WASTEWATER IMPROVEMENTS AND
REIMBURSEMENT AGREEMENT

This Wastewater Improvement and Reimbursement Agreement is made and entered into between the City of Santa Rosa ("CITY") and Storage PRO of Santa Rosa, LLC, a California limited liability company ("DEVELOPER") for the purpose of reimbursing DEVELOPER for constructing certain wastewater main/s to be installed by DEVELOPER and setting forth the reimbursement costs associated therewith.

RECITALS

WHEREAS, CITY, pursuant to its Resolution No. (insert resolution number), has approved the proposed StoragePRO II New Multifamily Housing and Self-Storage Facilities project to be located at 4332-4374 Sonoma Highway with certain conditions of approval ("PROJECT"), including the requirement for DEVELOPER to install wastewater mains required by Condition No. (insert condition number from CUP Resolution) of the conditions of approval; and

WHEREAS, DEVELOPER has included the construction of certain wastewater main improvements on DEVELOPER's Engineering Plans, which have been approved and signed by the City Engineer (hereinafter referred to as the "PLANS"), a portion of such improvements will benefit other City properties and are therefore properly the subject of this Reimbursement Agreement; and

WHEREAS, the Santa Rosa Guide to Potable Water, Recycled Water and Wastewater Policy dated as of August 2014, Section III, Reimbursement Program authorizes a Reimbursement Agreement in these circumstances; and

WHEREAS, DEVELOPER is required by CITY to dedicate such wastewater main improvements to the public.

NOW THEREFORE, DEVELOPER AND CITY AGREE AS FOLLOWS:

AGREEMENT

1. Recitals Correct. The recitals set forth above are true and correct.

2. Reimbursement. DEVELOPER and CITY agree that certain improvements (consisting of a portion of the Los Alamos wastewater main) shown on the PLANS are properly the subject of a Reimbursement Agreement and that the sum of $ (enter amount of reimbursement) is a fair and equitable reimbursement for DEVELOPER's costs installing said portion of the wastewater main to provide additional capacity not required for the PROJECT. CITY agrees to pay DEVELOPER amount listed above upon completion of the installation of the wastewater main by DEVELOPER and acceptance of all such work by CITY.

3.   Construction. DEVELOPER shall construct the Los Alamos portion of the wastewater main as described in the PLANS which are incorporated by reference herein and made a part hereof. These PLANS have been reviewed and approved by CITY. However, CITY has not made an independent investigation of the job site, soil conditions, and any and all other conditions that might affect the design and construction of the facilities. It is the responsibility of DEVELOPER to construct all required facilities in accordance with the PLANS. In the event that job conditions require changes in the PLANS, a request for such deviation must be submitted in writing by DEVELOPER for approval by CITY; no deviation will be allowed without such approval.

4.   Access; Compliance with Plans. DEVELOPER shall allow CITY's duly authorized representative access to the work at all times and shall furnish representative with every reasonable facility for ascertaining that the methods, materials, and workmanship comply with the requirements and intent of the PLANS. CITY may reject defective work and require its repair, replacement, or removal by DEVELOPER, all at no expense to CITY. All work shall conform to the PLANS.

5.   Default. In the event that the wastewater main work required hereunder is not completed in accordance with the PLANS to the satisfaction of CITY, CITY in addition to any other remedy at law or equity, may complete such work with its own forces or by contract. In the event of such default by DEVELOPER, and CITY's subsequent undertaking, CITY shall have no obligation to reimburse DEVELOPER for any partial performance of this agreement, except that CITY shall reimburse DEVELOPER for that portion of the work which is determined by CITY to be acceptable.

6.   Indemnity. DEVELOPER agrees to accept all responsibility for loss or damage to any person or entity, and to defend indemnify, hold harmless and release CITY, its officers, agents and employees, from and against any and all actions, claims, damages, disabilities or expenses that maybe asserted by any person or entity, including DEVELOPER, arising out of or in connection with the performance of DEVELOPER hereunder, whether or not there is concurrent negligence on the part of CITY but excluding liability due to the sole active negligence or sole willful misconduct of CITY. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for DEVELOPER or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

DEVELOPER shall be liable to CITY for any loss of, or damage to, CITY property arising from or in connection with DEVELOPER's performance hereunder.

7.   Insurance. DEVELOPER shall maintain in full force and affect all of the insurance coverage described in, and in accordance with the insurance requirements set forth below. Maintenance of such insurance coverage during the entire performance of the contract is a material element of the contract. Failure by DEVELOPER to (i) maintain or renew coverage, (ii) provide notice of any changes, modification, or reduction in coverage, or (iii) provide notice of any changes, be deemed a material breach of the contract by DEVELOPER, whereas the City shall be entitled to all rights and remedies at law or in equity. Notwithstanding the foregoing, any failure by DEVELOPER to maintain required insurance coverage shall not excuse or alleviate DEVELOPER from any of its other duties or obligations under the contract. In the event DEVELOPER retains or utilizes any subcontractors or consultants in performance of the

work, DEVELOPER shall assure that any contractor, subcontractor or consultant has first obtained, and shall maintain, all of the insurance coverage requirement herein below set forth.

<u>Insurance Requirements</u>

DEVELOPER shall maintain and keep in full force and effect the following policies of insurance with minimum limits as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City:

·Commercial general liability at least as broad as
ISO CG 0001 (per occurrence) $2,000,000
With an edition date prior to 2004 or its equivalent (aggregate)[1] $2,000,000

·Business auto coverage at least as broad as ICO CA 0001[2] (per accident) $1,000,000

·Workers Compensation[3]   Statutory
Employers Liability $1,000,000

·Pollution Liability Insurance (per claim and annual aggregate) $500,000

[1] If insurance applies separately to this project/location, aggregate may be equal to per occurrence amount. Limits may be met by a combination of primary and excess insurance, but excess shall provide coverage at least as broad as specified for underlying coverage.

[2] Auto liability insurance shall cove owned, non-owned and hired autos. If DEVELOPER owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. If DEVELOPER or DEVELOPER's employees will use personal autos in any way on this project, DEVELOPER shall provide evidence of personal auto liability coverage for each such person.

[3] Sole Proprietors must provide representation of their exempt status.

Endorsements: All policies shall contain or be endorsed to contain the following provisions:

Coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the entity unless canceled for non-payment, then ten (10) days notice shall be given.

Commercial General Policies are to contain, or be endorsed to contain the following provisions:

For any clams related to this project, the **DEVELOPER's insurance shall be primary,** and any insurance or self-insurance maintained by the City shall be excess of the DEVELOPER's insurance and shall not contribute with it.

The City of Santa Rosa, its officer, agents and employees are to be named as

additional insured on a form equivalent to CG20 10 with an edition date prior to 2004.

Other Insurance Provisions

No policy required by this section shall prohibit DEVELOPER from waiving any right of recovery prior to loss. DEVELOPER hereby waives such right with regard to the indemnities.

All insurance coverage and limits provided by DEVELOPER and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in the Agreement limits the application of such insurance coverage. Coverage for an additional insured shall NOT be limited to its vicarious liability. Defense costs must be paid in addition to any limits.

Self-insured retentions and/or deductibles above $10,000 must be approved by the City. At the City's option, the DEVELOPER may be required to provide financial guarantees.

Verification of Coverage and Certificates of Insurance

DEVELOPER shall furnish the City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements shall make reference policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the contract. The City reserves the right to require complete, copies of all required policies and endorsements.

*Upon acceptance by CITY, some of the above Insurance requirements may be provided by DEVELOPER's General Contractor.

8.   Permits. DEVELOPER shall be responsible for obtaining all required permits for the construction and installation of said improvements and facilities, including but not limited to building, grading and encroachment permits from CITY.

9.   Bonds. DEVELOPER shall furnish to CITY a Faithful Performance Bond and a Labor and Materials Bond, each in the amount of One Hundred Percent (100%) of the maximum total reimbursement amount. Said bonds shall be furnished at no expense to CITY and executed by responsible surety acceptable to CITY. DEVELOPER may, in the alternative, furnish other cash security acceptable to CITY in the amount of One Hundred Percent (100%) of the maximum total reimbursement amount.

