

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 046-600-012

AGREEMENT FOR DEFERRED PAYMENT OF SPECIAL CAPACITY CHARGE
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THIS AGREEMENT FOR THE PAYMENT OF CAPACITY CHARGE OVER TIME (this "AGREEMENT") by and between KB Napa Holdings LLC, a limited liability company, located at c/o Hotel Wailea, 555 Kauhahi Street, Wailea HI 96753, (the "PROPERTY OWNER") and The Napa Sanitation District, a California County Sanitation District, located at 1515 Soscol Ferry Road, Napa CA 94558 ("DISTRICT"), is dated for identification purposes only as of _____, _____, 2018 .

RECITALS

A PROPERTY OWNER owns a piece of real property known as 901 Kaiser Road (the "FACILITY").

B PROPERTY OWNER leases FACILITY to a Winery-Related Operation (as defined under District Code Section 1.02) (the "FACILITY USER").

C To operate the FACILITY, PROPERTY OWNER requires use of and connection to the DISTRICT's sewerage infrastructure (the "SERVICE").

D In order to receive SERVICE, any industrial user must pay capacity charges based on the use of the property and on the Industrial User Permit from DISTRICT (the "PERMIT").

E Pursuant to Section 5.02.030(C) of the Napa Sanitation District Code, FACILITY USER's current capacity charge for SERVICE, is \$2,319,287.76, which represents 240.99 Equivalent Dwelling Units ("EDU") at a fee of \$9,624.00 per EDU.

F Pursuant to Resolution No. 17-008, certain property owners may purchase EDU capacity up to the difference between (1) the number of EDU currently assigned to the building as paid for and assigned to the industrial user tenant space and (2) the number of EDU permitted for use by DISTRICT for an Industrial User Permit for an existing industrial user (the

“SPECIAL CAPACITY CHARGE PROGRAM” and “SPECIAL CAPACITY CHARGE” and “SPECIAL CAPACITY RIGHT”).

G Pursuant to Resolution No. 17-008, under the SPECIAL CAPACITY CHARGE PROGRAM, PROPERTY OWNER can elect to defer payment for a purchase of capacity by entering into a deferral agreement with DISTRICT to the terms identified in Resolution No. 17-008.

H PROPERTY OWNER meets the requirements of Resolution No. 17-008, including but not limited to those requirements enumerated in Section 2, and wishes to defer payment of its SPECIAL CAPACITY CHARGE as detailed below.

AGREEMENT

IN WITNESS WHEREOF, PROPERTY OWNER and DISTRICT each in consideration of the covenants of the other and for other good and valuable consideration, the receipt of which is hereby acknowledged, hereby agree as follows:

1. Deferred Special Capacity Charge. Prior to receiving the PERMIT, PROPERTY OWNER paid for 2.11 EDU to DISTRICT, which was only a portion of the total industrial capacity used at the FACILITY. PROPERTY OWNER desires to purchase an additional 240.99 EDUs at a rate of \$2,145.60 per EDU, in accordance with Resolution No. 17-008, for a total amount of \$517,068.14, which will be paid to the DISTRICT as described in this AGREEMENT (the “DEFERRED CHARGE”).

2. Temporary and Permanent Special Capacity Right. This AGREEMENT grants PROPERTY OWNER a Temporary Capacity Right equal to the amount of Special Capacity Rights purchased, subject to the terms of this AGREEMENT. Each payment of the DEFERRED CHARGE shall convert a pro rata portion of the Temporary Capacity Right into a permanent SPECIAL CAPACITY RIGHT.

3. Payments Due and Interest. DISTRICT agrees to allow PROPERTY OWNER to pay the DEFERRED CHARGE according to this section and the Payment Schedule below. PROPERTY OWNER will make equal monthly payments for the period set forth in Section 3.4 of this AGREEMENT, not to exceed sixty (60) months, with the first payment due on the first day of the month following the execution of this AGREEMENT. In the event of prepayment by PROPERTY OWNER or late payment interest, DISTRICT will furnish to BUSINESS an updated Payment Schedule within a reasonable time period.

3.1 Annual Interest. PROPERTY OWNER will pay 4.0% annual interest, compounded monthly, on the DEFERRED CHARGE.

3.2 Late Payment Charge. Notwithstanding any other provisions in this AGREEMENT, in the event PROPERTY OWNER fails to pay any amount due to DISTRICT as required by the Payment Schedule, that amount shall be subject to a late payment penalty of ten percent (10%). This penalty shall be added to the DEFERRED CHARGE.

3.3 Prepayment. PROPERTY OWNER may pay a portion or the entirety of the DEFERRED CHARGE before it is due under this AGREEMENT without any bonus or penalty. In the event that PROPERTY OWNER prepays any portion of the DEFERRED CHARGE pursuant to this section, PROPERTY OWNER's prepayment will be subtracted from the final or third-year payment due to the DISTRICT under the Payment Schedule. In the event that any prepayment exceeds the total estimated value of the final scheduled payment, the final scheduled payment will be extinguished, and the exceeding portion of the payment will be deducted from the most distant remaining payment.

3.4 Payment Schedule. The payment schedule is attached hereto as Exhibit A.

4. Termination. Failure to pay installment within 30 days of due date according to the most recent Payment Schedule will result in Termination of this AGREEMENT. Upon Termination, PROPERTY OWNER shall lose all Temporary Capacity Rights and will not be eligible to purchase additional permanent SPECIAL CAPACITY RIGHTS.

5. Governing Law. This AGREEMENT will be construed in accordance with and governed by the laws of the State of California.

6. Attorney's Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

7. Assignment. Pursuant to Resolution No. 17-008, this AGREEMENT cannot be transferred or assigned.

8. Waiver. Waiver of any rights under this AGREEMENT will only be operative as a waiver when expressly stated, in writing, to the opposing party. Any delay by either party in exercising its rights under this AGREEMENT shall not operate as a waiver thereof. Any express waiver of any right or breach under this AGREEMENT shall not constitute a waiver of any other right or breach.

9. Severability. The clauses and paragraphs contained in this AGREEMENT are intended to be read and construed independently of each other. If any term, covenant or provision is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provisions be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.

10. Entire Agreement. This AGREEMENT constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise, at the time of the execution of this AGREEMENT.

11. No Oral Modifications or Amendments. This AGREEMENT may only be amended or modified by a written instrument executed by both BUSINESS and DISTRICT.

12. Counterparts Signature. This AGREEMENT may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one agreement.

* * * * *

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

PROPERTY OWNER:

KB NAPA HOLDINGS LLC

By:

Name:
Title:

[Signature]
Jonathan McManus
MANAGEMENT MEMBER

NAPA SANITATION DISTRICT:

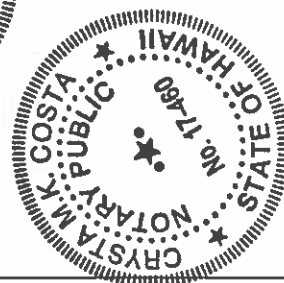
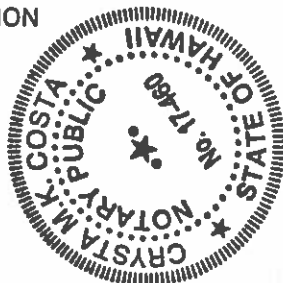
Napa Sanitation District, a California Special District

Doc. Date: 11/13/18 # Pages: 7
Crysta M.K. Costa First Judicial Circuit
Doc. Description Agreement for
deferred Payment of
Special Capacity Charge
Crysta M.K. Costa 11/13/18
Notary Signature Date

By:

Timothy B. Healy
General Manager

NOTARY CERTIFICATION



State of Hawaii City and County of Honolulu
This 7 page Jonathan Michael McManus
was subscribed and sworn to me this 13 day
of November, 2018, in the First Circuit
of the State of Hawaii by
Crysta M.K. Costa 11/13/18
Notary Name: Crysta M.K. Costa Date
My Commission Expires: 11/06/2021

APPROVED AS TO FORM:

By:



John Bakker

District Legal Counsel

EXHIBIT A

	4% Annual	Monthly	Outstanding	
<u>Principal</u>	<u>Interest</u>	<u>Payment</u>	<u>Principal</u>	<u>Month #</u>
Upon Agreement			\$517,068.14	
\$7,799.04	\$1,723.56	\$9,522.60	\$509,269.10	1
\$7,825.03	\$1,697.56	\$9,522.60	\$501,444.07	2
\$7,851.12	\$1,671.48	\$9,522.60	\$493,592.95	3
\$7,877.29	\$1,645.31	\$9,522.60	\$485,715.67	4
\$7,903.54	\$1,619.05	\$9,522.60	\$477,812.12	5
\$7,929.89	\$1,592.71	\$9,522.60	\$469,882.23	6
\$7,956.32	\$1,566.27	\$9,522.60	\$461,925.91	7
\$7,982.84	\$1,539.75	\$9,522.60	\$453,943.07	8
\$8,009.45	\$1,513.14	\$9,522.60	\$445,933.61	9
\$8,036.15	\$1,486.45	\$9,522.60	\$437,897.46	10
\$8,062.94	\$1,459.66	\$9,522.60	\$429,834.52	11
\$8,089.82	\$1,432.78	\$9,522.60	\$421,744.71	12
\$8,116.78	\$1,405.82	\$9,522.60	\$413,627.93	13
\$8,143.84	\$1,378.76	\$9,522.60	\$405,484.09	14
\$8,170.98	\$1,351.61	\$9,522.60	\$397,313.11	15
\$8,198.22	\$1,324.38	\$9,522.60	\$389,114.89	16
\$8,225.55	\$1,297.05	\$9,522.60	\$380,889.34	17
\$8,252.97	\$1,269.63	\$9,522.60	\$372,636.37	18
\$8,280.48	\$1,242.12	\$9,522.60	\$364,355.90	19
\$8,308.08	\$1,214.52	\$9,522.60	\$356,047.82	20
\$8,335.77	\$1,186.83	\$9,522.60	\$347,712.05	21
\$8,363.56	\$1,159.04	\$9,522.60	\$339,348.49	22
\$8,391.44	\$1,131.16	\$9,522.60	\$330,957.06	23
\$8,419.41	\$1,103.19	\$9,522.60	\$322,537.65	24
\$8,447.47	\$1,075.13	\$9,522.60	\$314,090.18	25
\$8,475.63	\$1,046.97	\$9,522.60	\$305,614.55	26
\$8,503.88	\$1,018.72	\$9,522.60	\$297,110.67	27
\$8,532.23	\$990.37	\$9,522.60	\$288,578.44	28
\$8,560.67	\$961.93	\$9,522.60	\$280,017.77	29

\$8,589.20	\$933.39	\$9,522.60	\$271,428.57	30
\$8,617.83	\$904.76	\$9,522.60	\$262,810.73	31
\$8,646.56	\$876.04	\$9,522.60	\$254,164.17	32
\$8,675.38	\$847.21	\$9,522.60	\$245,488.79	33
\$8,704.30	\$818.30	\$9,522.60	\$236,784.49	34
\$8,733.32	\$789.28	\$9,522.60	\$228,051.17	35
\$8,762.43	\$760.17	\$9,522.60	\$219,288.75	36
\$8,791.63	\$730.96	\$9,522.60	\$210,497.11	37
\$8,820.94	\$701.66	\$9,522.60	\$201,676.17	38
\$8,850.34	\$672.25	\$9,522.60	\$192,825.83	39
\$8,879.84	\$642.75	\$9,522.60	\$183,945.99	40
\$8,909.44	\$613.15	\$9,522.60	\$175,036.54	41
\$8,939.14	\$583.46	\$9,522.60	\$166,097.40	42
\$8,968.94	\$553.66	\$9,522.60	\$157,128.46	43
\$8,998.84	\$523.76	\$9,522.60	\$148,129.63	44
\$9,028.83	\$493.77	\$9,522.60	\$139,100.80	45
\$9,058.93	\$463.67	\$9,522.60	\$130,041.87	46
\$9,089.12	\$433.47	\$9,522.60	\$120,952.74	47
\$9,119.42	\$403.18	\$9,522.60	\$111,833.32	48
\$9,149.82	\$372.78	\$9,522.60	\$102,683.50	49
\$9,180.32	\$342.28	\$9,522.60	\$93,503.19	50
\$9,210.92	\$311.68	\$9,522.60	\$84,292.27	51
\$9,241.62	\$280.97	\$9,522.60	\$75,050.64	52
\$9,272.43	\$250.17	\$9,522.60	\$65,778.22	53
\$9,303.34	\$219.26	\$9,522.60	\$56,474.88	54
\$9,334.35	\$188.25	\$9,522.60	\$47,140.53	55
\$9,365.46	\$157.14	\$9,522.60	\$37,775.07	56
\$9,396.68	\$125.92	\$9,522.60	\$28,378.39	57
\$9,428.00	\$94.59	\$9,522.60	\$18,950.39	58
\$9,459.43	\$63.17	\$9,522.60	\$9,490.96	59
\$9,490.96	\$31.64	\$9,522.60	\$0.00	60
\$517,068.14	\$54,287.67	\$571,355.81		