provided.

NAPA SANITATION DISTRICT

By: _____

Title: _____

Date: _____

OWNER

By: _____

Title: _____

Date: _____

SIGNATURES MUST BE NOTARIZED.

OFFICIAL BUSINESS
Exempt from recording fees per
Government Code Section 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Napa Sanitation District
1515 Soscol Ferry Road
Napa, CA 94558

(SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE)

APN: 046-531-030-000

MEMORANDUM OF AGREEMENT
TO PAY SEWER SERVICE CHARGES

This Memorandum of Agreement to Pay Sewer Service Charges (this "Memorandum") dated as of June 21, 2017, is entered into by and between the Napa Sanitation District ("NapaSan") and 910 Enterprises LLC ("Owner").

1. Owner and NapaSan have entered into an Agreement (the "Agreement") to evidence the obligation to pay certain sewer service charges with respect to the property located known as APN 046-531-030-000 (the "**Property**") as more generally known as 910 Enterprise Way, Napa, CA.
2. Owner and NapaSan have executed and recorded this instrument to give notice of the Agreement and NapaSan's rights thereunder. Copies of the Agreement are available at the offices of the Napa Sanitation District, 1515 Soscol Ferry Road, Napa, California, and the Agreement is incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the Agreement, the Agreement shall control.
3. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws.
4. The Agreement shall bind and inure to the benefit of NapaSan and its respective successors and assigns. **SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date provided.

NAPA SANITATION DISTRICT

By: _____

Title: _____

Date: _____

OWNER

By: 
Rolando Herrera

Title: Member

Date: June 14, 2017

SIGNATURES MUST BE NOTARIZED.

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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 }

On June 14, 2017 before me, Cheryl P. Schuh, Notary Public
(Here insert name and title of the officer)

personally appeared Rolando Herrera,
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 the entity upon behalf of
which the person(s) acted, executed the instrument.

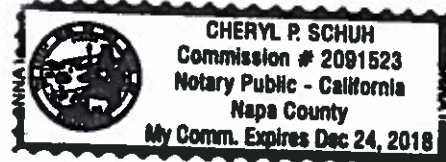
I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Cheryl P. Schuh

Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Memorandum of Agreement
(Title or description of attached document)

to Pay Sewer Service charges
(Title or description of attached document continued)

Number of Pages 2 Document Date 6/24/17

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they~~ - is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple