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| OFFICIAL BUSINESS  Document entitled to free recording  Government Code Section 27383 RECORDING REQUESTED BY AND  WHEN RECORDED MAIL TO: Napa County  1195 Third Street, Suite 310 Napa, CA 94559  Attn: Clerk of the Board of Supervisors |  |
|  | (SPACE ABOVE THIS LINE RESERVED FOR RECORDER’S USE) |

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT   
BY AND BETWEEN

NAPA COUNTY

AND

NAPA REDEVELOPMENT PARTNERS, LLC

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT   
NAPA PIPE

This First Amendment to Development Agreement (the “**Amendment**”) is entered into as of this \_\_\_ day of September, 2015, by and between **Napa County**, a political subdivision of the State of California (“**County**”) and **Napa Redevelopment Partners, LLC**, a Delaware limited liability company (“**Landowner**”). County and Landowner and their respective successors and Transferees are hereinafter collectively referred to as the “**Parties**” and singularly as “**Party**.”

RECITALS

A. The Parties previously entered into that certain Development Agreement (the “**Agreement**”) dated as of January 13, 2015 and recorded in the Official Records of Napa County on January 26, 2015 as Instrument No. 2015-000228 governing the development by Landowner of a mixed use project known as Napa Pipe. Capitalized terms not defined herein shall have the same meanings ascribed to them in the Agreement.

B. On July 21, 2015, the City of Napa by Resolution No. 2015-100 took certain actions authorizing the City Manager to (i) execute an Annexation, Consent, Protest Waiver and Water Service Agreement with Landowner (the “Water Agreement”), (ii) submit (or arrange for Landowner to submit) an application on behalf of the City to LAFCO to expand the City’s SOI, extend municipal services outside city limits and annex the Napa Pipe Property in two steps, and (iii) execute the following City/County Agreements:

1. Memorandum of Agreement Between the City of Napa and Napa County Regarding the Allocation of Property Tax, Sales Tax and Transient Occupancy Tax Revenues Generated by the Napa Pipe Site Consisting of Assessor’s Parcels 046-400-030 and 046-412-005 and the Allocation of Property Tax Generated by the Other Properties Within the City’s Sphere of Influence;

2. Memorandum of Agreement Between the City of Napa and Napa County Regarding the Provision of Municipal Services for the Napa Pipe Development Project;

3. Memorandum of Agreement Between the City of Napa and Napa County Regarding Regional Housing Needs Allocations for Future Housing Element Planning Periods;

4. Form of Professional Services Agreement; and

5. Memorandum of Agreement Between the City of Napa and Napa County Regarding the City of Napa’s Sphere of Influence and the Napa Pipe Property (the “SOI Agreement”).

C. In the Water Agreement, the City conditioned its commitment to provide water to the Project on, among other things, the execution by the Parties of this Amendment to revise certain obligations of the Landowner related to the membership warehouse store, the open space phasing and construction of certain improvements at Kaiser Rd./SR 221. In addition, the Parties wish to use this Amendment to make technical corrections to the legal description of the Property as shown in Exhibit A to the Agreement.

D. In accordance with Government Code Section 65867, 65867.5 and 65868, the Planning Commission of Napa County, serving as the County’s planning agency for purposes of development agreement review pursuant to Government Code 65967 considered this Amendment and recommended that the Board of Supervisors approve this Amendment.

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

AGREEMENT

**1. Incorporation of Exhibits and Recitals**. The Preamble, Recitals, Exhibits and all defined terms set forth therein are hereby incorporated into this Amendment as if set forth herein in full.

**2**. **Kaiser Road Improvements**. Section 15.4 of the Agreement is hereby amended by adding the following new Subsection 15.4.5:

15.4.5 Kaiser Road/State Route 221 Intersection Improvements. All language of this Agreement to the contrary notwithstanding, Landowner shall construct and complete the improvements to the intersection of Kaiser Road and State Route (SR) 221 as described and on the schedule set forth in Section 4.4 of Exhibit D (Phasing Plan) to this Agreement.

**3. Legal Description**. Exhibit A-1 to the Agreement (“Legal Description”) is hereby amended in its entirety as shown on Attachment 1 attached hereto and incorporated herein by this reference.

**4. Napa Pipe Intersection Improvement Plan.** Exhibit C to the Agreement (Napa Pipe Intersection Improvement Plan) is hereby amended to include the Napa Pipe Intersection Improvement Plan Supplement prepared by Fehr & Peers, dated August 3, 2015, attached hereto as Attachment 2 and incorporated herein by this reference.

**5. Phasing Plan**. Exhibit D to the Agreement (Phasing Plan) is hereby amended in its entirety as shown on Attachment 3 attached hereto and incorporated herein by this reference. Exhibit D-Attachment 1 in the form attached to the Agreement remains unchanged and in full force and effect.

**6.** **Remainder Unchanged**. All other terms of the Agreement which are not in conflict with the provisions of this Amendment shall remain unchanged in full force and effect. In case of a conflict in the terms of the Agreement and this Amendment, the provisions of this Amendment shall control.

**[Signatures on next page ]**

IN WITNESS WHEREOF, Napa County, a political subdivision of the State of California, has authorized the execution of this Agreement in duplicate by the County Executive Officer and attested to by its County Clerk under the authority of Ordinance No. \_\_\_\_\_\_\_\_, adopted by the Board of Supervisors of Napa County on \_\_\_\_\_\_\_\_\_\_, 2015, and Landowner has caused this Agreement to be executed.

**“COUNTY”**

**NAPA COUNTY,**a political subdivision of the State of California

DIANE DILLON, Chair of the Board of Supervisors

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| --- | --- | --- |
| APPROVED AS TO FORM  Office of County Counsel  By:  County Counsel  Date: | APPROVED BY THE NAPA COUNTY  BOARD OF SUPERVISORS  Date:  Processed By:    Deputy Clerk of the Board | ATTEST: GLADYS I. COIL  Clerk of the Board of Supervisors  By: |

**“LANDOWNER”**

**NAPA REDEVELOPMENT PARTNERS, LLC**, a Delaware limited liability company

By:

Keith Rogal  
Its: Manager

|  |  |
| --- | --- |
| 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 )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a 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 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.

Signature (Seal)

|  |  |
| --- | --- |
| 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 )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a 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 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.

Signature (Seal)

Exhibits

**Attachment 1** Exhibit A-1: Legal Description

**Attachment 2** Exhibit C: Napa Pipe Intersection Improvement Plan Supplement

**Attachment 3** Exhibit D: Phasing Plan

ATTACHMENT 1

EXHIBIT A-1 LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NAPA, COUNTY OF NAPA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

Commencing at a point where the projection of the Southerly line of the 129 acre tract of land described in the Deed from Fedele Martinelli, et ux, to The Mercantile Trust Company, Recorded July 9, 1920 in Book 128 of Deeds, at Page 497, Napa County Records intersects the centerline of the Southern Pacific Railroad Company Right of Way; thence South 78° 46' 23" West 335.41 feet; thence North 58° 38' West, 117.19 feet to the Southern line of the 1.22 acre tract of land described in the Deed from American Trust Co. to Basalt Rock Co., Inc., dated June 11, 1934 and Recorded in Book 88 at Page 153 of Official Records of Napa County; thence South 86° 22' West 18.14 feet to the Southwest corner thereof; thence along the mean high tide of the Eastern Bank of Napa River, South 34° 22' West 211.1 feet, South 61° 08' West 188.4 feet, South 14° 54' West, 79 feet, South 2° 12'

West, 286.4 feet, South 11° 58' West 221.8 feet, South 18° 51' West 251.10 feet; thence along the Western face of existing dry docks South 23° 03' 45" West, 276.77 feet to the Northeastern corner of the 1.114 acre tract of land described in the Deed from Basalt Rock Co., Inc. to The County of Napa Recorded May 13, 1949 in Book 305 at Page 164 of Official Records of Napa County; thence along the Easterly boundary of the Napa River Channel Right of Way, South 2° 01' 42" East, 284.49 feet, South 81° 18' East 76.33 feet, South 2° 01' 42" East, 979.76 feet; thence leaving said Easterly boundary of the Napa River and a right angles thereto North 87° 58' 18" East

1919.09 feet crossing the Southern Pacific Railroad; thence due North 2555.52 feet to a point 60.12 feet South of the Southerly boundary of aforementioned 129 acre tract of land; thence parallel to and 60 feet distant from the Southerly boundary of aforementioned 129 acre tract of land, South 86° 22' West 1042.08 feet to the centerline of the Southern Pacific Railroad Right of Way; thence due North 60.12 feet to the point of commencement.

EXCEPTING therefrom an existing Southern Pacific Railroad Right of Way, the centerline of which passes through the point of commencement, thence runs in a general Southerly direction passing through the Southern boundary of the hereinabove described property.

ALSO EXCEPTING therefrom a parcel of land circumscribed by a 20 foot radius circle surrounding an existing well, the center of which is located South 29° 41' East, 954.31 feet from the aforementioned point of commencement, together with the right to take water from the well situate on the above described premises and a Right of Way across the land hereby conveyed to the said well, including the right of laying, inspecting, repairing and replacing pipelines for the purpose of taking water therefrom, said Right of Way to lie in a general Easterly direction from said well.

ALSO EXCEPTING therefrom a parcel of land bounded by a circle having a diameter of 40 feet as described in the Deed of Basalt Rock Company, Inc., recorded November 22, 1940 in Block 158 at Page 137, Official Records of Napa County.

**PARCEL ONE-A:**

Easements and Rights of Way to Kaiser Steel Corporation, a Corporation, its successors and assigns forever, for ingress and egress for persons and vehicles to and from the parcel of land hereinabove described and conveyed, for roads, underground pipelines, power and telephone lines and other utility services, in, over, along and across the following described real property:

1. A strip of land, 60 feet in width, running from the West side of the State Highway from Napa to Valley to the East side of the Southern Pacific Railroad Right of Way. The Northerly line of said 60 foot Right of way being the Southerly line of a 129 acre tract of land described in the Deed from Fedele Martinelli, et ux, to The Mercantile Trust Company, Recorded July 7, 1920 in Book 128 of Deeds, at Page 497,. Napa County Records. A portion of the Southerly boundary of said 60 foot Right of Way being the Northerly line of that portion of the parcel of land first above described herein which lies East of the Southern Pacific Railroad Right of Way.

2. A strip of land, 25 feet in width, Northerly of and parallel to the First described line, namely South 78° 46' 23" West 335.41 feet, constituting a portion of the parcel of land hereinabove first described running from the Westerly line of the Southern Pacific Railroad Right of Way to the second described line of the aforementioned parcel of land hereinabove first described.

3. A strip of land, 60 feet wide, running South form the Southerly line of the aforementioned Right of Way, running from the State Highway to the railroad. The Westerly line of said Right of Way being 2555.52 feet in length and common to the Easterly line of the parcel of land first hereinabove described and conveyed.

4. An easement for ingress and egress over and across the strip of land described in the Memorandum of Right of Way Agreement executed by Southern Pacific Transportation Company, a Delaware corporation, Recorded April 18, 1989 in Book 1651 Page 445 Official Records of Napa County.

Portion APN: 046-400-030-000 and Portion APN: 046-412-005-000

**PARCEL TWO:**

Commencing at the Southwestern corner of the tract of land conveyed by Basalt Rock Company, Inc. to the Kaiser Steel Corporation by Deed of record in Book 474 at Page 240 of Official Records of Napa County, said point of commencement being on the Easterly line of the 18.289 acre tract of land described in the Agreement between the County of Napa and C. R. Adams, et al, of record in Book 310 at Page 152 of Official Records of Napa County; running thence along the Eastern line of said 18.289 acre tract and the Southerly extension thereof to a point on the Westerly line of the Right of Way of the Southern Pacific Railroad Company; thence Northeasterly along the Westerly line of said Right of Way of the Southerly line of the tract of land hereinbefore referred to; thence along the Southerly line of said tract, South 87° 58' 18" West to the point of commencement.

Portion APN: 046-412-005-000

**PARCEL THREE:**

Commencing at the Southeastern corner of the 106.56 acre tract of land described in the Deed to Kaiser Steel Corporation Recorded in Book 474 at Page 240 of Official Records of Napa County; running thence South 1007.30 feet to the centerline of that certain 75 foot Power Line Easement granted to Pacific Gas and Electric Company as described in Book 484 at Page 33 of Official Records of Napa County; thence along said Easement centerline South 82° 59' 45" West 1566.96 feet to the Southeastern line of the Southern Pacific Railroad company Right of Way; thence along said Southeastern line of said Right of Way on a curve to the left from a tangent bears North 29° 18' 40" East, having a radius of 4337.27 feet through a central angle of 16° 28' for a distance of 1246.52 feet to the intersection thereof with the Southern line of the said 106.56 acre tract hereinabove referred to; thence along the Southern line of said 106.56 acre tract North 87° 58' 18" East 1109.21 feet to the point of commencement.

ATTACHMENT 2

EXHIBIT C

NAPA PIPE INTERSECTION IMPROVEMENT PLAN SUPPLEMENT

[see attached pages]



MEMORANDUM

1. Date: August 3, 2015

To: Rick Marshall, County of Napa

From: Chris Mitchell, PE, Fehr & Peers

**Subject: Supplement to Napa Pipe Intersection Improvement Plan – SR 221/Kaiser Road**

*SF06-0290*

1. Fehr & Peers submitted a memo dated October 22, 2014 (*Napa Pipe Intersection Improvement Plan,* i.e. *NPIIP*) that provided the County of Napa, City of Napa, and the Napa Pipe Project Sponsor (Napa Redevelopment Partners, i.e. NRP) with physical and financial obligation information related to the project’s transportation impacts. These obligations can be incorporated into the Napa Pipe project’s Development Agreement (DA).

The previous memo identified that NRP would be required to pay a specific dollar amount (calculated based on their percentage trip contribution) which represented a portion of the total cost of a larger suite of improvements at the intersection of SR 221/Kaiser Road. Since that draft, the County, the City, and NRP have reached agreement to revise the fair share mitigation. This revised approach would require NRP to construct a specific portion of the improvements in the near term that all parties agree represents the full extent of NRP’s fair share contribution to the larger suite of improvements at the intersection. Specifically, the required mitigation for the project’s contribution to cumulative impacts for the intersection should be revised to be the following:

**Kaiser Road/State Route 221 Intersection Improvements.** Landowner shall construct dual left-turn lanes on northbound SR 221 that are equal in length to the existing two hundred eighty (280) foot single left turn lane. Construction shall be completed as follows:

1. If the first building permit issued for a structure on the Property is for a Membership Warehouse Store on Block F, construction shall be completed before the issuance of any other building permits for any other structures on the Property;

332 Pine Street | 4th Floor | San Francisco, CA 94104 | (415) 348-0300 | Fax (415) 773-1790  
www.fehrandpeers.com

1. Rick Marshall
2. August 3, 2015

Page 2 of 2

1. If the first building permit issued for a structure on the Property is not for a Membership Warehouse Store on Block F, construction shall be completed before either one (but not both) of the following occurs:
2. a building permit is issued for the structure that will contain the three hundredth (300th) residential unit on the Property; or
3. a Certificate of Occupancy is issued for a Membership Warehouse Store on Block F.

By constructing the turn-lane improvements required by this Section 4.4, the City acknowledges that NRP has fully satisfied its obligation to mitigate the Project’s contribution to a cumulative impact at Intersection #17 pursuant to the MMRP, the NPIIP (Napa Pipe Intersection Improvement Plan) and the DA. To the extent construction of any other improvements at Intersection #17 are or become necessary to satisfy the requirements of the MMRP and DA, the funding or completion of those other improvements shall not be the responsibility of NRP. Rather, NRP’s responsibility for providing fair share payments for improvements at Intersection #17 and for any other improvements at Intersection #17 shall have been fully and completely addressed by the construction of the turn-lane improvements required by this Section 4.4 in lieu of a fair share contribution.

1. With the changes proposed above, the revised mitigation measure satisfies NRP’s obligation toward a fair-share contribution toward mitigating cumulative impacts at the subject intersection.

ATTACHMENT 3

EXHIBIT D

**PHASING PLAN**

EXHIBIT D

Phasing Plan

1. Phasing - Generally

1.1 Phased Infrastructure Generally. Throughout development of the Project, construction of Project Infrastructure, Affordable Housing and other Development Agreement obligations will be phased in accordance with the terms and conditions of the Development Agreement, including, without limitation, this Phasing Plan, the Affordable Housing Plan, and the MMRP. Landowner will provide certain Open Space, Affordable Housing, and traffic mitigation improvements in connection with certain levels of development and/or as a pre requisite for commencement of a subsequent Phase or a particular residential or commercial building block or project building within a Phase or sub-Phase, as described herein. Phasing of other Project Infrastructure, including access and utilities (including storm water controls) improvements necessary to accommodate development of a Phase or sub-Phase shall be provided on the basis of adjacency and as-needed, as described in Section 2 below. Approval and construction of Project Infrastructure in connection with each Phase or sub-Phase is intended to maintain a level of flexibility in determining Infrastructure requirements while providing services appropriate for development.

1.2 Local Agency Approval of Phased Infrastructure. The Subdivision Procedures attached as Exhibit I to this Agreement require Landowner to submit with each subdivision map for each Phase identified on the Phasing Plan Diagrams attached hereto as Attachment 1 (each, a “Phase”) (or if a subdivision map is submitted for less than an entire phase (each, a “sub-Phase”), for each sub-Phase), a description of the applicable Project Infrastructure and Open Space to be included within that Phase or sub-Phase (in each case, the “Phase Infrastructure”). Local Agency shall approve or disapprove the Phase Infrastructure based on consistency with the requirements and standards set forth in this Agreement (including as provided in Section 2 below) and the other Project Approvals (including, without limitation, the Development Plan and Master Map), the Subdivision Map Act and applicable Local Agency Subdivision Code and regulations as modified by the Subdivision Procedures and Development Plan, and Existing Local Agency Land Use Regulations.

1.3 Local Agency Approval of Illustrative Phasing Plan. Project Phases described herein are shown on the illustrative Phasing Plan diagrams attached hereto as Attachment 1. In the event of any discrepancy between Attachment 1 and the Agreement, including the text of this Phasing Plan, the Agreement and the text of this Phasing Plan shall control.

2. Adjacency and As-Needed

The primary principles of the Project's Infrastructure phasing are "adjacency" and "as needed", unless otherwise specifically provided in the Development Plan and this Agreement, including, without limitation, this Phasing Plan, the Affordable Housing Plan, the NPIIP and MMRP. When development of a residential or commercial project(s) occurs within a Phase or sub-Phase, “Adjacent Infrastructure” and other Project Infrastructure needed to provide for adequate access and utilities service for such project will be constructed. These include, for example, streets (and improvements therein and thereon), curbs, gutters, sidewalks, street lights and other streetscape improvements, joint utility trench, utility corridors and related facilities, storm water, wastewater, potable and other water facilities. "Adjacent Infrastructure" means Infrastructure which is near to and may share a common border or end point with a building project or sub-Phase within one of the four identified Phases. Where it is determined by Local Agency and Landowner to be feasible and sufficient to meet the needs of a project or sub-Phase, half-streets may be constructed. Project Infrastructure will be constructed in accordance with this adjacency and as needed principles unless other specific criteria is provided. In all cases, Project Infrastructure must be designed so as to connect with Project Infrastructure previously approved or installed.

3. Open Space Phasing

3.1 Open Space Development. Open Space and associated community facilities and improvements shall be designated in connection with each Phased Final Map and improvement plans approved therewith (unless earlier included in separate improvement plans) consistent with the schedule for construction of open space described in Section 3.2 below. Local Agency, in its sole discretion, may defer Open Space requirements to subsequent project maps, Phases or sub-Phases as it deems it appropriate.

3.2 Schedule for Construction of Open Space. Open Space (as each is more particularly described in the Development Plan) shall be Substantially Completed consistent with the following schedule of performance:

*Block P9 (Wetlands Restoration):* Prior to issuance of a Certificate of Occupancy for the first residential unit in the Project;

*Pedestrian and bicycle connection to Kennedy Park:* Prior to issuance of a Certificate of Occupancy for the first residential unit in the Project;

*Block 14 – Drydock improvements:* Prior to issuance of a Certificate of Occupancy for the 351st residential unit in the Project*;*

*Blocks P3 (Farm):* Prior to issuance of a Certificate of Occupancy for the 351st residential unit in the Project;

*Block P5:* Prior to the issuance of a Certificate of Occupancy for the 351st residential unit in the project;

*Block P6:* Prior to the issuance of a Certificate of Occupancy for the first residential unit on either Block 18, 20 or 22;

*Block P7:* Concurrent with the Substantial Completion of Block P5 and shall include a pedestrian connection across the railroad tracks connecting Block P5 to Block P7;

*Block P1:* Prior to issuance of a Certificate of Occupancy for the hotel on Block E, but not later than issuance of a Certificate of Occupancy for the 40th residential unit within the geographical area described by Blocks 3, 6, 9 and 12;

*Block P2 and Trail:* Prior to issuance of a Certificate of Occupancy for the 100th residential unit within the geographical area described by Blocks 3, 6, 9 and 12;

*Block P4:* Prior to issuance of a Certificate of Occupancy for the 100th residential unit within the geographical area described by Blocks 1, 4, 7, 8, 5 and 2;

*Block P8:* Prior to issuance of a Certificate of Occupancy for the first residential unit within the geographical area described by Blocks 1 and 2; and

*Interim Bicycle and Pedestrian Trail (as shown in the Development Plan):* Prior to issuance of a Certificate of Occupancy for the 50th Residential unit in the Project.

4. Transportation Infrastructure

As described in the Napa Pipe Intersection Improvement Plan, in addition to Landowner’s obligation to pay its fair share and other costs for transportation-related Project Infrastructure, Landowner must also construct specific Project Infrastructure improvements, regardless of adjacency, as follows:

4.1 Napa Valley Corporate Drive / Anselmo Court. Landowner shall construct a single lane round-about with a by-pass lane on the southbound and eastbound approaches to the intersection, including the bridge improvements to Anselmo Court and Anselmo Court/Corporate Drive, such that all access roads are at flood elevation of 12 feet NGVD29, as referenced in Section 3 of the Napa Pipe Zoning Code. If the right of way for a roundabout cannot be reasonably and timely obtained, then a traffic signal may be installed as an alternative. Regardless of whether this intersection is improved with the roundabout or with the traffic signal, Landowner shall complete the improvements required by this Section 4.1 prior to the issuance of a Certificate of Occupancy for the Membership Warehouse Store or the first residential unit in the Project, whichever is issued first.

4.2 Soscol Ferry Road / Devlin Road. Landowner shall install median treatment improvements on Soscol Ferry Road that control all movements except for the westbound through movement on Soscol Ferry Road, and shall widen Soscol Ferry Road to the west of its intersection with Devlin Road to allow for merging of the two lanes. The merge distance shall be in accordance with County standard roadway design criteria for lane merges. Landowner shall complete such improvement prior to the issuance of a Certificate of Occupancy for the Membership Warehouse Store or the first residential unit in the Project, whichever is issued first.

4.3 Kaiser Road Landscape Median Improvements. Landowner shall design and construct a landscape median on Kaiser Road between State Route 221 and Syar Road (“Kaiser Road Landscape Median Improvements”), including any roadway improvements such as restriping necessary to accommodate the installation of the Kaiser Road Landscape Median Improvements. Construction shall be completed before issuance of a Certificate of Occupancy for the 351st residential unit. Kaiser Road Landscape Median Improvements shall be subject to the review and approval of the City and County. The Kaiser Road Landscape Median Improvements shall fit within a roadway configuration that includes a minimum 6’ westbound bike lane, 12’ westbound travel lane, 14’ westbound travel lane, 14’ eastbound travel lane, 12’ eastbound travel lane and 6’ eastbound bike lane.

4.4 Kaiser Road/State Route 221 Intersection Improvements. Landowner shall construct dual left-turn lanes on northbound SR 221 that are equal in length to the existing two hundred eighty (280) foot single left turn lane. Construction shall be completed as follows:

(A) If the first building permit issued for a structure on the Property is for a Membership Warehouse Store on Block F, construction shall be completed before the issuance of any other building permits for any other structures on the Property;

(B) If the first building permit issued for a structure on the Property is not for a Membership Warehouse Store on Block F, construction shall be completed before either one (but not both) of the following occurs:

i. a building permit is issued for the structure that will contain the three hundredth (300th ) residential unit on the Property; or

ii. a Certificate of Occupancy is issued for a Membership Warehouse Store on Block F.

By constructing the turn-lane improvements required by this Section 4.4, the City acknowledges that NRP has fully satisfied its obligation to mitigate the Project’s contribution to a cumulative impact at Intersection #17 pursuant to the MMRP, the NPIIP (Napa Pipe Intersection Improvement Plan) and the DA. To the extent construction of any other improvements at Intersection #17 are or become necessary to satisfy the requirements of the MMRP and DA, the funding or completion of those other improvements shall not be the responsibility of NRP. Rather, NRP’s responsibility for providing fair share payments for improvements at Intersection #17 and for any other improvements at Intersection #17 shall have been fully and completely addressed by the construction of the turn-lane improvements required by this Section 4.4 in lieu of a fair share contribution.

5. Stormwater

An erosion and sediment control plan ("ESCP") shall be submitted for review and approval with the applicable map or improvement permit prior to issuance of grading permits and improvement plans for each residential or commercial development project. The ESCP shall address interim or permanent facilities or control measures, such as straw bale barriers, straw mulching, straw wattles, silt fencing, and temporary sediment ponds, needed to handle storm water overland flow and manage erosion and sediment, control and treat increased stormwater runoff associated with the increase in the amount of impervious surfaces and promote infiltration of runoff from new impervious services as project development occurs in each Phase or Sub- Phase. Streets will most often provide the drainage corridors needed for these flows, but it is also possible that temporary or permanent drainage pipes, basins or swale corridors (and provision of corresponding access) will be needed in various locations until the final or ultimate drainage systems are completed.

6. Community Facilities Space

Landowner shall provide the Community Facilities space described in Section IV.5 of the Development Plan and Section 15.2.5 of the Agreement prior to the issuance of the first Certificate of Occupancy for a structure on Block 21.

7. Affordable Housing

The phasing requirements associated with development of Affordable Housing are described in the Affordable Housing Plan, Exhibit B to the Agreement.

8. Site Remediation and Grading

Prior to commencement of site grading within the geographical area described by Phases 2, 3 and 4 (i.e., all of the Property except for Block F (the Membership Warehouse Store Parcel) and Block P9 (the Wetlands Restoration Area), soil remediation for the entire Property shall be completed consistent with the Remedial Design and Implementation Plan attached to the 2011 Supplemental Draft Environmental Impact Report for the Napa Pipe project. Grading and filling shall be performed as needed for development of each Phase or sub-Phase and as described in Development Plan.

9. Membership Warehouse Store and Hotel

9.1 Generally.

Phase One includes a Membership Warehouse Store to be located on Block F, as described in the Development Plan. Landowner shall use diligent and good faith efforts as soon as reasonably practicable after the Effective Date of this Agreement to enter into a binding agreement for purchase and sale of the Membership Warehouse Store site, as shown on the Land Use Plan, and for development of a Membership Warehouse Store by such purchaser thereon (the "Purchase Agreement"). Prior to Landowner entering into such a Purchase Agreement, the Local Agency shall not be obligated to issue building permits for private residential or commercial development in Phase Two. Notwithstanding the foregoing, if despite its diligent and good faith efforts, Landowner is unable to enter into such a Purchase Agreement within such two (2) year period, then Landowner shall continue to use such diligent and good faith efforts to enter into a Purchase Agreement but shall nonetheless be entitled to obtain building permits for development in Phase Two and any subsequent Phases in accordance with this Agreement and all applicable laws, subject to compliance with the deposit and payment requirements described below.

9.2 Landowner’s Deposit.

Landowner shall provide and maintain a cash deposit, or a letter of credit in such form as is reasonably approved by the City, as provided below (“Landowner’s Deposit”). If requested by Landowner, the City may, in its sole discretion, accept a bond, guaranty, or other form of security:

(A) Landowner’s First Deposit. If a Certificate of Occupancy has not been issued for a Membership Warehouse Store on Block F, or for a hotel on Block E, at the time Landowner applies for the building permit for the structure that will contain the first (1st) residential unit on the Property, then Landowner shall provide to the City of Napa (“City”) a cash deposit, or a letter of credit in such form as is reasonably approved by the City, in the amount of Seven Hundred Thousand Dollars ($700,000) (the “First Deposit”), before Indexing. For purposes of this Section 9, “Indexing” means adding to the amount of the deposit or payment stated in this Section 9 the product of the deposit or payment multiplied by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers (base years 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics from the first day of the month in which the Effective Date occurred to the first day of the most recent month for which the Index is available at any given time. The Local Agency shall not issue the building permit for the structure that will contain the 1st residential unit on the Property unless and until Landowner has made the First Deposit as required herein.

(B) Landowner’s Second Deposit. If a Certificate of Occupancy has not been issued for a Membership Warehouse Store on Block F, or for a hotel on Block E, at the time Landowner applies for the building permit for the structure that will contain the seven hundred first (701st) residential unit on the Property, then Landowner shall provide to the City a second cash deposit, or letter of credit in such form as is reasonably approved by the City, in the amount of Two Hundred Thirty One Thousand Five Hundred Dollars ($231,500), before Indexing (the "Second Deposit"). This Second Deposit shall be in addition to the First Deposit provided by Landowner pursuant to Section 9.2(A) above, bringing the total amount of Landowner’s Deposit with the City to Nine Hundred Thirty One Thousand Five Hundred Dollars ($931,500), before Indexing. The Local Agency shall not issue the building permit for the structure that will contain the 701st residential unit on the Property unless and until Landowner has made the Second Deposit as required herein.

9.3 Landowner’s Payments.

(A) First Annual Payment. Concurrent with Landowner’s First Deposit, and on each anniversary date thereafter, Landowner shall pay to the City the amount of Three Hundred Fifty Thousand Dollars ($350,000), before Indexing (the “First Annual Payments”);

(B) Second Annual Payment. On the date that the Local Agency issues the building permit for the structure that will contain the 176th residential unit within the Property, and prior to the issuance of such building permit, and on each anniversary date thereafter, Landowner shall pay to the City the amount of Three Hundred Fifty Thousand Dollars ($350,000), before Indexing (the “Second Annual Payments”). Upon commencing the Second Annual Payments, the total amount of Landowner’s annual payment obligations under this Section 9.3 shall be Seven Hundred Thousand Dollars ($700,000), before Indexing.

(C) Third Annual Payment. Concurrent with Landowner’s Second Deposit pursuant to Section 9.2(B) above, and on each anniversary date thereafter, Landowner shall pay to the City the amount of One Hundred Fifteen Thousand Seven Hundred Fifty Dollars ($115,750), before Indexing (the “Third Annual Payments”). Upon commencing the Third Annual Payments, the total amount of Landowner’s annual payment obligations under this Section 9.3 shall be Eight Hundred Fifteen Thousand Seven Hundred Fifty Dollars ($815,750), before Indexing.

(D) Fourth Annual Payment. On the date that the Local Agency issues the building permit for the structure that will contain the 824th residential unit within the Property, and prior to the issuance of such building permit, and on each anniversary date thereafter, Landowner shall make pay to the City the amount of One Hundred Fifteen Thousand Seven Hundred Fifty Dollars ($115,750), before Indexing (the “Fourth Annual Payments”). Upon commencing the Fourth Annual Payments, the total amount of Landowner’s annual payment obligations under this Section 9.3 shall be Nine Hundred Thirty One Thousand Five Hundred Dollars ($931,500), before Indexing.

If Landowner fails to timely make a payment required under this Section 9.3, the City shall be entitled to draw on Landowner’s Deposit in any amount up to and including the full amount of Landowner’s delinquent payment(s). If the City draws on Landowner’s Deposit as provided herein, Landowner shall, within five (5) business days of City’s draw, replenish Landowner’s Deposit to bring the balance up to the balance amount immediately preceding the City’s draw. If Landowner fails to timely replenish Landowner’s Deposit as required herein, the Local Agency shall withhold the issuance of building permits for the Project until such time as Landowner’s Deposit has been fully replenished as required herein.

Immediately upon the issuance of a Certificate of Occupancy for a Membership Warehouse Store on Block F or a hotel on Block E, Landowner’s obligations to maintain Landowner’s Deposit and make the annual payments under Subsections 9.2 and 9.3 shall terminate, and the City shall be entitled to retain all previously-made payments. If Landowner remains in full compliance with its deposit and payment obligations under this Section 9 at the time of such termination, then the full remaining balance of Landowner’s Deposit shall be released and returned to Landowner, and no further payments shall be required.

9.4 Hotel Development. Landowner may develop the hotel in any of Phases Two, Three or Four.

10. Floodgates.

Two floodgates shall be constructed as shown in the Development Plan, one located at the north end of the Property and the other located south of the most southerly railroad crossing. The floodgates shall be dedicated to and operated and maintained by the Flood Control District. The floodgates shall be installed prior to issuance of the first Certificate of Occupancy for any occupiable building structure (residential or non-residential) west of the railroad tracks.

11. Phases – Generally

This Section 11 is intended to clarify and explain the descriptions and requirements of the preceding Phasing Plan provisions. However, to the extent that this Section 11 is inconsistent with or conflicts with any of the provisions or requirements of the preceding Sections 1 through 10, the provisions of the preceding Sections 1 through 10 shall control and govern the implementation and phasing of the Project.

11.1 Phase One. Membership Warehouse Store, Wetlands Restoration and Site Remediation and Fill Activities. The elements of Phase One, including the development of a Membership Warehouse Store use on Land Use Block F, associated gas station and a wetlands restoration area, are described Figure 1 of the Phasing Plan diagram, Attachment 1, to this Exhibit. Soil remediation and site grading shall be completed for development of the warehouse retail site. Wetlands restoration is contemplated within Phase One but must be completed no later than issuance of a Certificate of Occupancy for the first residential unit in the Project.

11.2 Phase Two. Residential and Commercial Development, Continuing Care Retirement Center, Open Space, including connection to Kennedy Park, and Drydocks. The elements of Phase Two are described in Figure 2 of the Phasing Plan diagram, Attachment 1 to this Exhibit. Development in Phase Two includes approximately 40,000 s.f. of neighborhood retail and restaurants, up to a total of 350 residential units on Blocks 11 13, Blocks 16-18, and a continuing care retirement complex on Block 10.

Prior to commencement of site grading for development in Phase Two, soil remediation for the entire Property shall be completed consistent with the Remedial Design and Implementation Plan attached to the 2011 Supplemental Draft Environmental Impact Report. Grading and filling shall be performed as needed for development of each Phase or sub-Phase and as described in Development Plan.

Phase Two Project Infrastructure includes the Kaiser Road segment from the Property entrance to Route 221. The two railroad crossings shown in the Phase Two Phasing Plan Diagram, and as further described in the Development Plan, shall be completed prior to issuance of a Certificate of Occupancy for the first residential project in Phase Two. Approvals for a third crossing should also be obtained at this time. The third crossing shall be installed in connection with the improvement of Block P5.

The pedestrian/bicycle connection to Kennedy Park and improvements to the drydocks (Block 14) shall be provided as described in Section 3, above. Other improvements to associated Open Space shall be provided as described in Section 3, above.

11.3 Phase Three. Residential and Commercial Development, Hotel, Third Railroad Crossing and Open Space. The elements of Phase Three are described in Figure 3 of the Phasing Plan diagram, Attachment 1 to this Exhibit. Development in Phase Three includes a hotel, up to a total of 350 residential units on Blocks 3, 6, 9 and 19 22.

The improvements in Phase Three include a third railroad crossing and associated fencing and flood gates for pedestrian and bicycle use, as shown on the Phasing Plan Diagram and as described in the Development Plan. Such facilities shall be constructed in conjunction with the construction of Block P5 and P7.

Improvements to associated Open Space shall be provided as described in Section 3, above.

Concurrent with Phase Three or Phase Four, or subsequently, development may occur within the Industrial Zoning District on the Eastern Parcel, subject to all applicable Local Agency requirements for that zone, of up to ninety thousand (90,000) gsf of office space and seventy-five thousand (75,000) gsf of warehouse/R&D development. Development within the Industrial Zoning District is not tied to any Phase, and is subject to completion of applicable soil remediation and site grading.

11.4 Phase Four. Residential and Commercial Development and Open Space. The elements of Phase Four are described in Figure 4 of the Phasing Plan diagram, Attachment 1 to this Exhibit, and in the Development Plan. Development in Phase Four includes the completion of commercial development on Blocks C & D immediately north of the hotel site, and up to a total of 245 residential units on Blocks 1, 2, 4, 5, 7, 8 and the balance of Block 15.

Open Space improvements shall be provided as described in Section 3, above.

Notwithstanding the foregoing, development of the hotel may occur in any of Phases Two through Four and shall not be a prerequisite for commencement of any Phase.

11.5 Phasing Flexibility. Subject to the prerequisites for development of each Phase as identified in this Phasing Plan and Attachment 1 hereto, Development in another Phase may proceed prior to completion of the Project Infrastructure and Open Space identified for a prior Phase, provided that development of Project Infrastructure and Open Space remains consistent with the principles outlined herein, and that for each building project or sub-Phase previously initiated Landowner has committed in an associated Improvement Agreement to provide the as-needed or Adjacent Infrastructure and required Open Space and is otherwise proceeding in compliance with the requirements of the Affordable Housing Plan.