10.   Prevailing Wages. Pursuant to Labor Code " 1770 *et seq*., each laborer or mechanic of DEVELOPER or any subcontractor engaged in work in connection with this Agreement shall be paid not less than the hourly wage rate of per diem wages set forth in the prevailing wage rate schedule published by the Director of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between DEVELOPER or any subcontractor and such laborers and mechanics. A copy of the schedule of prevailing wage rates is available from the City Transportation and Public Works Department.

Any laborer or mechanic employed to perform work in connection with this Agreement, which work is not covered by any of the foregoing classifications, shall be paid not less than the prevailing rate of per diem wages specified herein for the classification which most nearly corresponds to the work to be performed by him.

The foregoing specified prevailing wage rates are minimum rates only, and the DEVELOPER may pay any wage rate in excess of the applicable rate contained in this contract.

Pursuant to Labor Code '1775, DEVELOPER as a penalty shall forfeit fifty dollars ($50.00) for each calendar day, or portion thereof for each worker paid less than the prevailing rate established by the Department of Industrial Relations for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage rate shall be paid to each worker by DEVELOPER.

12. Use of Apprentices. DEVELOPER agrees to comply with Chapter 1, Part 7, Division 2, ''1777.5 *et seq*. of the California Labor Code. These sections require contractors and subcontractors to employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice work for each five hours of journeyman work (unless an exception is granted in accordance with '1777.5), and the contractors and subcontractors shall not discriminate among otherwise qualified employees as apprentices solely on the ground of sex, race, religion, creed, national origin, ancestry, or color. Only apprentices as defined in '3077, who are in training under apprenticeship standards and who have written apprentice agreements will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the prime contractor for all apprenticeable occupations.

13. Workmanship. DEVELOPER hereby warrants that the design and construction of improvements will not adversely affect any portion of adjacent properties, and that all work will be performed in a proper and workmanlike manner.

14. No Third-Party Beneficiary. Nothing in this agreement does or is intended to create an interest in any person or entity not a party to this agreement.

15. Termination. At any time and with reasonable cause, CITY shall have the right in its sole discretion, to terminate this agreement by giving written notice to DEVELOPER.

16. Warranty. CITY has relied upon the professional ability and training of DEVELOPER as a material inducement to enter into this agreement. DEVELOPER hereby warrants that all of its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of DEVELOPER's work by CITY shall not operate as a waiver or release.

17. Merger. This writing is intended both as the final expression of the agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the agreement, pursuant to Code of Civil Procedure ' 1856.

No modification of this agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

18. <u>Notice</u>. All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail shall be addressed as follows:

DEVELOPER: Storage PRO of Santa Rosa, LLC
1615 Bonanza Street, Suite 208
PO Box 459
Walnut Creek, CA 94597

CITY: City Engineer
Water Department
69 Stony Circle
Santa Rosa, CA 95401

and when so addressed shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notice, bills and payments shall deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

19. <u>Status of DEVELOPER</u>. The parties intend that DEVELOPER, in performing the services hereinafter specified, shall act as an independent contractor and shall have the control of the work and the manner in which it is performed. DEVELOPER is not to be considered an agent or employee CITY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits CITY provides its employees.

20. <u>Compliance with Law, Ordinances and Procedures</u>. DEVELOPER shall comply with all applicable laws, including but not limited to the Americans with Disabilities Act (ADA) of 1990, (42U.S.C. 12101, *et seq*.) and any laws which may become applicable due to this AGREEMENT, all applicable ordinances and procedures of CITY as well as all of the terms and provisions of this Agreement.

21. <u>Governing Law; Venue.</u> This Agreement shall be construed, and its performance enforced, under California law. Because this Agreement is to be performed in the County of Sonoma, the parties hereto agree that the forum for the adjudication of any dispute regarding this Agreement or enforcement thereof shall be brought exclusively and solely in Sonoma County, California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be

executed

DEVELOPER: CITY:

By: _____   By: _____
    Stephen Mirabito
Title: Manager_____   Title: _____

Date: _____   Date: _____

APPROVED AS TO FORM:

By: _____
Office of the City Attorney

Attachments: