COX, CASTLE & NICHOLSON LLP
Andrew B. Sabey (State Bar No. 160416)
Linda C. Klein (State Bar No. 270016)
Stacy L. Freeman (State Bar No. 258301)
Eric J. Cohn (State Bar No. 324818)
50 California Street, Suite 3200
San Francisco, California 94111-4710
Telephone: (415) 262-5100
Facsimile: (415) 262-5199
Email: asabey@coxcastle.com; lklein@coxcastle.com;
SFreeman@coxcastle.com; ecohn@coxcastle.com

Attorneys for Plaintiff
WINEHAVEN LEGACY LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

WINEHAVEN LEGACY LLC, A DELAWARE LIMITED LIABILITY COMPANY,

Plaintiff,

v.

CITY OF RICHMOND; CITY OF RICHMOND CITY COUNCIL; AND DOES 1-20,

Defendants.

Case No. C22-01081

UNLIMITED JURISDICTION

COMPLAINT FOR BREACH OF CONTRACT AND VIOLATION OF BROWN ACT

Plaintiff WINEHAVEN LEGACY LLC, a Delaware limited liability company ("Winehaven") alleges as follows:

INTRODUCTION

1. Winehaven entered into agreements with the City of Richmond ("City") for the purchase of land at Point Molate and proposed development of a new mixed-use community, rehabilitation of historic buildings and remediation of contamination remaining from the prior use of the site as a Navy fuel depot. The City's breach of the agreements subjects Winehaven to irreparable harm. While Winehaven seeks to recover its costs incurred in the project, which exceed $20 million, if it cannot compel the City to convey the land to Winehaven, it will suffer

irreparable harm because it will be unable to pursue consequential damages or the proposed project. Accordingly, Winehaven seeks specific performance against the City. Winehaven also seeks relief for the City's violations of the Brown Act in connection with the City's bad faith efforts to thwart Winehaven's ability to complete its acquisition of the land.

PARTIES

2. Winehaven is a Delaware limited liability company, registered with the California Secretary of State and qualified to transact business in California.

3. Upon information and belief, the City of Richmond ("the City") is a chartered municipality and a public agency located in Contra Costa County, subject to the laws of the State of California.

4. Upon information and belief, the City of Richmond City Council (the "Council") is the seven-member duly elected legislative and governing body for the City.

5. Winehaven is unaware of the true names and/or capacities of Defendants DOES 1 through 20, inclusive, and therefore sues said Defendants by such fictitious names. Winehaven will amend this pleading to insert the true names and/or capacities of DOES 1 through 20, inclusive, when the same have been ascertained. Winehaven is informed and believes and thereon alleges that each such fictitiously named Defendant is, in some manner or for some reason, responsible for committing the acts upon which this action is based and for the damage caused to Winehaven and is subject to relief being sought in this pleading.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the Defendants pursuant to California Code of Civil Procedure sections 410.10 and 1060, and Government Code sections 6258, 54960, 54960.1, and 54960.2, because each Defendant resides in, and regularly conducts business in the State of California, and based upon the limitations of the discretion vested in public agencies.

7. Winehaven has performed all conditions precedent to filing this Complaint and has exhausted any and all available administrative remedies to the extent required by law. Winehaven has complied with the requirements of Government Code sections 910 et seq. by serving the City with written notice of Winehaven's intention to commence this action.

Winehaven has complied with the requirements of Government Code sections 54960, 54960.1, and 54960.2 by timely delivering to the City a letter demanding that the City cure or correct and cease and desist its Brown Act violations.

8. Winehaven is informed and believes, and thereon alleges, that the City failed to respond within the 30-day requisite time period to the Brown Act letter.

9. Venue is proper in this Court because the causes of action arose and the contracts at issue in this action were made in, raised obligations to be performed in, and/or concerned liabilities and risks relating to land in Contra Costa County, and Defendant the City is situated in Contra Costa County. (Code of Civil Procedure, §§ 393-395.)

FACTUAL BACKGROUND

10. Point Molate is an approximately 425-acre parcel of land in the City of Richmond, bordering on the San Francisco Bay, rising to a ridgeline that borders the Chevron refinery. At various times, all or part of Point Molate has been used as a fishing village, a quarry, and more recently, a large winery and a Navy fuel depot.

11. After the fuel depot closed in 1995, the federal government conveyed Point Molate to the City pursuant to the federal Base Realignment and Closure (BRAC) process, with the expectation that the City would use the land for self-sustaining regional economic development. In 2002 the U.S. Navy published a Record of Decision for Disposal and Reuse of the Point Molate Navy Fuel Depot based on the City's 1997 Point Molate Reuse Plan that contemplated three development alternatives, one of which included residential use.

12. In 2004 the City entered into a Land Disposition Agreement ("LDA") with Upstream Point Molate, LLC ("Upstream") and the Guidiville Rancheria of California a/k/a Guidiville Band of Pomo Indian's of the Guidiville Rancheria (the "Tribe") (collectively "GU"). City agreed to sell and lease to Upstream for transfer to the Tribe, real property located at the former Naval Fuel Depot Point Molate and to provide certain essential municipal services to the Property, thereafter. Thereafter, Richmond's City Council (the "Council") prevented the Tribe's achievement of certain conditions precedent necessary for transfer of the land to the Tribe, in breach of the LDA. GU filed a lawsuit against the City in the northern district of California

alleging, inter alia, causes of action for breach of contract and breach of the covenant of good faith and fair dealing. The City and GU settled that action and entered into a stipulated federal judgment, which it revised, filing the amended judgment on November 21, 2019 (the "Federal Judgment").

13. Pursuant to the Federal Judgment, the City was to market Point Molate's Development Areas[1] for sale or lease to qualified developers. The net revenues from any such sale were to be split between the City and GU. However, if any portion of the Development Areas remained unsold 30 months after the entry of the Federal Judgment (i.e., May 21, 2022), then GU would have the option to buy any unsold portion of the Development Areas for $100 per Development Area or portion thereof (the "Federal Judgment Purchase Option"). GU and the City now agree that the GU can buy all four Development Areas for $400.

GENERAL ALLEGATIONS

14. In 2019 the City and Winehaven commenced negotiations for Winehaven's purchase of the Development Areas, for creation of a mixed-used development ("Project"). The City and Winehaven agreed on a purchase price of $45 million, and on a set of approvals enabling the City to sell the Development Areas to Winehaven in compliance with the terms of the Federal Judgment. The deal terms would have preserved 70 percent of Point Molate's upland area as open space and public parks, including a new shoreline park. The deal also would have provided the additional financial resources necessary to remediate fuel depot contamination to residential standards, rehabilitate historic Winehaven District buildings, and build desperately needed housing, including affordable-by-design and deed-restricted affordable and market rate housing.

15. Specifically, the Project entails construction of 1,425 new homes, roughly 375,000 square feet of rehabilitated historic structures (Winehaven District historic buildings), 250,000 square feet of new mixed use development, a new fire station and police station, along with preservation of roughly 70% of the land as open space, including parks, recreation areas,

[1] Point Molate consists of approximately 270 acres of upland area, and 134 acres of tidal and submerged real property. Of the upland acreage, the 1997 Point Molate Reuse Plan designates approximately 30 percent as Development Areas, and the remaining 70 percent as open space.

trails, and vista overlooks. The parties' negotiations over the terms of the DDA and DA contemplated massive investment in the City.

I. *The DA and DDA*

16. The parties' negotiations culminated in Winehaven and the City's execution of the Development Agreement ("DA") and the Disposition and Development Agreement for Point Molate Mixed-Use Development ("DDA") in fall 2020. True and correct copies of the DA and the DDA are attached to this Complaint as **Exhibits A and B**, respectively (minus extensive exhibits to those agreements).

17. Both the DA and the DDA obligate the City to work cooperatively and in good faith with Winehaven to establish a Mello Roos Community Facilities District[2] (the "Point Molate CFD") as part of Winehaven's financing of the mixed-use development. Both parties understood that formation of the Point Molate CFD was a central and critical component of Winehaven's financial plan to underwrite the substantial costs associated with remediating and rehabilitating the land and its historic district, and with building the infrastructure necessary to develop a new community.

18. DDA section 4.6.2.8 requires the City to "work cooperatively and in good faith to establish the CFD and to reach mutual agreement as to additional detail[3] regarding the scope, terms and conditions affecting the CFD." DA section 2.1.2. likewise requires the City to "cooperate with the Developer to establish one or more CFDs pursuant to the Mello Roos Act and as permitted by State law to finance construction, development, and operation of the Master Infrastructure, Offsite Improvements and Master Developer Amenities in connection with the Project and the development of the Property." DA section 4.2 requires the City "to cooperate with

[2] A Community Facilities District provides financing secured against the land for certain public services and infrastructural improvements. The Point Molate CFD was critical to Winehaven's development plan because the Development Areas lacked necessary infrastructure, required substantial rehabilitation, and would demand extensive remediation and maintenance services.

[3] Mutual agreement was only required as to *additional* CFD details because DA sections 4.5.1-4.5.12 already set forth negotiated and agreed-upon terms for the Point Molate CFD, including a maximum effective tax rate for assessor's parcels within the CFD, and bond issuances with defined reserve funds to cover potential shortfalls.

[Winehaven] in the formation of any assessment districts (including without limitation Mello Roos Districts and Landscaping and Lighting Districts), community facilities districts ('CFD'), Geologic Hazard Abatement Districts, tax exempt financing mechanisms (a 'Financing Mechanism') that Developer *in its sole discretion* may elect to initiate related to the Project as and when so requested by Developer, provided that no such Financing Mechanisms shall obligate the City's general fund or negatively impact the City's General Fund . . . ." (Emphasis added.). D.A. section 4.5 states that the City "shall cooperate with the Developer to establish one or more CFDs pursuant to the Mello-Roos Act and as permitted by State law to finance construction, development, and operation of the Master Infrastructure, Offsite Improvements, and Master Developer Amenities required in connection with the development and operation of the Project."

19. Action 35 on the DDA's Schedule of Performance (DDA, Exhibit A, at 2.3.1-A) states that the Council will act on the CFD "[w]ithin six (6) months after the 'Effective Date' of the Development Agreement." DA section 4.5 repeats this six-month timeline: "Promptly following the Effective Date, City shall conduct proceedings to form the CFD consistent with State law. The Parties shall cooperate so that, to the extent possible, the associated public process and the resolution of intention to form the infrastructure component and services component shall be adopted by the City Council within six (6) months of the Effective Date."

II. *City Approval of Preliminary Financing Plan Including the Point Molate CFD*

20. As part of the City's approval and execution of the DDA, Winehaven submitted and the City approved a preliminary financing plan for financing the cost of acquiring the Property and constructing the site improvements. This City-approved preliminary financing plan was attached as Exhibit 2.5.1. of the DDA, and clearly set forth CFD proceeds as a critical source of financing for the Project.

21. Winehaven also submitted a fiscal impact report to the City, which the City's economic consultant, BAE Urban Economics, peer reviewed. BAE Urban Economics concluded that the Project would have a net positive impact on the City fisc.

III. *Post-Entitlement Litigation*

22. The City and Winehaven received two petitions challenging the City's approval of the Project under the California Environmental Quality Act ("CEQA") and Planning and Zoning Law and alleging improper delegation of police powers and violation of the Constitution ("CEQA Petitions").

23. The City and Winehaven successfully defended the CEQA Petitions in Contra Costa County Superior Court, with this court rejecting all of the petitioners' claims. (Petitioners have appealed the judgment).

IV. *The City's Delay in Fulfilling Its CFD Formation Obligations*

24. Just weeks after the Council approved the DA, the DDA and Winehaven's entitlements, new City of Richmond councilmembers were elected in November 2020.

25. More specifically, at the time of the approval of the seven-member Council was comprised of Mayor Thomas K. Butt; Councilmember Nathaniel Bates; Councilmember Ben Choi; Councilmember Demnlus Johnson III; Councilmember Eduardo Martinez; Councilmember Jael Myrick; and Councilmember Melvin Willis. Following approval, the seven-member Council was now comprised of Mayor Thomas K. Butt; Councilmember Nathaniel Bates; Councilmember Claudia Jimenez; Councilmember Demnlus Johnson III; Councilmember Eduardo Martinez; Councilmember Gayle McLaughlin; and Councilmember Melvin Willis.

26. The Council's new majority expressed hostility toward the Project approvals the City Council had granted Winehaven. The new majority engaged in a sustained effort to undermine the Project and thwart Winehaven's ability to acquire the Property.

27. Following the change in composition, the City thereafter engaged in protracted delays and stall tactics regarding Point Molate CFD formation, including failing to authorize the hiring of consultants necessary to complete the CFD. More than a year after execution of the DA and DDA, the Council included on its November 2, 2021 agenda a proposed resolution to jumpstart the Point Molate CFD process; however, the Council failed to adopt that resolution.

28. Winehaven repeatedly reminded the City of its obligation under the DA

and DDA to cooperate in good faith to establish the Point Molate CFD.[4] In response, while still somewhat recalcitrant, the City appeared to recognize its legal obligations regarding CFD formation, and Winehaven believed that the City would fulfill these obligations.

29. The parties moved forward pursuant to the DA and DDA. Based on the City's commitment to form the Point Molate CFD, Winehaven expended millions of dollars and thousands of hours to, among other things, further land entitlements, defend against the CEQA Petitions and pay for City-designated experts to evaluate the proposed CFD. Winehaven consistently worked in good faith toward creation of the Point Molate CFD, and believed the City to be doing the same.

V. *March 15, 2022 Regular Meeting of the Council, March 18, 2022 Special Meeting of the Council, and the Resolution Declining To Establish Point Molate CFD*

30. Per the agenda for the Council's March 15, 2022 regular meeting (the "Regular Meeting") the Council was set to discuss and take action on establishment of the Point Molate CFD. The Regular Meeting agenda included a "new business" item entitled "Adoption of a Resolution of Intent to Establish a Community Facilities District (CFD) for Point Molate, Adoption of Goals & Policies Statement for Community Facilities Districts, specifically for the Point Molate CFD" (the "CFD Establishment Item").

31. The Council did not substantively discuss or take action on the CFD Establishment Item at the Regular Meeting—with the discussion thereon lasting less than three minutes. Rather, City councilmember McLaughlin motioned to "table" the CFD Establishment Item for a few days to a Special Meeting on Friday, March 18, 2022 at 3:00 p.m. (the "Special Meeting"). The motion passed 4-3 with Councilmember Gayle McLaughlin; Councilmember Claudia Jimenez; Councilmember Eduardo Martinez; and Councilmember Melvin Willis voting yes; and Mayor Thomas K. Butt; Councilmember Nathaniel Bates; and Councilmember Demnlus Johnson III voting no.

[4] Winehaven had to repeatedly remind Richmond of other contractual obligations as well, such as its obligation to defend against the CEQA challenges. The new City Council majority also tried to evade the Federal Judgment by refusing to defend the legal challenge to that Federal Judgment, but it was unsuccessful in its bad faith attempts in that forum.

32. Per the agenda for the Special Meeting, the Council was again set to discuss and take action on the CFD Establishment Item. The agenda for the Special Meeting included the CFD Establishment Item in effectively identical language to the Regular Meeting agenda.

33. The Council, again, did not discuss or take action on the CFD Establishment Item at the Special Meeting. Rather the Council discussed a different *non-agendized* item—a resolution declining to establish the Point Molate CFD (the "CFD Decline Resolution"). The Council took action and approved and adopted the CFD Decline Resolution (citing grounds that are demonstrably baseless and pretextual).[5]

34. Specifically, City councilmember McLaughlin motioned to adopt the CFD Decline Resolution at the Special Meeting. The motion passed 4-0 with Councilmember Gayle McLaughlin; Councilmember Claudia Jimenez; Councilmember Eduardo Martinez; and Councilmember Melvin Willis voting yes; and Mayor Thomas K. Butt; Councilmember Nathaniel Bates; and Councilmember Demnlus Johnson III absent from the vote and largely absent from the Special Meeting.

35. Neither the agenda or agenda package materials made available to the public in advance of the Regular Meeting or Special Meeting included, or even mentioned, the CFD Decline Resolution—and absent its limited circulation to the Council and select representatives for Winehaven only within the hour of the start of the Special Meeting was not made available to the public prior to the Council taking action at the Special Meeting. Rather the agenda and agenda package materials made available for both the Regular Meeting and the Special Meeting made available to the public all related to a different item—the CFD Establishment Item, which, as mentioned above, read (*emphasis* added) "Adoption of a

---

[5] Adopted CFD Decline Resolution states that the Council's decision was based in part on the Point Molate CFD's alleged potential impact on the City's General Fund. However, the City's own expert advisors and consultants publicly stated that the terms of the proposed Point Molate CFD were protective of the City's interest. Moreover, as previously discussed, the City had previously considered the fiscal impact of the Point Molate CFD, and had previously approved Winehaven's preliminary financing plan including that CFD. The financing plan that Winehaven thereafter presented to the City, and the City rejected, did not substantively deviate from the City-approved preliminary financing plan concerning the Point Molate CFD.

Resolution of Intent to Establish a Community Facilities District (CFD) for Point Molate, Adoption of Goals & Policies Statement for Community Facilities Districts, specifically for the Point Molate CFD."

36. Despite the City's adoption of the CFD Decline Resolution, Winehaven continued to perform its contractual obligations towards closing. On May 17, 2022, the City served Winehaven with a letter stating that the City would not honor the parties' agreements and allow Winehaven to close on the Development Areas unless and until Winehaven overcame financing obstacles directly created by the City's adoption of the CFD Decline Resolution. Despite this letter, Winehaven continued in earnest its attempts to overcome closing obstacles created by the City's refusal to form the Point Molate CFD. However, the City's bad faith refusal to form the Point Molate CFD prevented Winehaven from closing on the Development Areas before the Federal Judgment Purchase Option ripened.

37. The City's last-minute denial of the CFD, on baseless grounds, thwarted Winehaven's ability to meet certain closing conditions related to Project financing because Winehaven's financing plan, as already previewed and approved in the DDA and DA, expressly relied on the existence of the CFD. CFDs are efficient means of financing new project infrastructure because they effectively secure the cost against the property to be served and can be paid back over a long period of time, thereby efficiently paying for infrastructure without obligating the City's public funds. The cost-effectiveness of a CFD is irreplaceable. Without the CFD, which Winehaven's plans had long been expressly based on, it was effectively impossible for Winehaven to present a financing plan to the City within the time remaining before the deadlines under the Federal Judgment arrived.

38. Winehaven at all times worked with the City in good faith to fulfill all conditions of, and remove all impediments to, the close of the transaction for the Development Areas. Winehaven was and remains ready, willing and able to close the transaction and purchase the Development Areas from the City, provided the City abides by its obligations under the Agreements.

39. The City's breaches of the DA and DDA concerning CFD formation give

rise to damages in an amount to be established at trial by expert testimony, but believed to be in excess of $20,000,000.

CLAIMS

FIRST CAUSE OF ACTION

(Breach of Contract)

40. Winehaven realleges and incorporates by reference the allegations set forth in paragraphs 1 through 39, above, as though fully set forth herein.

41. Winehaven and the City entered into written contracts memorialized in the DA attached hereto as Exhibit B, and the DDA attached hereto as Exhibit A. Pursuant to the DA and DDA, the City covenanted to work cooperatively and in good faith with Winehaven to establish the Point Molate CFD. In exchange, Winehaven agreed to pay the City $45,000,000 and undertake numerous obligations connected with the Project.

42. Defendants breached the DA and DDA by failing to adopt a resolution of intent to establish the Point Molate CFD and, instead, adopting a resolution declining to establish the CFD.

43. Winehaven performed all obligations required of it under the DA and DDA or was justifiably excused therefrom by the City's breaches.

44. As a result of Defendants' breaches, Winehaven has suffered losses including, without limitation, monies spent in furtherance of the mixed-use development for administrative costs, approvals and addressing environmental issues, reimbursement of City expenses, defense of third party claims, substantial time and investment of its own personnel, among other costs, well in excess of the minimum jurisdiction of an unlimited civil action, to be proved at trial.

SECOND CAUSE OF ACTION

(Breach of the Covenant of Good Faith and Fair Dealing)

45. Winehaven realleges and incorporates by reference the allegations set forth in paragraphs 1 through 44, above, as though fully set forth herein.

46. The covenant of good faith finds particular application in situations like

this where one party, the City, is invested with a discretionary power affecting the rights of another, Winehaven. Precisely because of the City's power, it must exercise that power in good faith, and cannot exercise its power in an unreasonable or arbitrary manner.

47. Defendants breached the covenant of good faith and fair dealing implied in every contract by the acts set forth herein above.

48. As a result of Defendants' breaches, Winehaven has suffered losses including, without limitation, monies spent in furtherance of the mixed-use development for administrative costs, approvals and addressing environmental issues, reimbursement of City expenses, defense of third party claims, substantial time and investment of its own personnel, among other costs, well in excess of the minimum jurisdiction of an unlimited civil action, to be proved at trial.

THIRD CAUSE OF ACTION

(Unjust Enrichment)

49. Winehaven realleges and incorporates by reference the allegations set forth in paragraphs 1 through 39, above, as though fully set forth herein.

50. Beginning in 2019, and continuing through the present, Winehaven performed services and advances costs on Defendants' behalf, to work expeditiously in good faith to meet all conditions precedent, and remove all obstacles, to closing on the transaction for the Development Areas.

51. In this regard, Winehaven spent thousands of hours and advance millions of dollars for the benefit, and at the request of, Defendants. Defendants have been unjustly enriched by Winehaven's efforts.

52. Winehaven is entitled to an award for the value of Defendants' unjust enrichment arising from Winehaven's services and monies advanced for Defendants' benefit in an amount to be proven at trial, but which reasonably exceeds the jurisdictional minimum for unlimited civil proceedings.

FOURTH CAUSE OF ACTION

(Quantum Meruit)

53. Winehaven realleges and incorporates by reference the allegations set forth in paragraphs 1 through 39 and 50 through 52, above, as though fully set forth herein.

54. Beginning in 2019, and continuing through the present, Winehaven performed services and advanced costs on Defendants' behalf, to work expeditiously in good faith to meet all conditions precedent, and remove all obstacles, to closing on the transaction for the Development Areas.

55. Winehaven performed these services with the expectation of compensation by way of transfer of the Development Areas to Winehaven and also the development of such land pursuant to the terms of the DA and DDA, and in reliance on the City's execution of the DA and DDA and on-going promises to adhere thereto and to support the mixed-use development.

56. In this regard, Winehaven spent thousands of hours and advanced millions of dollars for the benefit, and at the request of, Defendants. Winehaven is entitled to an award for the value of its services and reimbursement of monies advances for Defendants' benefit in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

(Specific Performance)

57. Winehaven realleges and incorporates by reference the allegations set forth in paragraphs 1 through 48, above, as though fully set forth herein.

58. In September and October 2020, Winehaven and the City entered into the DA and DDA, which are written contracts with sufficient certainty of terms.

59. The DA and DDA are supported by adequate consideration and are just and reasonable.

60. Defendants breached the DA and DDA by failing to adopt a resolution of intent to establish the Point Molate CFD and, instead, adopting a resolution declining to establish the CFD.

61. Winehaven performed all obligations required of it under the DA and DDA or was justifiably excused therefrom by the City's prior breaches.

62. Winehaven does not have an adequate remedy at law[6] to address Defendants' breaches of the DA and DDA. Accordingly, Winehaven is entitled in equity to an order compelling Defendants to specifically perform their obligations under the DA and DDA, which will allow Winehaven to complete the purchase as contemplated by the parties.

SIXTH CAUSE OF ACTION

(Declaratory Relief)

63. Winehaven realleges and incorporates by reference the allegations set forth in paragraphs 1 through 62, above, as though fully set forth herein.

64. An actual controversy has arisen and now exists between Winehaven and the City concerning their respective rights and duties under the DA and DDA, in that Winehaven contends the City breached the DA and DDA by failing to adopt a resolution of intent to establish the Point Molate CFD and, instead, adopting a resolution declining to establish the CFD. And further that the City has an obligation to adopt the CFD based on the proposed CFD's compliance with the terms of the DA and DDA and the absence of any substantial evidence supporting the City's resolution to deny the CFD. Winehaven contends that the City's stated reasons are pretextual and meritless and do not justify denial of the CFD, whereas the City seems to contend it was free to adopt this reasoning as a basis to thwart the CFD.

65. Winehaven desires a judicial determination of its rights and duties and a declaration as to which party's interpretation of the DA and DDA is correct.

SEVENTH CAUSE OF ACTION

(Violation of the Brown Act, Government Code §§ 54956, 54954.2)

66. Winehaven realleges and incorporates by reference the allegations set forth in paragraphs 1 through 39, above, as though fully set forth herein.

67. A fundamental purpose of the Ralph M. Brown Act, Government Code §§ 54950 et seq. ("Brown Act") is to encourage public participation in government decision-making.

[6] The parties' contracts foreclose recovery of consequential damages, highlighting the unique importance in this action of affirmative injunctive relief compelling Defendants to perform their obligations under the parties' contracts and allow the transaction to close. Indeed, the parties' contracts expressly reserve to Winehaven the remedy of specific performance.

68. In furtherance of this purpose, the Brown Act prohibits the Council from discussing or taking action on any item that does not appear on a properly posted agenda, except in certain situations not applicable here. (Government Code §§ 54956, 54954.2; *see also Moreno v. City of King* (2005) 127 Cal.App.4th 17, 26.)

69. Despite this requirement, the City violated the Brown Act by discussing and taking action on the CFD Decline Resolution at the Special Meeting after failing to properly agendize the CFD Decline Resolution for the Special Meeting. The Special Meeting agenda and agenda package materials neither included, nor even mentioned, the CFD Decline Resolution—and in no way indicated, let alone sufficiently, to an ambushed Winehaven or the public that the Council was set to adopt a substantively different resolution *affirmatively declining to establish* the (contractually obligated) Point Molate CFD. Had the public sufficiently been notified of this different CFD Decline Resolution item, including the contents of the CFD Decline Resolution, one or more representatives of Winehaven as well as the public at-large could have and would have provided substantive comments to the Council thereon.

70. Winehaven as well as the public (inclusive of the Mayor and the City councilmembers not sufficiently present at the Special Meeting) were prejudiced by this violation because this violation denied them the opportunity to sufficiently prepare and provide meaningful and focused input to the Council on the substantively different CFD Decline Resolution—including saliently reminding the City of its contractual obligations to establish the CFD under the DA and DDA and the impacts that such a breach of obligations would have not only on Winehaven, but on the City and the public at-large.

71. Pursuant to Government Code §§ 54960.1 and 54960.2, Winehaven timely delivered a letter to the City demanding that the Council cure or correct the action taken by the Council at the Special Meeting with respect to the CFD Decline Resolution and cease and desist the practices constituting this violation of the Brown Act.

72. Winehaven is informed and believes, and thereon alleges, that the City failed to respond to Winehaven's Brown Act letter.

73. For the reasons stated above, the Council's action taken at the Special

Meeting on March 18, 2022 with respect to the CFD Decline Resolution must be determined as null and void, pursuant to Government Code § 54960.1(a).

74. Furthermore, for the reasons stated above, and because the Council refuses to make an unconditional commitment to cease and desist the practices constituting this violation of the Brown Act, a controversy exists regarding the City's past compliance with the Brown Act, and the City is likely to continue such violations of the Brown Act.

EIGHTH CAUSE OF ACTION

(Violation of the Brown Act, Government Code §§ 54953, §§ 54960 et seq.)

75. Winehaven realleges and incorporates by reference the allegations set forth in the paragraphs 1 through 39 and 67 through 74 above, as though fully set forth herein.

76. A fundamental purpose of the Brown Act is open and public government decision-making.

77. In furtherance of this purpose, the Brown Act provides "[a]ll meetings of the legislative body of a local agency shall be open and public…" (Government Code § 54953.)

78. The Brown Act defines the term "meeting" very broadly to encompass almost every gathering of a majority of City councilmembers to hear, discuss, deliberate or take action on any item of City business or potential City business. (Government Code § 54952.2(a) ["[a]ny congregation of a majority of members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or local agency to which it pertains"].)

79. The Brown Act prohibits a series of individual communications if they result in a "serial meeting." (Government Code § 54952.2(b).) A "serial meeting" is a series of meetings or communications between individuals in which ideas are exchanged on city business or potential city business among a majority of the legislative body (e.g., at least four City councilmembers) through either one or more persons acting as intermediaries or through use of technological devices (such as e-mail or text), even though a majority of councilmembers never gather together at the same time. "Serial meetings" commonly occur in one of two ways—either a staff member, such as the City Attorney or some other person individually contacts a majority of

members of a body and shares ideas among the majority or, without the involvement of a third person, a single member calls other members individually until a majority of the body has reached a collective concurrence on a matter.

80. Despite the requirement that meetings be "open and public," Winehaven is informed and believes, and thereon alleges, the Council violated the Brown Act by taking action, at least in the few days from and between the Regular Meeting to the Special Meeting (if not prior thereto) that was not open and public, through either conducting a "secret meeting" or "serial meeting."

81. Winehaven bases this information and belief on the suspect nature of how the substantively different CFD Decline Resolution came to be prepared and presented to the Council "at the eleventh hour" prior to the March 18, 2022 Special Meeting.

82. That is even though the CFD Decline Resolution was not included on, or even mentioned in, the agenda or agenda materials for the March 15, 2022 Regular Meeting. And even though, as Winehaven is informed and believes, and thereon alleges, there was no public deliberation by the Council instructing City staff, inclusive of the City Attorney, to draft the CFD Decline Resolution at the Regular Meeting. And even though there was only three days time between the Regular Meeting and the Special Meeting. And even though the Special Meeting did not include an item for the CFD Decline Resolution and the City failed to sufficiently, if at all, make it available to the public in advance of the Special Meeting. Somehow—"absent any direction by a majority of the Council"—City staff "at the eleventh hour" prior to the Special Meeting presented the Council with the substantively different CFD Decline Resolution, which for all intents and purposes, at least as far as the public was aware did not exist, in any capacity, just three days prior.

83. This absence of any public deliberation, and the short timing (three days) between the Regular Meeting and Special Meeting, strongly suggests that the Council violated the Brown Act by surreptitiously taking action through conducting a "secret meeting" or "serial meeting" that was not open and public to cause the CFD Decline Resolution to be prepared and presented at the Special Meeting. Winehaven will establish such Brown Act violation by way of

this Action.

84. Pursuant to Government Code §§ 54960.1 and 54960.2, Winehaven timely delivered a letter to the City demanding that the Council cure or correct the "non-open and public" actions taken by the Council in advance of the Special Meeting and cease and desist the practices constituting this violation of the Brown Act.

85. Winehaven is informed and believes, and thereon alleges, that the City failed to respond to Winehaven's Brown Act letter.

86. For the reasons stated above, the Council's "non-open and public" actions taken in advance of the Special Meeting must be declared null and void, pursuant to Government Code § 54960.1(a).

87. Furthermore, for the reasons stated above, and because the Council refuses to make an unconditional commitment to cease and desist the practices constituting this violation of the Brown Act, a controversy exists regarding the City's past compliance with the Brown Act, and the City is likely to continue such violations of the Brown Act.

PRAYER FOR RELIEF

Wherefore, Winehaven prays for judgment against defendants, and each of them, as follows:

ON THE BREACH OF CONTRACT AND IMPLIED COVENANT CLAIMS:

1. A declaration as to the proper interpretation of the DA and DDA.
2. An order compelling the Council to approve a resolution for the adoption of the Point Molate CFD and perform its obligations under the DA and DDA including completing the sale to Winehaven.
3. An injunction preventing the City from conveying or deeding the Property to any other party before Winehaven's claims for specific performance are resolved.
4. An award of damages against Defendants for actual and incidental damages and interest thereon, including for breach of contract and/or

breach of the implied covenant of good faith and fair dealing.

5. Recovery of sums available through quantum meruit and/or unjust enrichment verdicts.

ON THE BROWN ACT VIOLATIONS:

6. A declaration that the City violated the Brown Act through the actions taken at and prior to the Special Meeting.

7. A declaration ordering the City to invalidate the actions taken at and prior to the Special Meeting in violation of the Brown Act.

8. An injunction enjoining the City from committing Brown Act violations detailed herein.

9. An order compelling the City to provide an unconditional assurance per Government Code § 54960.2 that the City will hereafter comply with the Brown Act.

ON ALL CAUSES OF ACTION:

10. For costs of suit, including reasonable attorneys' fees, *inter alia* as authorized by the DDA and DA, and by Government Code § 54960.5, and costs as permitted by law.

11. Such other relief as is just under the circumstances.

JURY DEMAND

Winehaven hereby demands a jury trial in this action.

DATED: May 26, 2022

COX, CASTLE & NICHOLSON LLP

By: _____

Andrew B. Sabey
Linda C. Klein
Stacy L. Freeman
Eric J. Cohn
Attorneys for Plaintiff
WINEHAVEN LEGACY LLC

EXHIBIT A

DISPOSITION AND DEVELOPMENT AGREEMENT FOR POINT MOLATE MIXED-USE DEVELOPMENT

BY AND BETWEEN

THE

CITY OF RICHMOND

AND

WINEHAVEN LEGACY LLC

TABLE OF CONTENTS

DISPOSITION AND DEVELOPMENT AGREEMENT
FOR
POINT MOLATE MIXED-USE DEVELOPMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT FOR POINT MOLATE MIXED-USE DEVELOPMENT (this "**Agreement**") is made as of September 30, 2020 (the "**Effective Date**"), by and between the CITY OF RICHMOND, a municipal corporation and charter city (the "**City**") and WINEHAVEN LEGACY LLC, a Delaware limited liability company ("**Original Developer**," and together with its permitted successors and assigns pursuant to this Agreement, "**Developer**"), with reference to the following findings of facts, understandings and intentions of the Parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined and shall have the meanings set forth in **Article 1** of this Agreement.

B. The City is the owner of approximately 412 gross acres of property commonly known as the Point Molate Site, located within the City of Richmond, County of Contra Costa, State of California, and more particularly described and depicted in **Exhibit A-1** (the "**Site**"), with approximately 136 acres being submerged in the San Francisco Bay (the "**Submerged Lands**"), resulting in the upland acreage of the Site being approximately 276 acres.

C. Pursuant to Article II (Powers), Section 1 of the City Charter of the City of Richmond, the City has the power to dispose of its real property.

D. On March 19, 2019, Original Developer was selected through a competitive process by the City to enter into exclusive negotiations regarding the terms and conditions of a Disposition and Development Agreement pursuant to which Developer will purchase the Property and develop the Site with the Project. Consistent therewith, the City and Original Developer entered into an Exclusive Right to Negotiate Agreement Regarding Point Molate Mixed-Use Development, dated May 2, 2019 (as amended, the "**ERN**"), providing, among other things, for a period of exclusive negotiations, deposit by Developer of funds to reimburse certain pre-development, negotiation and entitlement costs incurred by the City, and Developer's due diligence, and summarizing certain proposed terms for this Agreement. In accordance with the ERN, Original Developer and the City entered into exclusive negotiations for this Agreement. The Exclusive Period under the ERN expires on September 30, 2020.

E. The Site is subject to the Judgment (as defined below) that stated in part that the land use entitlements must be generally consistent with the Point Molate Reuse Plan adopted by the City Council in 1997 ("**Reuse Plan**"). The Reuse Plan designates approximately 70% of the Site as open space with development to occur on the remaining 30%. The open space and developable area percentages are based on the approximately 276 upland acre portion of the Site and are more particularly shown on the vesting tentative tract map attached to and hereby made a part of this Agreement as **Exhibit A-2**. The portion of the Site that will be conveyed by the City to Developer for the development of the Project is depicted and identified on **Exhibit A-2** as Parcels 1 through 44, inclusive, the precise boundaries of which are subject to

resolution/determination prior to Closing to reflect minor adjustments in the vesting tentative tract map as proposed by the Developer and approved by the City or otherwise as may be conditioned by the City (the "**Property**"). The Property does not include any portion of the Submerged Lands, and to the extent any Improvements are intended to be constructed on the Submerged Lands, such Improvements, together with any renovation of existing piers located within the Submerged Lands, shall be Master Developer Amenities.

F. Developer intends to acquire the Property for the development of an environmentally suitable mixed-use project as described in **Exhibit A** attached hereto (the "**Project**"), including any program for development that conforms with the Point Molate Planned Area District ("**PM-PAD**"), including the Zoning and Master Planned Area Plan (found in the Point Molate Design Guidelines), and falls within the mix and envelope of land uses evaluated in the Subsequent Environmental Impact Report, State Clearinghouse No. 2019070447 (the "**SEIR**") and the "Development Capacity" set forth in Section 1.020 of the PM-PAD.

G. The environmental impacts of the Project were evaluated in a Subsequent Environmental Impact Report (State Clearinghouse No. 2019070447), which was prepared pursuant to the California Environmental Quality Act ("**CEQA**"), was recommended for certification by the Planning Commission on August 20, 2020, by Resolution No. 20-12, and certified with findings by the City Council on September 8, 2020, by Resolution No. 97-20 (certifying SEIR) and Resolution No. 97-20 (adopting findings) (the "**SEIR**").

H. The execution and performance of this Agreement is in the vital and best interests of the City and the health, safety and welfare of the City's residents, and is in accord with applicable provisions of federal, state and local law.

I. The City Council approved this Agreement and the disposition of the Property hereunder at its regular meeting held on September 8, 2020. The City Council approved that certain statutory Development Agreement for the Project (the "**Development Agreement**") following Planning Commission review and recommendation, at the City Council's regular meeting held on September 15, 2020.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and obligations of the Parties set forth herein, the City and Developer hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply:

"**Approved Guarantor**" means an entity or person designated by Developer that has an ownership interest in Developer and is acceptable to the City in the City's reasonable discretion; provided, however, and without limiting such discretion, any such entity shall, in any event and at a minimum, (i) be registered and qualified to transact business in California (if such guarantor is an entity); and (ii) shall have provided to the City reasonable and customary written evidence from one or more bona fide financial institutions, or otherwise reasonably acceptable to the City,

substantiating that such entity has on hand (in the aggregate) cash, marketable securities and other liquid assets with a present value not less than to the greater of (i) Twenty Million Dollars ($20,000,000.00) and (ii) one hundred percent (100%) of the then outstanding amount of unpaid Project Costs for the applicable guaranteed Construction Phase (based on the Approved Final Financing Plan for the applicable Construction Phase) (the "**Guarantor Liquidity Requirement**") and a net worth of at least One Hundred Million Dollars ($100,000,000.00) (the "**Guarantor Net Worth Requirement**"); provided that with respect to the Historic Core Work, the Guarantor Liquidity Requirement will be on hand (in the aggregate) cash, marketable securities and other liquid assets with a present value not less than the greater of (i) Twenty Million Dollars ($20,000,000.00) and (ii) fifty percent (50%) of the then outstanding amount of unpaid Project Costs for the Historic Core Work being guaranteed (based on the Approved Final Financing Plan for the Historic Core Work). The City acknowledges that such person or entity may also be the guarantor under a Conventional Construction Loan obtained by Developer for the construction of the applicable Construction Phase, and, in such event, the City agrees to accept such entity as an "Approved Guarantor" hereunder provided it satisfies the requirements in clauses (i) and (ii) above. J.R. Orton III shall be an Approved Guarantor of the Historic Core Work provided that he satisfies the Guarantor Liquidity Requirement and the Guarantor Net Worth Requirement.

"**Affordable Onsite Units**" means all or any of the Onsite Residential Units located within the Project and affordable to very low-, low- or moderate-income households (≤120% AMI), a minimum number of which shall total no less than sixty-seven (67) Residential Units (such sixty-seven (67) Affordable Onsite Units, the "**Required Onsite Affordable Units**"). All of the Required Onsite Affordable Units shall be completed as part of the Vertical Phases to be constructed within the First Site Improvement Phase, and at least 25% of the Required Onsite Affordable Units will be for sale units and will be interspersed with market rate housing (and not in a separate building).

"**Agreement**" means this Disposition and Development Agreement.

"**Applicable Law**" means any and all federal, state, and local laws, statutes, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, policies, directives, building codes, zoning codes, standards, permits, licenses, conditions of approval and other requirements adopted by any governmental, administrative or judicial authority including, without limitation, Other Agencies. Applicable Laws include, without limitation, all Project Approvals, all Hazardous Materials Laws, all federal, state and local historical preservation and adaptive reuse requirements (including without limitation the requirements included or referenced in the State Historic Preservation MOA), and other laws and regulations governing environmental conditions, the Davis Stirling Act, and all covenants, conditions and restrictions of record, which are or at any time during the Term may become binding upon or applicable to all or any portion of the Property or the Project or any improvements thereon, or to the use or operation of all or any portion of the Property or the Project, or to this Agreement and/or the transactions contemplated by this Agreement, subject to the terms and conditions of the Development Agreement.

"**Approved Construction Budget**" has the meaning set forth in **Section 2.5.2.6**.

"**Approved Final Financing Plan**" has the meaning set forth in **Section 2.5.2.6**.

"**Approved Final Plans**" has the meaning set forth in **Section 2.6.6**.

"**Approved Vertical Construction Budget**" has the meaning set forth in **Section 2.5.4**.

"**Approved Vertical Improvements Financing Plan**" has the meaning set forth in **Section 2.5.4**.

"**Approved Vertical Improvements Plans**" has the meaning set forth in **Section 2.6.7**.

"**AS-IS Condition**" has the meaning set forth in **Section 4.10.5**.

"**Assignment of Developer Agreements, Plans and Approvals**" has the meaning set forth in **Section 2.8.2** and refers to the form set forth in attached **Exhibit 2.8.2**.

"**Bankruptcy/Insolvency Event**" means any of the following:

(1) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Developer or any Principal or Guarantor to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Developer or any Principal or Guarantor or seeking any arrangement for Developer or any Principal or Guarantor under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Developer or any Principal or Guarantor in bankruptcy or insolvency or for any of its properties, or (iv) directing the winding up or liquidation of Developer or any Principal or Guarantor, if any such decree or order described in clause (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a greater time period, as applicable, is permitted for such cure under any Permitted Security Interest; in which event such greater time period will apply, or Developer or any Principal or Guarantor shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive.

(2) Assignment; Attachment. Developer or any Principal or Guarantor shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a greater time period is permitted for such cure under any Permitted Security Interest, in which event such greater time period shall apply) or prior to sooner sale pursuant to such sequestration, attachment or execution.

(3) Suspension; Termination. Developer or any Principal or Guarantor shall have voluntarily suspended its business or fails to maintain its good standing, or shall have been dissolved or terminated, and such condition, as applicable, remains uncured for a period of ninety (90) days after written notice thereof from the City.

"**Building Permit**" means a building permit or equivalent permit for vertical construction of all or any portion of the Project issued by the City in its regulatory capacity, other than vertical construction for which a Site Improvement Permit is issued.

"**CEQA**" means the California Environmental Quality Act, Sections 21000 *et seq*. of the Public Resources Code and the CEQA Guidelines set forth at 14 California Code of Regulations Sections 15000 *et seq*.

"**Certificate of Completion**" means either a Certificate of Construction Phase Completion or a Certificate of Project Completion.

"**Certificate of Construction Phase Completion**" means the certificate to be issued by the City with respect to Completion of Construction of a particular Construction Phase pursuant to **Section 5.9.1** and refers to the form set forth in attached **Exhibit 5.9.1-A** (for Site Improvement Phases) or **Exhibit 5.9.1-B** (for Vertical Improvement Phases), as applicable.

"**Certificate of Occupancy**" means a certificate of occupancy for any portion of the Project issued by the City.

"**Certificate of Project Completion**" means the certificate to be issued by the City with respect to Completion of the Project pursuant to **Section 5.9.1** and refers to the form set forth in attached **Exhibit 5.9.1-C**.

"**Certificate of Readiness**" has the meaning set forth in **Section 2.10**.

"**CFD**" means a Mello Roos Community Facilities District.

"**CFR**" means the Code of Federal Regulations.

"**City**" means the City of Richmond, a municipal corporation and charter city, operating through its governing body, the City Council, and its various departments.

"**City Approved Preliminary Master HOA Documents**" has the meaning set forth in **Section 2.9**.

"**City Attorney**" means the Office of the City Attorney.

"**City Closing Conditions**" has the meaning set forth in **Section 4.6.1**.

"**City Closing Funds and Documents**" has the meaning set forth in **Section 4.4.2**.

"**City Council**" means the City Council of the City of Richmond, which is the governing body of the City.

"**City Date-Down Certificate**" has the meaning set forth in **Section 4.4.2.7** and refers to the form set forth in attached **Exhibit 4.4.2.7**.

"**City Event of Default**" has the meaning set forth in **Section 10.3.1**.

"**City Grant Deed**" has the meaning set forth in **Section 4.4.1.2** and refers to the form set forth in attached **Exhibit 4.4.1.2** and otherwise reasonably satisfactory to the City.

"**City Living Wage Ordinance**" has the meaning set forth in **Section 5.5.10.1**.

"**City Manager**" means the City Manager of the City.

"**City Materials**" has the meaning set forth in **Section 4.10.1**.

"**City Notice of Developer Default**" has the meaning set forth in **Section 10.4.2**.

"**City Parties**" means the City and its respective board members, the City Council and its members, the City's Planning Commission, advisory boards, managers, directors, officers, employees, representatives, consultants, agents, shareholders, affiliated attorneys and related entities, and their respective successors and assigns.

"**City Regulatory Agreement**" and "**City Regulatory Agreements**" has the meaning set forth in **Section 5.5.5** and refers, individually and collectively as applicable, to the forms set forth in attached **Exhibit 5.5.5-B** and **Exhibit 5.5.5-C** and otherwise reasonably satisfactory to the City.

"**Claims**" means any and all claims, demands, actions, causes of action, proceedings, liabilities, losses, damages, fines, penalties, liens, costs and expenses (including court costs and reasonable attorneys', experts' and consultants' fees and costs) of any nature whatsoever.

"**Close**," "**Close of Escrow**" or "**Closing**" means the close of Escrow for conveyance of the Property by the City to Developer as provided in **Article 4**.

"**Closing Conditions**" has the meaning set forth in **Section 4.6.3**.

"**Closing Conditions Satisfaction Date**" has the meaning set forth in **Section 4.6.3**.

"**Closing Date**" means the date of Closing.

"**Commence Construction**," "**Commenced Construction**," "**Commencement of Construction**" or similar terms means, (i) with respect to any Site Improvements, the issuance by the City to Developer of a Site Improvement Permit with respect to such Site Improvements, and the commencement of substantial physical construction by Developer of the Site Improvements based on such Site Improvement Permit, and, (ii) with respect to the Vertical Improvements, the issuance by the City to Developer, the Historic Resources Assignee, or a Merchant Builder of a Building Permit with respect to the applicable Vertical Improvement(s), and the commencement of substantial physical construction of such Vertical Improvement(s) based on such Building Permit. For purposes of this definition, (a) "substantial physical construction" of any Site Improvements means commencement of physical demolition of any existing improvements or commencement of grading or excavation pursuant to the applicable Site Improvement Permit; (b) "substantial physical construction" of the Historic Resources Work means commencement of any work of improvement pursuant to the applicable Building Permit and certificate of appropriateness from the Historic Preservation Commission, but specifically

excluding weatherization work described in **Exhibit 2.12-A** hereto, demolition, abatement work, site preparation, shoring, utility connections, and testing of means and methods of performing the Historic Resources Work; and (c) "substantial physical construction" of any Vertical Improvements means commencement of any work pursuant to the applicable Building Permit.

"**Commercial Unit**" means any commercial, retail or neighborhood-serving building, condominium, or space constructed by Developer, the Historic Resources Assignee, or a Merchant Builder.

"**Complete Construction**," "**Completed Construction**," "**Completion of Construction**," "**Completion of the Project**" or similar terms means, with respect to each Construction Phase, completion of all work on such Construction Phase, including any Site Improvement Phase or any Vertical Improvement Phase, as applicable, such that Developer, Historic Resources Assignee, or Merchant Builder constructing such Construction Phase, as applicable, shall have obtained from the City: (i) with respect to the Site Improvements in a Site Improvement Phase, a Certificate of Completion thereof; or (ii) with respect to the Vertical Improvements in a Vertical Improvement Phase, the final (last) Certificate of Occupancy for the Vertical Improvements in such Vertical Improvement Phase; and (iii) with respect to any Construction Phase or the Project, the Certificate of Construction Phase Completion with respect thereto; and (iv) with respect to the Project, the Certificate of Project Completion with respect thereto. For avoidance of doubt, the terms "Completion of the Project" and "Completion of Construction of the Project" mean completion of the entire Project, including any and all Construction Phases.

"**Construction Budget**" has the meaning set forth in **Section 2.5.2.1**.

"**Construction Phase**" means, as applicable, each of the Site Improvement Phases and each of the Vertical Improvement Phases.

"**Construction Plans**" means all construction documentation and related materials upon which Developer, the Historic Resources Assignee and/or any Merchant Builder (as the case may be), and each of their several contractors, shall rely in building each and every part of the Project (including, without limitation, utilities, roads, landscaping, parking, public improvements, common areas and Offsite Improvements) in accordance with this Agreement and shall include with respect to each Construction Phase (and as applicable for such Construction Phase), but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings") and, if required by City, sample materials and finishes to be used for the Project, sufficient to permit issuance by City of Site Improvement Permits and/or Building Permits for the applicable Construction Phase consistent with this Agreement, as applicable.

"**Control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities or memberships, by contract, or otherwise, and the terms "Controlling" and "Controlled" have the meanings correlative to the foregoing.

"**Conventional Construction Lender**" means the lender of a Conventional Construction Loan.

"**Conventional Construction Loan**" means one or more loans to Developer for construction of any Construction Phase of the Project, or to Developer, Historical Resources Assignee or Merchant Builders for construction of any Vertical Improvement Phase of the Project, from private lending institutions (excluding any Developer Affiliate other than an affiliate of MSDC SC Investors, LLC), nonprofit lending groups, and public lenders (other than the City), approved by the City in an Approved Final Financing Plan or in an Approved Vertical Phase Financing Plan, as applicable.

"**Conventional Construction Loan Closing**" means the closing for initial funding or disbursement of a Conventional Construction Loan for the applicable Construction Phase.

"**County**" means the County of Contra Costa, a political subdivision of the State of California.

"**Davis Stirling Act**" means the Davis Stirling Common Interest Development Act, California Civil Code Sections 4000-4070, and any successor statute thereto.

"**Density Increase Payment**" has the meaning set forth in **Section 7.9**.

"**Deposit**" has the meaning set forth in **Section 4.2.1**.

"**Developer**" means the Original Developer, and its successors and assigns approved by the City or otherwise permitted in accordance with this Agreement. Upon the execution and delivery of each Partial Assignment and the assumption of Developer's obligations under this Agreement, (i) the approved or permitted assignee (including, without limitation, a Merchant Builder or the Historic Resources Assignee) will be the "Developer" with respect to the applicable Vertical Improvements Phase or Historic Resources, as applicable, and portion of the Property conveyed to the assignee, and (ii) such assignee shall have all of the Developer's rights and, to the extent the Original Developer is released from its obligations under such Partial Assignment, all of the Developer's obligations hereunder with respect to the applicable Vertical Improvements Phase or Historic Resources, as applicable, and portion of the Property conveyed to the assignee.

"**Developer Affiliate**" means any entity that is directly or indirectly Controlling, Controlled by, or under common Control with Developer, including but not limited to the Developer Members.

"**Developer Agreements, Plans and Approvals**" means the "Agreements," "Plans and Specifications" and "Approvals" as those terms are defined in the Assignment of Developer Agreements, Plans and Approvals.

"**Developer Closing Conditions**" has the meaning set forth in **Section 4.6.2**.

"**Developer Closing Funds and Documents**" has the meaning set forth in **Section 4.4.1**.

"**Developer Date-Down Certificate**" has the meaning set forth in **Section 4.4.1.6** and refers to the form set forth in attached **Exhibit 4.4.1.6**.

"**Developer Event of Default**" has the meaning set forth in **Section 10.4.1**.

"**Developer Members**" means the Principals and any other or successor members of Developer in accordance with the applicable provisions of **Article 7**.

"**Developer Parties**" means Developer and its affiliates, and each of their directors, officers, employees, agents, contractors, subcontractors, representatives, successors and permitted assigns.

"**Developer Property Testing**" has the meaning set forth in **Section 4.10.4.1**.

"**Developer's Ownership Period**" means the period of time commencing on the date that Developer acquires title to the Property or a portion thereof and terminating upon the following:

(i) with respect to any portion of the Property sold by Original Developer to a Merchant Builder or to the Historic Resources Assignee, the Original Developer's "Developer's Ownership Period" shall terminate on the date of closing of the sale of such portion of the Property to such Merchant Builder or Historic Resources Assignee; provided, however, that such Merchant Builder's or Historical Resources Assignee's "Developer's Ownership Period" shall thereupon commence with respect to the portion of the Property so transferred and shall continue thereafter until terminated pursuant to clause (ii), (iii), or (iv) below, as applicable

(ii) with respect to each Residential Unit other than an Affordable Onsite Unit, the date of closing for the sale or rental of such completed Residential Unit to a member of the home-buying public for the purpose of ownership, occupancy and/or rental of such Residential Unit;

(iii) with respect to each Affordable Onsite Unit, the date of closing for the sale or rental of such completed Affordable Onsite Unit to the anticipated occupant thereof in accordance with this Agreement and the applicable City Regulatory Agreement;

(iv) with respect to each Commercial Unit, following the issuance of the Certificate of Completion and Certificate of Occupancy, the date of closing for the sale or rental of such completed Commercial Unit;

(v) with respect to Project Common Area, when ownership of the completed Project Common Area is conveyed to the Master HOA or Vertical HOA in accordance with this Agreement;

(vi) with respect to public improvements or land to be transferred or dedicated to the City or any other government agency, the date upon which the City or such other governmental agency accepts such transfer or dedication, subject to any on-going

maintenance or other obligations with respect to such improvements or land retained by Original Developer under this Agreement or by separate document; and

(vii) with respect to the Project, when all of the events described in items (i) through (vi) above, inclusive, shall have occurred with respect to the entire Property, including such Residential Units, Affordable Onsite Units (including without limitation the Required Onsite Affordable Units), Commercial Units and Project Common Area.

For the avoidance of doubt, unless otherwise specified in particular provisions of this Agreement, any reference to "Developer's Ownership Period" shall be deemed to refer to Developer's Ownership Period with respect to the Project.

"**Developer's Pre-Closing Obligations**" has the meaning set forth in **Section 2.1**.

"**Developer's Title Policy**" has the meaning set forth in **Section 4.7.3**.

"**Development Agreement**" has the meaning set forth in **Recital I**.

"**DIR**" means the California Department of Industrial Relations and any successor agency thereto.

"**Discretionary City Approvals**" has the meaning set forth in **Section 2.3.1.3**.

"**DTSC**" has the meaning set forth in **Section 2.3.1.2**.

"**Effective Date**" means the date set forth in the first paragraph of this Agreement.

"**Entitlement Fees Fund**" has the meaning set forth in **Section 2.3.2**.

"**Environmental Disclosures**" has the meaning set forth in **Section 4.10.1**.

"**ERN**" has the meaning set forth in **Recital D**.

"**Escrow**" means the escrow established with the Escrow Agent for the purpose of conveying the Property from the City to Original Developer.

"**Escrow Agent**" shall mean Old Republic Title Company, 555 12th Street, Suite 2000, Oakland CA 94607, (510) 272-1121 office, (510) 208-5045 fax.

"**Evidence of Availability of Funds**" has the meaning set forth in **Section 2.5.3**.

"**Final Large Lot Map**" has the meaning set forth in **Section 2.3.7**.

"**First Phase Final Map**" has the meaning set forth in **Section 2.3.7**.

"**Final Master HOA Documents**" has the meaning set forth in **Section 6.3.3**.

"**First Source Hiring Agreement**" has the meaning set forth in **Section 5.5.3** and refers to the form set forth in attached **Exhibit 5.5.3**.

"**Force Majeure Delay**" has the meaning set forth in **Section 11.3**.

"**Further Encumbrance**" has the meaning set forth in **Section 4.7.2**.

"**Governing Documents**" means, collectively, this Agreement, the Development Agreement, the Memorandum of DDA, the Guaranty, the City Regulatory Agreements, the First Source Hiring Agreement, the Notices of Affordability Restrictions, the Project Approvals, the Approved Final Financing Plan, the HOA Documents, and any and all other written agreements, certifications, instruments and other documents required to be executed by Developer and/or the Guarantor and/or the City hereunder or in connection with the subject matter of this Agreement, and any amendments thereto in accordance therewith.

"**Guarantor**" means a Guarantor under and as defined in any Guaranty.

"**Guaranty**" has the meaning set forth in **Section 2.8.1** and refers to the form set forth in attached **Exhibit 2.8.1** and otherwise satisfactory to the City.

"**Hazardous Materials**" means any substance, material, or waste which is: (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos and asbestos containing materials; (4) polychlorinated biphenyls; (5) radioactive materials; (6) MTBE; or (7) determined by California, federal, regional or local governmental authority to be capable of posing a risk of injury to health, safety, property or the environment. The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial and/or residential properties, buildings and grounds, or typically used in household activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 *et seq*., which substances are commonly used by a significant portion of the population living within the region of the Project, including but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine, so long as such materials and substances are stored, used, and disposed of in compliance with all applicable Hazardous Materials Laws.

"**Hazardous Materials Claims**" has the meaning set forth in **Section 6.7.1.4**.

"**Hazardous Materials Laws**" means all federal, state, regional and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials.

"**Historic Core**" means that portion of the Historic District excluding the Retained Historic District Improvements.

"**Historic Core Work**" means the portion of the total Historic Resources Work to be performed by Original Developer (or, if applicable, by Historic Resources Assignee) on the buildings comprising the Historic Core.

"Historic Core Access Work" means the installation of roads and utilities to the Historic Core sufficient for the Commencement of the Construction of the Historic Core Work as part of the First Site Improvement Phase, as depicted by red and green lines in **Exhibit 2.5.2-C** attached hereto, which Historic Core Access Work Original Developer is obligated to complete within thirty-six (36) months after the Commencement of Construction on the First Site Improvement Phase. The "Historic Core Access Work" includes the work that is required for Original Developer (or, if applicable, Historic Resources Assignee) to Commence Construction of the Historic Core Work (but would not include the Completion of all of the First Phase Master Infrastructure).

"**Historic District**" means that portion of the Property that is generally depicted on **Exhibit A-3** attached hereto as the Historic District, including the Retained Historic District Improvements.

"**Historic District Partial Assignment**" shall mean a Partial Assignment to the Historic Resources Assignee pursuant to **Section 7.8**.

"**Historic Resources**" has the meaning set forth in **Section 2.6.1.2**.

"**Historic Resources Assignee**" shall mean Orton or any other entity approved by City in accordance with **Section 7.8** below that purchases the Historic District, excluding the Retained Historic District Improvements, for the purpose of renovating or otherwise repurposing historic buildings within the Historic District for commercial and/or residential use.

"**Historic Resources Work**" has the meaning set forth in **Section 2.6.1.2**.

"**Historic Resources Work Construction Security"** has the meaning set forth in **Section 7.8.3.5**.

"**HOA**" means the Master HOA or any Vertical HOA, as applicable.

"**HOA Documents**" means the Master HOA Documents or any Vertical HOA Documents, as applicable.

"**Holder**" has the meaning set forth in **Section 8.2**.

"**Improvements**" means any and all infrastructure, buildings, structures, fixtures, and other improvements, including but not limited to any work of improvement as defined in California Civil Code Section 8050, constructed, installed, erected, built, placed or performed (or to be so done) by or on behalf of Developer, Historic Resources Assignee or any Merchant Builder as part of the Project and pursuant to this Agreement, including the Site Improvements and the Vertical Improvements.

"**Independent Consideration**" has the meaning set forth in **Section 4.2.3**.

"**Initial Project Performance and Payment Security**" has the meaning set forth in **Section 5.6.1**.

"**IRC**" shall mean the Internal Revenue Code of 1986, as amended.

"**Judgment**" shall have the meaning given in **Section 2.4**.

"**Local Approvals**" shall have the meaning given in **Section 2.3.1.1**.

"**Local Business and Local Hire Requirements**" has the meaning set forth in **Section 5.5.3**.

"**Master Infrastructure"** means the Police and Fire Station, the Offsite Improvements, the Historic Core Access Work, and all access and infrastructure, consisting of grading, streets, traffic signals, roadways, sidewalks, utilities (including without limitation water, sanitary sewer, storm sewer, gas, electricity, telephone, cable and broadband) sufficient to provide access, utilities, and emergency services to each Vertical Improvement Phase and to all Offsite Improvements. The Master Infrastructure will be constructed in phases in accordance with the Site Phasing Plan, provided that the Police and Fire Station, all Offsite Improvements, and the Historic Core Access Work will be constructed as part of the First Phase Master Infrastructure, which will be completed as part of the First Site Improvement Phase. Without limiting the generality of the foregoing, the required components of the Master Infrastructure for each Site Improvement Phase are more particularly shown on **Exhibit 2.5.2-A** (the "**First Phase Master Infrastructure**") and **Exhibit 2.5.2-B** (the "**Second Phase Master Infrastructure**"). **Exhibit 2.5.2-C** shows the Historic Core Access Work component of the First Phase Master Infrastructure.

"Master Developer Amenities" means the on- and off-site work to be constructed by the Developer, including right-of-way landscaping and sidewalks, parks and paseos, Bay Trail improvements, shoreline beach park improvements, trailheads, and neighborhood monumentation and gateway monumentation for the Project, and construction and installation of portions of the Project Common Area not included as part of any Vertical Phase. The Master Developer Amenities shall include, without limitation, preservation of approximately 193 acres of open space, including a shoreline park with recreational areas and trails, park recreation facilities (such as play areas, equipment rentals, etc.), picnic facilities, public art and cultural exhibits, a paddle sport launch and restroom facilities, all open to the public and consistent with the Reuse Plan; (ii) construction of approximately 1.5 miles of the Bay Trail through the Site along the shoreline, including a vista overlook, as required by and on the terms and conditions of the Development Agreement; (iii) enhanced and improved public waterfront amenities and access with a waterfront promenade, improvements to the Point Molate pier and beach park, (iv) pedestrian- and bike- friendly community design, including pedestrian trails through preserved natural hillside open space areas; and (v) local and regional public transportation connections, which shall include a terminal on the existing Point Molate pier that will be accessible to ferries, shuttles and/or water taxis as mutually agreed by the Parties. The Master Developer Amenities will be constructed in phases in accordance with the Site Phasing Plan. Without limiting the generality of the foregoing, the required components of the Master Developer Amenities for each Site Improvement Phase are more particularly shown on **Exhibit 2.5.6-A** (the "**First Phase Master Developer Amenities**") and **Exhibit 2.5.6-B** (the "**Second Phase Master Developer Amenities**").

"**Master HOA**" has the meaning set forth in **Section 6.3.3**.

"**Master HOA Documents**" means the Preliminary Master HOA Documents, the City Approved Preliminary HOA Documents, the Proposed Final HOA Documents, and/or the Final HOA Documents for the Master HOA.

"**Membership Interest**" means an ownership and voting interest in Developer or any Developer Member, as applicable.

"**Memorandum of DDA**" has the meaning set forth in **Section 11.6** and refers to the form set forth in attached **Exhibit 11.6**.

"**Merchant Builder**" shall mean any entity, approved by the City in accordance with **Section 7.7** below, purchasing a portion of the Project from Original Developer or the Historic Resources Assignee for the purpose of constructing in-tract improvements and Residential Units on portions of the Property (other than the Historic Resources) zoned for residential uses or constructing Commercial Units and related improvements on portions of the Property zoned to allow commercial, retail, and/or neighborhood-serving uses.

"**Merchant Builder Partial Assignment**" shall mean a Partial Assignment to a Merchant Builder pursuant to **Section 7.7**.

"**NEPA**" shall mean the National Environmental Policy Act of 1969, as amended (42 U.S.C., Sections 4321-4361) and any implementing regulations.

"**Notice of Affordability Restrictions**" and "**Notices of Affordability Restrictions**" have the meanings set forth in **Section 5.5.5** and refers, individually and collectively as applicable, to the forms set forth in attached **Exhibit 5.5.5-D** and **Exhibit 5.5.5-E.**

"**Notice of Corrective Action Requirement**" has the meaning set forth in **Section 4.10.6**.

"**Notice of Onsite Affordable Housing Requirements**" has the meaning set forth in **Section 5.5.5** and refers to the form set forth in attached **Exhibit 5.5.5-A**.

"**Offsite Improvements**" shall mean the improvement work shown on **Exhibit 2.5.6-C** and any other offsite Improvements that are required by the City or Other Agencies as part of CEQA review for the Project or under any MMRP for the Project, under the Development Agreement, or otherwise required by the Project Approvals, which are anticipated to include, without limitation (A) widening of Stenmark Drive from the easterly Project boundary to connection at the I-580 freeway; (B) undergrounding or relocating existing utility power poles along Stenmark Drive from the easterly boundary to the I-580 freeway connection to accommodate completion of anticipated improvements to Stenmark Drive; and (C) installation of a new force main for wastewater treatment along a proposed segment of the Bay Trail or Stenmark Drive and Western Drive to bring sanitary sewer service to and throughout the Project from an existing 12-inch sanitary sewer line at the intersection of Tewksbury Avenue and Contra Costa Street in Point Richmond.

"**On-going Remediation**" has the meaning given in **Section 4.10.6**.

"**Original Developer**" means Winehaven Legacy LLC, a Delaware limited liability company.

"**Orton**" shall mean, collectively, Orton Development, Inc. and any other person or entity that directly or indirectly Controls, is Controlled by or under common Control with Orton Development, Inc., J.R. Orton III and/or James Madsen.

"**Other Agencies**" has the meaning given in **Section 2.3.1.2**.

"**Other Agency Approvals**" has the meaning given in **Section 2.3.1.2**.

"**Outside Closing Date**" has the meaning set forth in **Section 4.3.2**.

"**Parties**" means the City and Developer.

"Partial Assignment" means a Merchant Builder Partial Assignment or a Historic District Partial Assignment, as applicable.

"**Permitted Exceptions**" has the meaning set forth in **Section 4.7.1**.

"**Permitted Security Interest**" has the meaning set forth in **Section 8.1**.

"**Permitted Security Interest Debt**" has the meaning set forth in **Section 8.4.1**.

"**Permitted Transfer**" has the meaning set forth in **Section 7.4**.

"**Permitted Transferee**" has the meaning set forth in **Section 7.4**.

"**PLA**" has the meaning set forth in **Section 5.5.4**.

"**Plaintiffs**" has the meaning set forth in **Section 2.4**.

"**Police and Fire Station**" means the onsite police substation and fire station, which may be new construction, adaptive reuse of the existing fire station, or a mix of both new construction and adaptive reuse, sufficient to service the entire Project, and to be constructed as part of the First Phase Master Infrastructure and Completed prior to the issuance of the first Certificate of Occupancy issued in connection with any portion of the Project, whether for a Residential Unit or a Commercial Unit; provided, however, (a) certificates of occupancy may be issued for model homes prior to the Completion of the Police and Fire Station provided that in no event shall a member of the homebuying public be able to occupy a model home until construction of the Police and Fire Station is Complete, and (b) Completion of the Police and Fire Station will not be a requirement for the issuance of a temporary (as opposed to final) Certificate of Occupancy ("**TCO**") for the Historic Core if a TCO is needed for the Historic Core to be deemed "placed in service" for purposes of Section 47(b) of the IRC, so long as no portion of the Historic Core is occupied or used by persons or businesses until Completion of the Police and Fire Station occurs. The parties agree that the Police and Fire Station shall be Complete when (i) the Police and Fire

Station is connected to utilities, (ii) the interior improvements and installation of furniture, fixtures and equipment ("**FF&E**") within the Police and Fire Station as required by public safety specifications is complete, consistent with the scope of work approved by both Parties prior to the Closing, and (iii) one or more certificates of occupancy have been issued for the Police and Fire Station, but that the Police Department and Fire Department do not need to have occupied the Police and Fire Station or commenced operations in the Police and Fire Station in order for the Police and Fire Station to be Complete hereunder. Within sixty (60) days after the Effective Date, Developer and the City shall work together in good faith with the Police Department and Fire Department to develop the scope of required interior improvements and FF&E for the Police and Fire Station (such mutually agreed upon scope, the "**FF&E Specifications**"), and it shall be a condition to both Parties' obligation to Close that such scope is reasonably acceptable to both the City and Developer.

"**Preliminary Master HOA Documents**" has the meaning set forth in **Section 2.9**.

"**Pre-development City Fund**" has the meaning set forth in **Section 2.2**.

"**Prime Construction Contract**" has the meaning set forth in **Section 2.7.1**.

"**Prime Contractor**" has the meaning set forth in **Section 2.7.1**.

"**Principals**" means, collectively, JNI LLC, a Delaware limited liability company, and MSDC SC Investors, LLC, a Delaware limited liability company, and their respective affiliates, successors and assigns.

"**Progress Reports**" has the meaning set forth in **Section 2.11**.

"**Project**" has the meaning set forth in **Recital F** and more fully described in attached **Exhibit A**. The Project includes, without limitation, all Site Improvements and Vertical Improvements (including without limitation the Historic Resources Work) required to be constructed by Developer hereunder and pursuant to the Project Approvals.

"**Project Applications**" has the meaning set forth in **Section 2.3.3**.

"**Project Approvals**" has the meaning set forth in **Section 2.3.1**.

"**Project Common Area**" has the meaning set forth in **Section 6.3.3**.

"**Project Financing**" has the meaning set forth in **Section 2.5.1**.

"**Project Financing Closing**" means the closing for initial funding or disbursement of any Project Financing.

"**Project Lender**" means the lender of a Project Loan, excluding any such lender (other than a lender that is an affiliate of MSDC SC Investors, LLC) that is a Developer Member or other Developer Affiliate.

"**Project Loans**" means, collectively, any and all loans (whether interim, term, permanent or otherwise) made by lenders to Developer (including without limitation any Merchant Builder or the Historic Resources Assignee with respect to the applicable portion of the Property or Project) during the Term with respect to the Property or the Project in accordance with an Approved Final Financing Plan, any Approved Vertical Phase Financing Plan, and this Agreement.

"**Project Performance, Payment and Warranty Security**" means, collectively and with respect to each Phase, the Initial Project Performance and Payment Security, the Subsequent Project Performance and Payment Security, and the Site Improvement Warranty Security.

"**Project Taxes**" has the meaning set forth in **Section 6.5**.

"**Property**" has the meaning set forth in **Recital E**.

"**Proposed Phase Financing Plan**" has the meaning set forth in **Section 2.5.2**.

"**Proposed Final HOA Documents**" has the meaning set forth in **Section 6.3.3**.

"**Proposed Final HOA Revenue and Expense Projections**" has the meaning set forth in **Section 6.3.3**.

"**Proposed Final Plans**" has the meaning set forth in **Section 2.6.1**.

"**Proposed Master Financing Plan**" has the meaning set forth in **Section 2.5.1**.

"**Purchase Price**" has the meaning set forth in **Section 4.2**.

"**Repurchase Election Date**" has the meaning set forth in **Section 10.7.2.1**.

"**Request for Consent to Transfer**" has the meaning set forth in **Section 7.5**.

"**Residential Unit Owner**" means any owner of a completed Residential Unit other than Developer, Developer Affiliate, Historic Resources Assignee or a Merchant Builder.

"**Residential Units**" means any and all "for sale" or rental residential units within the Project, including any and all condominiums (as that term is defined in the Davis Stirling Act) and any and all Affordable Onsite Units (including without limitation the Required Onsite Affordable Units).

"**Retained Historic District Improvements**" means Cottage 31, Cottage 32, the historic Firehouse, the historic Powerhouse and Building 17.

"**Reuse Plan**" has the meaning set forth in **Recital E**.

"**RMC**" means the Richmond Municipal Code, as amended.

"**RWQCB**" means the San Francisco Bay Regional Water Quality Control Board, and any successor agency thereto.

"**RWQCB Order**" has the meaning set forth in **Section 4.10.6**.

"**SB 854**" means the California legislation commonly referred to as SB 854 and comprising Stat. 2014, chapter 28, and any successor statute thereto.

"**Schedule of Insurance Requirements**" has the meaning set forth in **Section 6.8.1.2** and refers to the Schedule of Insurance Requirements attached hereto as **Exhibit 6.8.1.2**.

"**Schedule of Performance**" means the schedule or schedules (collectively) summarizing and setting forth the dates and/or time periods by which certain obligations of the Parties under this Agreement must be accomplished, which initial schedule for the Site Improvement Phases is attached hereto as **Exhibit 2.3.1-A**, and which initial schedule for the Historic Core Work is attached hereto as **Exhibit 2.3.1-B**, as each may be hereafter modified as provided in **Sections 5.1 and 10.10**.

"**Security Interest**" has the meaning set forth in **Section 8.1**.

"**Site**" has the meaning set forth in **Recital B**.

"**Site Improvement Permit**" means a grading permit, demolition permit, building permit and/or any other horizontal site improvement permit or other approval for construction of all or any portion of the Site Improvements issued by the City, and any permit for construction of all or any portion of the Police and Fire Station and/or any other vertical improvements that are part of the Site Improvements.

"**Site Improvement Phase**" means any phase of construction of the Project consisting of Site Improvements. Each Site Improvement Phase shall be completed in accordance with the Project Approvals. The Parties acknowledge that the current intention of Original Developer is that there be two (2) Site Improvement Phases as shown on the Site Phasing Plan, but that during the planning of the Project and processing of the entitlements, such number of Site Improvement Phases may change. Notwithstanding anything to the contrary in this Agreement, in the Site Phasing Plan or any amendments thereto or in the Project Approvals or any amendments thereto, except as otherwise approved by the City in its sole discretion, the first Site Improvement Phase shall include (1) all First Phase Master Infrastructure (including without limitation all Offsite Improvements shown on **Exhibits 2.5.2-A** and **Exhibit 2.5.6-C** and all Historic Core Access Work shown on **Exhibit 2.5.2-C**), and (2) all First Phase Master Developer Amenities (collectively, the "**First Site Improvement Phase**"). In addition, at least 920 Residential Units, including all of the Required Onsite Affordable Units, shall be completed as part of the Vertical Phases to be constructed within the First Site Improvement Phase. The Parties further acknowledge that Original Developer intends to begin Vertical Improvement Phases (or sell such Vertical Improvement Phases to Merchant Builders or the Historic Resources Assignee) within each Site Improvement Phase at such time as the applicable Site Improvement Phase is sufficiently completed in order for Original Developer or such Merchant Builder or Historic Resources Assignee to begin construction of the Vertical Improvement Phase. The Parties further acknowledge that Original Developer will construct the Offsite Improvements and the Master Infrastructure and Master Developer Amenities as required by and in accordance with the

Project Approvals such that the Project may be developed in an orderly and efficient manner and in accordance with the Schedule of Performance.

"**Site Improvement Warranty Period**" has the meaning set forth in **Section 5.6.3**.

"**Site Improvement Warranty Security**" has the meaning set forth in **Section 5.6.3**.

"**Site Improvements**" means the Master Infrastructure, the Master Developer Amenities, and the Offsite Improvements but excluding any Vertical Improvements. Notwithstanding the foregoing, shoring work on the existing piers partially located on the Submerged Land that is part of the Master Developer Amenities will be delayed until such time as (i) the City and Original Developer have entered into a lease or other occupancy agreement relating to the Submerged Lands (the "**Submerged Lands Lease**"), and (ii) all Other Agency Approvals for such Master Developer Amenities have been obtained. From and after the Effective Date, the Parties shall work together in good faith to negotiate the terms of the Submerged Lands Lease, which is to include the Point Molate pier.

"**Site Phasing Plan**" means, initially, the phasing plan reflected collectively in **Exhibits 2.5.2-A, 2.5.2-B, 2.5.2-C, 2.5.6-A, 2.5.6-B**, and **2.5.6-C** which show the Original Developer's current best estimate of the conditions forecast for the expected development period in order to achieve an economically feasible project while maximizing the public and community benefits provided and satisfying the requirements of this Agreement and the Project Approvals. Original Developer may request changes to the initial Site Phasing Plan and related changes to the Schedule of Performance to adjust to market conditions, which changes will be subject to approval by the City Manager, which approval shall not be unreasonably withheld so long as all First Phase Master Infrastructure and First Phase Master Developer Amenities are included within the First Site Improvement Phase and the Vertical Phases associated with the First Site Improvement Phase include at least 920 Residential Units, including the Required Onsite Affordable Units, and the Historic Resources Work.

"**Special Tax Allocation Procedures**" has the meaning set forth in **Section 5.5.11.1** and attached hereto as **Exhibit 5.5.11.1**.

"**State Historic Preservation MOA**" means the Memorandum of Agreement between The United States Department of the Navy and the California State Historic Preservation Officer Pursuant to 36 CFR Part 800.6(c) For the Leasing, Disposal and Reuse of Naval Fuel Depot, Point Molate, Richmond, California, as amended by Amendment One, copies of which have been provided by the City to Original Developer.

"**Subdivision Map Act**" means the Subdivision Map Act, California Government Code Sections 66410 *et seq*., and any successor statute thereto.

"**Submerged Lands**" has the meaning set forth in **Recital B**.

"**Subsequent Project Performance and Payment Security**" has the meaning set forth in **Section 5.6.2**.

"**Temporary Right of Entry**" has the meaning set forth in **Section 4.10.4.1**.

"**Term**" means the term of this Agreement, commencing as of the Effective Date and ending on the earlier to occur of (A) or (B) as follows:

(A) when all of the following shall have occurred:

(i) the Completion of the Project, including without limitation all Offsite Improvements;

(ii) the termination of Developer's Ownership Period with respect to the entire Project;

(iii) the expiration of the Site Improvement Warranty Periods; and

(iv) the satisfaction of all obligations of Developer secured by the Site Improvement Warranty Security; or

(B) the date of any sooner termination of this Agreement in accordance with the terms of this Agreement; provided, however, that nothing herein shall relieve or release Developer from any of its obligations under the Site Improvement Warranty Security if the Site Improvement Warranty Security is provided by Developer pursuant to the terms of this Agreement, which obligations shall survive the Term for the Site Improvement Warranty Periods.

"**Title Company**" means Old Republic Title Company, 555 12th Street, Suite 2000, Oakland CA 94607, (510) 272-1121 office, (510) 208-5045 fax.

"**Title Report**" has the meaning set forth in **Section 4.7.1.1**.

"**to the best of the City's knowledge**" means to the actual knowledge of the City's Community Development Director and Deputy City Manager, Economic Development, without either such person having conducted any independent investigation or study or having made any further inquiry and without any obligation to do so.

"**Transfer**" has the meaning set forth in **Section 7.1**.

"**Unrecorded Agreements**" has the meaning set forth in **Section 4.10.1**.

"**Vertical Construction Security**" has the meaning set forth in **Section 7.7.4.6**.

"**Vertical HOA**" has the meaning set forth in **Section 6.3.3**.

"**Vertical HOA Documents**" has the meaning set forth in **Section 7.7.4.1**.

"**Vertical Improvement Phase**" or "**Vertical Phase**" means each and every construction phase of the Project consisting of or including Vertical Improvements. There will be multiple Vertical Improvement Phases within each Site Improvement Phase. For the purposes of the delivery of Vertical Construction Security and the issuance of a Certificate of Completion in connection with a Vertical Phase, a "Vertical Phase" may be limited to the Vertical

Improvements within such Vertical Phase for which the Developer with respect to such Vertical Phase obtains Building Permits, and not any Vertical Improvements to be constructed within the Vertical Phase by the Original Developer as Site Improvements or Vertical Improvements to be constructed within the Vertical Phase for which Building Permits have not yet been obtained, provided that, if required by the City pursuant to **Section 7.7**, Vertical Construction Security will be provided with respect to future Vertical Improvements at or prior to the issuance of associated Building Permits, as more particularly described in **Section 7.7.4.6**.

"**Vertical Improvements**" means any and all Improvements and construction thereof relating to the Project and pursuant to this Agreement other than the Site Improvements, including the Residential Units, commercial and retail spaces, and associated parking, hardscape, landscaping and irrigation, and the Historic Resources Work. Vertical Improvements may be constructed by Merchant Builders or by the Historic Resources Assignee, as applicable, subject to the terms and conditions of **Article 7** below including, without limitation, City's consent and approval of the applicable Partial Assignment.

"**Vertical Project Financing**" means financing for all costs of development and construction of the Vertical Improvements within any Vertical Improvement Phase.

"**Vesting Large Lot Tentative Map**" has the meaning set forth in **Section 2.3.7**.

1.2 Exhibits. The following exhibits are attached to and incorporated in this Agreement:

Exhibit A	Project Description
Exhibit A-1	Legal Description and Depiction of Site
Exhibit A-2	Vesting Tentative Map Depicting the Property
Exhibit A-3	Depiction of Historic District
Exhibit 2.3.1-A	Schedule of Performance (Site Improvements)
Exhibit 2.3.1-B	Schedule of Performance (Historic Core Work)
Exhibit 2.3.1.3	Discretionary City Approvals
Exhibit 2.5.1	Proposed Master Financing Plan
Exhibit 2.5.2-A	First Phase Master Infrastructure
Exhibit 2.5.2-B	Second Phase Master Infrastructure
Exhibit 2.5.2-C	Historic Core Access Work
Exhibit 2.5.2.6	Approved Final Financing Plan
Exhibit 2.5.6-A	First Phase Master Developer Amenities
Exhibit 2.5.6-B	Second Phase Master Developer Amenities
Exhibit 2.5.6-C	Offsite Improvements
Exhibit 2.8.1	Form of Guaranty
Exhibit 2.8.2	Form of Assignment of Developer Agreements, Plans and Approvals
Exhibit 2.12-A	Work Scope of Weatherization of Historic Resources
Exhibit 2.12-B	Permit to Enter and Release of Liability Agreement
Exhibit 2.13	Security Scope of Services
Exhibit 4.4.1.2	Form of City Grant Deed
Exhibit 4.4.1.6	Form of Developer Date-Down Certificate
Exhibit 4.4.2.7	Form of City Date-Down Certificate

Exhibit 4.7.1.1	Title Report
Exhibit 5.5.3	Form of First Source Hiring Agreement
Exhibit 5.5.5-A	Notice of Onsite Affordable Housing Requirements
Exhibit 5.5.5-B	Form of City Regulatory Agreement (For Sale Units)
Exhibit 5.5.5-C	Form of City Regulatory Agreement (For Rent Units)
Exhibit 5.5.5-D	Form of Notice of Affordability Restrictions (For Sale Units)
Exhibit 5.5.5-E	Form of Notice of Affordability Restrictions (For Rent Units)
Exhibit 5.5.5-F	Form of Quitclaim Deed
Exhibit 5.5.11.1	Special Tax Allocation Procedures
Exhibit 5.9.1-A	Form of Certificate of Construction Phase Completion (Site Improvement Phases)
Exhibit 5.9.1-B	Form of Certificate of Construction Phase Completion (Vertical Improvement Phases)
Exhibit 5.9.1-C	Form of Certificate of Project Completion
Exhibit 6.7.1.1	Tanks Designated for Removal
Exhibit 6.8.1.2	Schedule of Insurance Requirements
Exhibit 7.7	Form of Merchant Builder Partial Assignment
Exhibit 7.8	Form of Historic District Partial Assignment
Exhibit 11.6	Form of Memorandum of DDA

ARTICLE 2
DEVELOPER OBLIGATIONS

2.1 Overview. This **Article 2** sets forth various actions that Developer shall seek diligently and in good faith to perform and achieve, both prior to Closing in order for the City to convey the Property to Developer in accordance with **Article 4** (the "**Developer's Pre-Closing Obligations**") and thereafter. Performance and achievement of the Developer's Pre-Closing Obligations constitute conditions precedent to the City's obligation to Close. As conditions precedent to the City's obligation to Close, the Developer's Pre-Closing Obligations must first be met on or before the date specified in the Schedule of Performance and, in any event, thirty (30) days prior to the Outside Closing Date, unless such times are extended in writing by the City in its sole and absolute discretion. All other conditions must first be met on or before the date specified in the Schedule of Performance. Only the City can waive satisfaction of the conditions set forth in this **Article 2**. Additional conditions precedent to the City's obligation to Close are set forth in **Section 4.6.1**. Developer must have satisfied (or the City must have so waived) each of Developer's Pre-Closing Obligations by not later than thirty (30) days prior to the Outside Closing Date, or else the City may terminate this Agreement pursuant to **Section 10.2** or **10.4**, as applicable.

2.2 Pre-development City Fund. Pursuant to the ERN, and as a significant part of the consideration for the City to enter into the ERN and this Agreement, Original Developer previously deposited with the City certain funds, in the initial amount of Two Hundred Thousand Dollars ($200,000) (the "**Pre-development City Fund**"), which Pre-development City Fund has been and may continue to be used by the City to reimburse expenses incurred by it for costs related to pre-development of the Project, preparation and negotiation of the ERN, this

Agreement and the Governing Documents, and legal fees related to the Project Approvals. Except as provided below, if at any time prior to Closing the amount of funds remaining in the Pre-development City Fund fall below $100,000, Developer agrees to make an additional deposit within ten (10) days of City's request in writing for same to increase the Pre-development City Fund back up to $200,000. The Pre-development City Fund shall be non-refundable to Developer; provided, however, that in the event that this Agreement is terminated prior to the Closing, any funds remaining in the Pre-development City Fund at the time of such termination after payment of costs incurred prior to the date of such termination shall be returned to Developer. At such time as pre-development of the Project is completed, all Governing Documents have been executed and all Project Approvals obtained, and all expenses incurred or anticipated to be incurred by the City related to any of the foregoing have been fully reimbursed from the Pre-development City Fund, all as determined by the City in its reasonable discretion, Developer shall have no further obligation to replenish the Pre-development City Fund in accordance with this **Section 2.2**, and any funds remaining in the Pre-development City Fund shall be returned to Developer upon its written request thereafter. The Pre-development City Fund shall not be applied to the Purchase Price. Upon Developer's request, the City shall provide a summary of all amounts charged to the Pre-development City Fund in the manner provided prior to the date of this Agreement.

2.3 Project Approvals.

2.3.1 Timing and Types. Not later than the time specified in the Schedule of Performance, Developer shall apply for and exercise commercially reasonable and good faith efforts to obtain all City and other governmental approvals, both discretionary and ministerial, necessary for the construction, use, and operation of the Project (including without limitation the installation of any Offsite Improvements) consistent with the requirements and provisions of this Agreement (collectively, the "**Project Approvals**").

2.3.1.1 The Project Approvals will include specific local approvals by the Richmond City Council, Planning Commission, Design Review Board, Historic Preservation Commission, and other City governmental departments with discretionary approval authority (the "**Local Approvals**"). In particular, the Local Approvals may include but are not limited to rezoning to a planned area district, major design review, design guidelines and master development plan, conditional use permits, development plan review permits, a development agreement, vesting tentative subdivision maps, a general plan amendment, certification of a subsequent environmental impact report ("**EIR**"), adoption of a statement of overriding consideration and a mitigation, monitoring, and reporting program ("**MMRP**"), certificates of appropriateness, and other approvals as needed to develop the Project, including without limitation the Offsite Improvements. Nothing in this Agreement shall be deemed to require City to grant any Local Approvals or otherwise commit its discretionary powers in any particular manner.

2.3.1.2 In addition to the Local Approvals, the Project Approvals will also include certain discretionary approvals from federal, state, and regional governmental entities (the "**Other Agency Approvals**"). These Other Agency Approvals may include, without limitation, approvals from the San Francisco Bay Conservation and

Development Commission, California State Water Resources Control Board, California State Lands Commission, California Toll Bridge Authority, California State Historic Preservation Office, California Department of Fish and Wildlife, California Department of Transportation, California Department of Toxic Substances Control ("**DTSC**"), RWQCB, U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service (the foregoing and such other federal, state or regional agencies that may require review of or permits for the Project are collectively referred to as "**Other Agencies**").

2.3.1.3 Lastly, the Parties acknowledge that, prior to the Effective Date, Developer has applied for and City has considered all "**Discretionary City Approvals**", as such term is defined in the Judgment, including certification of the subsequent EIR, adoption of the statement of overriding considerations and MMRP, zoning changes, and general plan amendments, but excluding design review permits, certificates of appropriateness, small-lot subdivision maps, final subdivision maps, building permits, grading permits, encroachment permits, and certificates of occupancy. The Discretionary City approvals are more particularly described on **Exhibit 2.3.1.3** attached hereto.

2.3.2 Responsibility for Securing Entitlements. Both before and after Closing, Developer shall be solely responsible for processing and securing all of the Project Approvals required to develop and construct the Project, including the Offsite Improvements, at Developer's sole cost. In furtherance of the foregoing and in addition to the Pre-development City Fund, pursuant to the ERN, and as a significant part of the consideration for the City to enter into the ERN and this Agreement, Original Developer previously deposited with the City certain funds, in the initial amount of One Hundred Thousand Dollars ($100,000) (the "**Entitlement Fees Fund**"), which amounts held in the Entitlement Fees Fund have been and may continue to be used by the City to pay for the cost of processing the Discretionary City Approvals, including environmental review. If at any time the amount of funds remaining in the Entitlement Fees Fund falls below $50,000 (due to the City drawing such funds to reimburse costs in accordance with this Section), Developer agrees to make an additional deposit within ten (10) days of the City's request in writing for same to increase the Entitlement Fees Fund back up to $100,000. Notwithstanding the foregoing, the amounts held in the Entitlement Fees Fund are not intended to represent a cap on the payment of fees required by the City to process Discretionary City Approvals or any other Local Approvals, the costs of which shall be borne in their entirety by Developer. The Entitlement Fees Fund shall be non-refundable to Developer, except as otherwise provided herein; provided, however, that (i) in the event the Local Approvals are obtained for the final phase of the Project, and all appeal periods with respect thereto have expired without an appeal being taken, or if an appeal is taken, such appeal has been resolved so that the Project may move forward, Developer shall have no further obligation to replenish the Entitlement Fees Fund in accordance with this **Section 2.3.2**, and any funds remaining in the Entitlement Fees Fund shall be returned to Developer after payment of all costs incurred prior to such date, and (ii) in the event that this Agreement is terminated prior to the Closing for reasons other than default by Developer, any funds remaining in the Entitlement Fees Fund at the time of such termination shall be returned to Developer after payment of all costs incurred prior to the

date of such termination. The Entitlement Fees Fund shall not be applied to the Purchase Price. Upon Developer's request, the City shall provide Developer with a summary of all expenses charged to the Entitlement Fees Funds, with a similar level to that provided in summaries delivered to the Developer prior to the Effective Date.

2.3.3 Preparation, Submittal, and Processing of Project Applications. Developer has previously filed, or will file within the time period provided in the Schedule of Performance (*i.e.*, both before and after Closing), applications with the City for Local Approvals (including the Discretionary City Approvals) required to develop and construct the Project, including the Offsite Improvements (the "**Project Applications**"). The City agrees to sign as co-applicant, if required, for any Project Applications involving City-owned property. Following Developer submittal of the Project Applications, Developer and the City agree to use their commercially reasonable and good faith efforts to diligently and expeditiously process the Project Applications in a manner that does not unreasonably delay the City's exercise of its discretionary authority in acting upon such applications. Nothing in this **Section 2.3.3** shall be deemed to require the City to grant any Local Approvals or otherwise to exercise its discretionary authority in any particular manner; provided, the City shall be subject to its obligations under the Development Agreement.

2.3.4 Timing of Developer Applications for Other Agency Approvals. Developer shall apply for the Other Agency Approvals required to develop and construct the Project, including the Offsite Improvements, on or before the dates specified in the Schedule of Performance. The City agrees to sign as co-applicant, if required, for any project applications for the Local Approvals and Other Agency Approvals involving City-owned property.

2.3.5 CEQA Review. Following execution of this Agreement, to the extent not previously completed, the City shall use its best efforts to diligently complete any required environmental review of discretionary Local Approvals that was not completed as of the Effective Date in accordance with CEQA and consistent with this **Section 2.3** and the Development Agreement. Whether completed prior to or after the Effective Date, the costs of the CEQA review will be paid from the Entitlement Fees Fund, and Developer shall be responsible for all costs in excess of the Entitlement Fees Fund. The Developer acknowledges: (a) that the environmental review process under CEQA for the Project has involved the preparation and consideration of the SEIR as well as consideration of public input from interested organizations and individuals, which may include the Plaintiffs; (b) that approval or disapproval of subsequent discretionary Local Approvals for the Project is within the sole, complete, unfettered and absolute discretion of the City without limitation by or consideration of the terms of this Agreement, but subject to the terms of the Development Agreement; and (c) that the City makes no representation regarding the ability or willingness of the City to approve subsequent discretionary Local Approvals at the conclusion of any additional environmental review required by CEQA for such subsequent discretionary Local Approvals, or regarding the imposition of any mitigation measures as conditions of any approval that may be imposed on the Project, subject, however, in each case to the terms of the Development Agreement. In addition, the Developer acknowledges that any required approvals by any

other local, regional, state or federal agency may require additional environmental review, and that any approval by the City shall not bind any other local, regional, state or federal agency to approve the Project or to impose mitigation measures which are consistent with the terms of this Agreement or with the terms of any mitigation measures required by the City pursuant to the City's environmental review. Such environmental review also shall be subject to the provisions of **Section 3.2**.

2.3.6 Mitigation Measures. If the City approves the development of the Project following completion of the environmental review process and such approval is conditioned upon implementation of specified environmental mitigation measures, then the Developer shall be responsible at its sole cost and expense for implementing such mitigation measures and any mitigations measures required in any Other Agency Approvals as part of the development of the Project that apply to Developer except for any mitigation measures that are the responsibility of a different party or entity, provided that Developer shall be responsible for the completion of the mitigation measures applicable to the Developer's construction of the Project. The City and Developer acknowledge and agree, however, that certain mitigation measures may be completed following the Closing and other obligations will be on-going following the Closing hereunder, as permitted by the Project Approvals, and Developer's obligation to comply with such measures shall survive the Closing and the subsequent termination of this Agreement.

2.3.7 Legal Parcels. As a condition to Closing and as part of Developer's Pre-Closing Obligations, prior to Closing, Developer, at its own cost, shall take all necessary steps, including surveying the Property if required, to apply to the City for a vesting, phased large lot tentative tract map (commonly known as a "**Large Lot Tract Map**" or an "**A Map**") under the Subdivision Map Act establishing the Property and each Site Improvement Phase as separate legal parcels as part of the Project Approval process (the "**Vesting Large Lot Tentative Map**"). Following approval of the Vesting Large Lot Tentative Map, Developer shall cause the conditions to the Vesting Large Lot Tentative Map to be satisfied (including by entering into a binding Subdivision Improvement Agreement) in order to obtain a final large lot map ("**Final Large Lot Map**"), or, at Developer's election, a phased final map for the first Site Improvement Phase ("**First Phase Final Map**") consistent with the Site Phasing Plan. If the Developer obtains a First Phase Final Map, the balance of the Property that is not covered by the First Phase Final Map shall be conveyed to Developer pursuant to Section 66426.5 of the California Government Code. Notwithstanding any provision of this Agreement to the contrary, recordation of either the Final Large Lot Map or the First Phase Final Map shall be a condition to Closing which may not be waived by either the City or Developer, and the Final Large Lot Map or First Phase Final Map, as applicable, shall be recorded before or concurrently with the Closing; provided further, and notwithstanding any other provision of this Agreement to the contrary, under all circumstances the conveyance of the Property shall comply with the California Subdivision Map Act and neither Party may waive this compliance requirement. The City agrees to cooperate with such efforts as the seller of the Property, but reserves sole, complete, absolute and unfettered discretion as a regulatory body in any such applications.

2.3.8 Transit Plan. Prior to the Close of Escrow and as part of Developer's Pre-Closing Obligations, Developer shall, at its sole cost and expense, prepare and submit to the City, a transit plan which evaluates the feasibility of various transportation services for the Project including, without limitation, water taxis and ferries utilizing the Point Molate pier, shuttle buses and extension of existing AC Transit routes to the Project, with such plan to include estimated ridership levels, subsidy levels and cost estimates.

2.3.9 Planning Documents. Throughout the Project Approval process, Developer shall provide the City with copies of all technical studies and analysis and design and engineering work product submitted to any governmental entity with jurisdiction over the Project as required to process the Project Approvals. Developer acknowledges and agrees that all such submittals together with all Construction Plans, studies, reports, and specifications for the Project that are submitted to the City as required to process the Project Approvals (collectively, the "**Planning Documents**") are a matter of public record and may be retained in the City's files.

2.3.10 Indemnification. Developer shall indemnify, defend and hold harmless the City or any of the City Parties from any Claims brought against the City or any such City Parties to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, development plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to CEQA, and /or any mitigation monitoring program, or brought against the City due to acts or omissions in any way connected to the Project and this Agreement or any Developer's (including without limitation any Merchant Builder's, Historic Resources Assignee's or any other permitted or approved assignee's) performance hereunder, but excluding any approvals governed by California Government Code Section 66474.9, any action filed by Developer pursuant to California Government Code Section 66020 or otherwise brought by the Developer. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorneys' fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by Developer or the City. If Developer is required to defend the City as set forth above, the City shall retain the right to reasonably approve the counsel selected by Developer who shall defend the City.

2.4 Judgment. The City and the Site are subject to the November 21, 2019 Judgment of the United States District Court, Northern District of California, Oakland Division, on claims between Guidiville Rancheria of California and Upstream Point Molate LLC (collectively, "**Plaintiffs**") and the City (Case No. CV 12-1326 YGR) (the "**Judgment**"), a copy of which has been provided by the City to Original Developer. The Judgment requires the City to consider the Discretionary City Approvals by May 22, 2020 and sell the development areas of the Site by the Outside Closing Date; however, Plaintiffs have agreed in a letter from its legal counsel to the City dated April 21, 2020, to forbear exercising any rights they may have under the Judgment as a result of the City's failure to meet the Discretionary City Approvals consideration deadline until September 30, 2020. If such deadlines are not satisfied, Plaintiffs have certain options to purchase the Property, as further provided in the Judgment. The Judgment further requires that

the Discretionary City Approvals must be generally consistent with the Reuse Plan. The City and Developer acknowledge the timelines and other requirements of the Judgment, and each agrees to use commercially reasonable efforts to perform its obligations under this Agreement in compliance with the Judgment, including without limitation within the time periods required by the Judgment. If either Plaintiff exercises any option to purchase all or any portion of the Site pursuant to the Judgment, then this Agreement and all of the City's and Developer's rights and obligations hereunder shall automatically terminate, except those obligations that expressly survive the termination of this Agreement. Notwithstanding any other provision of this Agreement, Developer acknowledges that the City is required under the Judgment to provide, and will provide, to Plaintiffs a copy of this executed Agreement and certain other documents between the City and Developer, and such documents may be subject to disclosure by Plaintiffs to other parties, and the City will not be liable to Developer for any disclosure or sharing of this Agreement or any other documents or information provided to Plaintiffs pursuant to the Judgment or otherwise required by Applicable Law.

2.5 Financing Plans; Availability of Funds.

2.5.1 Proposed Master Financing Plan. Developer has prepared and submitted to the City, and by execution of this Agreement the City approves, Developer's proposed preliminary plan for financing all costs of acquisition of the Property and the construction of all of the Site Improvements, including the Offsite Improvements, all in accordance with this Agreement (the "**Project Financing**"), a copy of which is attached hereto as **Exhibit 2.5.1** (the "**Proposed Master Financing Plan**"). The Proposed Master Financing Plan does not (and is not required to) include any Vertical Improvement Phases, which are addressed in **Section 2.5.4 below**. To the extent the City determines that the Proposed Master Financing Plan or any subsequent Proposed Phase Financing Plan is based on assumptions or projections that (i) include less than 920 Residential Units as part of the Vertical Phases within the First Site Improvement Phase or (ii) result in a negative fiscal impact on the City's general fund, the City shall have the right to reject the Proposed Master Financing Plan or Proposed Phase Financing Plan in the City's sole and absolute discretion.

2.5.2 Proposed and Final Phase Financing Plans. Not later than the applicable date or dates set forth in the Schedule of Performance, Developer shall submit to the City for the City's reasonable approval hereunder a proposed plan for Project Financing for each Site Improvement Phase consistent with the form of the Proposed Master Financing Plan and otherwise in form reasonably acceptable to the City, including updated detailed submittals required in **Subsections 2.5.2.1, 2.5.2.2 and 2.5.2.3** below (each a "**Proposed Phase Financing Plan**"). Developer may elect to submit Proposed Phase Financing Plans for individual Site Improvement Phases, provided that (i) a Proposed Phase Financing Plan for the First Site Improvement Phase shall be submitted no later than sixty (60) days prior to the Outside Closing Date, and (ii) any subsequent submittals must be made within the time periods specified on the Schedule of Performance, and in all cases as a condition to the transfer of each portion of the Site to any Merchant Builder. Developer's sources of funding may include demonstrated in-house funding capability, access to private capital, parcel/lot sales to Merchant Builders, or availability of public financing such as CFD or assessment district funding for

infrastructure (including Master Infrastructure) and/or Offsite Improvements as approved by the City, including "private placement" of CFD bonds, as well as a performance security such as a completion performance bond or letter of credit, or some combination thereof; provided, however, that Developer will not use any Enhanced Infrastructure Financing District, any Landscape Lighting and Maintenance District or any other public financing that would obligate the City's general fund, and provided further that if a CFD is established Developer will pay all service fees associated with the CFD from and after the time it is established, whether before or after the Closing. The City hereby apprises Developer that certain financial tools and economic incentives may be available including, without limitation, the State Historic Building Code, federal and state tax credits and other state programs, for the preservation and adaptive use of historic properties such as the Historic Resources; provided the City makes no representations or warranties with respect to the same. The burden shall be on the Developer to demonstrate to the City's reasonable satisfaction Developer's funding capability. Without limiting the foregoing, each Proposed Phase Financing Plan shall include the following:

2.5.2.1 An updated "sources and uses" breakdown of all costs of acquiring the Property (with respect to the Proposed Phase Financing Plan for the First Site Improvement Phase) and development and construction of the applicable Construction Phase, including but not limited to a detailed proforma budget for all costs of construction for such work in reasonable detail (the "**Construction Budget**") and an estimated revenue and expense projection for the Master HOA for the first fifteen (15) years following Developer's Ownership Period with respect to the Project; provided, however, that the City acknowledges and agrees that (i) subject to City's approval of each Merchant Builder Partial Assignment, the Vertical Improvement Phases may be constructed by Merchant Builders at a later date, and, as such, no Construction Budget will be required prior to Closing with respect to Vertical Improvement Phases but, rather, Developer will be required to provide Vertical Phase Construction Budgets as and when provided in **Section 2.5.4** below; and (ii) Merchant Builders may elect (or the City may require) to form Vertical HOAs to service their respective neighborhoods, and, as such, Original Developer will not have the obligation to provide budgets for such Vertical HOAs prior to Closing but, rather, will be required as and when provided in **Section 2.5.4** below. Such updated sources and uses breakdown and marketing and sales proforma shall reflect Developer's then current expectations of sources for all Project Financing and costs of development, construction, and with respect to each Vertical Improvement Phase submittal the Residential Unit marketing and sales for the applicable Vertical Improvement Phase, with reasonable detail. Without limitation, the Construction Budget shall include separate line items for all costs of design, engineering, construction and installation of each of the Offsite Improvements, and with respect to each Vertical Improvement Phase submittal the per unit costs for the Residential Units in the applicable Vertical Phase, including for the Affordable Onsite Units (including without limitation the Required Onsite Affordable Units); provided, however, that the Developer shall only be required to show reasonable detail of such line items in the Construction Budget. The Proposed Final Master HOA Revenue and Expense Projections shall be submitted by Developer to the City for approval in accordance with **Section 6.3.3**.

2.5.2.2 If applicable, copies of funding commitments from the lender(s) and/or other external financing source(s) for the Project Financing relating to the Site Improvement Phases and the Historic Resources Work, in form and amounts, and subject only to such customary lender conditions, sufficient to demonstrate to the City's satisfaction that the Project is financially feasible, and certified by Developer to be true and correct copies thereof.

2.5.2.3 Any other information that would assist the City, in the City's reasonable judgment, in determining that Developer has the financial capability to pay all costs of (a) acquisition of the Property (with respect to the Proposed Phase Financing Plan for the First Site Improvement Phase), and (b) development and construction of the applicable portion of the Site Improvements in accordance with this Agreement. In the event Developer determines that financing for the Site Improvements is or becomes infeasible, then without limiting either Party's other obligations and rights under this Agreement, Developer shall promptly notify the City in writing and request a meeting with the City representatives as soon as possible.

2.5.2.4 Upon receipt by the City of any Proposed Phase Financing Plan, the City shall review the Proposed Phase Financing Plan and shall approve or disapprove it within fifteen (15) business days after submission by Developer. The City's review of the Proposed Phase Financing Plan shall be limited to determining if the Project Financing contemplated in the Proposed Phase Financing Plan would provide sufficient and reasonably available funds to acquire the Property (with respect to the Proposed Phase Financing Plan for the First Site Improvement Phase), and to Commence and Complete Construction of the applicable portion of the Project, including the Site Improvements and Historic Resources Work (but not including the Vertical Improvements), and satisfy Developer's other obligations hereunder, and determining if such Project Financing and Proposed Phase Financing Plan does not obligate the City's general fund or otherwise create any financial obligations of the City and is consistent with the terms of this Agreement. Subject to the foregoing, the City's approval of any Proposed Phase Financing Plan shall not be unreasonably withheld.

2.5.2.5 If the Proposed Phase Financing Plan is disapproved by the City pursuant to **Section 2.5.2.4**, the City shall set forth in writing and notify Developer of the reasons therefor. Within ten (10) business days following the City's notification of disapproval (or by such reasonably extended deadline as may be granted by the City in order to accommodate Developer's restructuring of the Proposed Phase Financing Plan), Developer shall resubmit a revised Proposed Phase Financing Plan to the City for its approval, which shall not be unreasonably withheld. The City shall either approve or disapprove the revised Proposed Phase Financing Plan within ten (10) business days following resubmission by Developer, and if disapproved, the parties will follow the resubmission provisions of this **Section 2.5.2.5** until approval of the Proposed Phase Financing Plan. Only upon approval of the first Proposed Phase Financing Plan shall this City Closing Condition (or condition to a Partial Assignment and/or obligation to comply with the Schedule of Performance, as applicable) be deemed met with respect to the applicable portion of the Project.

2.5.2.6 Notwithstanding the time requirements set forth in this **Section 2.5** for submittal and resubmittal to the City by Developer of a Proposed Phase Financing Plan and review and approval of the Proposed Phase Financing Plan by the City, Developer is responsible for ensuring that any Proposed Phase Financing Plan is submitted to the City in approvable form in a timely manner such that the City may have the time permitted by this **Section 2.5** to review and approve a Proposed Phase Financing Plan no later than the Outside Closing Date, or other outside date for such approval set forth in the Schedule of Performance, as applicable. The last version of any Proposed Phase Financing Plan with respect to a portion of the Project that is approved by the City pursuant to this **Section 2.5**, as applicable, shall be referred to herein as the "**Approved Final Financing Plan**" with respect to the applicable Construction Phase, and the Construction Budget approved by the City as part of any Approved Final Financing Plan shall be referred to herein as the "**Approved Construction Budget**" with respect to the applicable Construction Phase. Prior to Closing, the Approved Final Financing Plan for the First Site Improvement Phase shall be attached hereto as **Exhibit 2.5.2.6**, but the failure to attach such Approved Final Financing Plan shall not be a default hereunder or modify any of the Parties' respective rights or obligations hereunder.

2.5.2.7 Prior to issuance of the Certificate of Project Completion, any material change, modification, revision or alteration of any then Approved Final Financing Plan must first be submitted to and approved by the City for conformity to the provisions of this Agreement, which approval process also shall be subject to the provisions of **Section 2.5.2.5**; *provided however,* that any such change, modification, revision of alteration to the Approved Final Financing Plan for the Historic Core Work shall not be unreasonably withheld by the City if it is approved by either the Historic Resources Assignee's senior secured construction lender or a historic tax credit investor investing in a Historic Resources Assignee, satisfies the Developer's obligations hereunder (including as provided in **Section 2.5.1**) and does not obligate the City's general fund or otherwise create any financial obligations of the City. If not so approved, as applicable, any then Approved Final Financing Plan shall continue to control.

2.5.3 Availability of Funds. Not later than the applicable date set forth in the Schedule of Performance, Developer shall submit to the City written evidence reasonably acceptable to the City that any conditions precedent to the release or expenditure of Project Financing described in any Approved Final Financing Plan have been met or will be met at the Closing with respect to the First Site Improvement Phase, or on such later date specified in the Schedule of Performance with respect to any subsequent Site Improvement Phases, and that all such Project Financing will be available at or following the Closing for construction of the Site Improvements in accordance with the Schedule of Performance, this Agreement and the other Governing Documents (the "**Evidence of Availability of Funds**").

2.5.4 Vertical Improvements Financing. Not later than the times specified on the Schedule of Performance, but in any event prior to any Merchant Builder Partial Assignment, (or, in the case of the Historic Core Work, prior to the Commencement of Construction thereof as provided in **Section 7.8.3.2** below), Developer shall prepare and submit to the City, with respect to each Vertical

Improvements Phase, a proposed plan for Project Financing of the applicable Vertical Improvements consistent with the requirements of **Section 2.5.2** (a "**Proposed Vertical Improvements Financing Plan**"), which shall include without limitation a Construction Budget in compliance with (and including the Vertical Improvement Phase components described in) **Section 2.5.2.1** above and copies of funding commitments and other information described in **Sections 2.5.2.2** and **2.5.2.3** as applicable. The City shall review and approve or disapprove each Proposed Vertical Improvements Financing Plan in the manner described in **Sections 2.5.2** above, and the final financing plan and construction budget for each Vertical Improvement Phase as approved by the City shall be referred to herein as an "**Approved Vertical Improvements Financing Plan**" or as an "**Approved Vertical Construction Budget**," as applicable.

2.6 Submittal and Approval of Final Plans for Project.

2.6.1 Not later than the applicable date or dates set forth in the Schedule of Performance, Developer shall submit to the City, for its review and approval, proposed final Construction Plans for development of the Project, including each Site Improvement Phase, the Historic Resources Work and any revised Phasing Plan or other plan for phasing of Project construction, which Developer intends to use as the basis for, and to incorporate within, Developer's applications to City (and any other agencies with approval authority) for the Project Approvals (collectively, the "**Proposed Final Plans**"), provided that the initial submittal required prior to Closing and with respect to the First Site Improvement Phase pursuant to this **Section 2.6.1** shall be conceptual plans that are substantially consistent with the PM-PAD, the SEIR and the Site Phasing Plan and shall include, at a minimum, all information of the type included within the PM-PAD. Developer may elect to submit Proposed Final Plans for individual Site Improvement Phases, provided that (i) the Proposed Final Plans for the First Site Improvement Phase shall be submitted no later than ninety (90) days prior to the Outside Closing Date, and (ii) any subsequent submittals must be made within the time periods specified on the Schedule of Performance, and in all cases as a condition to the transfer of each portion of the Property to any Merchant Builder. The City acknowledges that Construction Plans for Vertical Improvement Phases will be done at the time that portions of the Property are ready to be sold to Merchant Builders, subject in each case to the City's consent to each applicable Merchant Builder Partial Assignment (or in any event prior to Commencement of Construction of the applicable Vertical Improvements). Notwithstanding the foregoing, the Proposed Final Plans for the Historic Core may be provided by the Historic Resources Assignee, as provided in **Section 7.8** below, but as a condition to the Historic District Partial Assignment the Historic Resources Assignee shall provide the City with conceptual plans for the anticipated core and shell work for the Historic Resources Work in the Historic Core that reflect the Historic Resources Assignee's good faith intent with respect to such work, provided that the City acknowledges that such conceptual plans are subject to change to reflect changes in the anticipated Project to be constructed in the Historic Core consistent with the Governing Documents, which changes will be reflected in the Proposed Final Plans. The Proposed Final Plans shall include plans for the following, without limitation:

2.6.1.1 The Master Infrastructure, the Master Developer Amenities, and the Offsite Improvements; and

2.6.1.2 Rehabilitation for adaptive reuse of the historic buildings contributing to the Winehaven Historic District, including the existing historic winery buildings, cottages, powerhouse, and fire station (the "**Historic Resources**") to a stable and weather-tight "cold shell" condition with utilities stubbed to each separate Commercial Unit and Residential Unit, seismically upgraded to meet applicable City building codes, and otherwise in a condition that is (i) sufficient to be deemed to have been "placed in service" for purposes of Section 47(b) of the IRC, and (ii) in compliance with the Secretary of the Interior Standards for the Treatment of Historic Properties and all other applicable federal, state and local requirements for historic preservation and adaptive reuse (collectively, the "**Historic Resources Work**"). Historic Resources Work may be undertaken by Original Developer or Historic Resources Assignee, as applicable, as a single construction project or in such number of phases as they shall elect, subject only to compliance with the Schedule of Performance. Notwithstanding the foregoing, "Completion of Construction" of the Historic Resources shall require any Residential Units within the Historic Resources be completed by the Original Developer or Historic Resources Assignee, as applicable, to a condition required to obtain a final Certificate of Occupancy.

2.6.2 The City shall approve or disapprove, in its reasonable discretion, the Proposed Final Plans within fifteen (15) business days following receipt. Any disapproval of the Proposed Final Plans shall state in writing the specific and detailed reasons for the disapproval and the changes the City reasonably requests in order to obtain City approval. The City's disapproval of the Proposed Final Plans shall be based solely on one or more of the following: (a) the Proposed Final Plans are incomplete; (b) the Proposed Final Plans are not substantially consistent with the PAM-PAD or SEIR; (c) the Proposed Final Plans do not comply with the requirements of this Agreement; (d) the Proposed Final Plans do not conform with all other Applicable Law; and/or (e) the Proposed Final Plans do not incorporate all applicable mitigation measures required pursuant to Applicable Law.

2.6.3 If the Proposed Final Plans are disapproved by the City in whole or in part, Developer shall have fifteen (15) business days following receipt of the City's disapproval notice to submit to the City new or revised Proposed Final Plans (or by such reasonably extended deadline as may be mutually agreed upon by Developer and City). The City shall approve or disapprove, in its reasonable discretion, any such resubmitted Proposed Final Plans and the same timelines and procedures for approval or disapproval shall apply to the resubmitted Proposed Final Plans as set forth above for the original submission.

2.6.4 If Developer submits, and as applicable resubmits, the Proposed Final Plans in an approvable form to the City and the City neither approves or disapproves in writing the submittals within the time periods established in this **Section 2.6**, the submitted Proposed Final Plans shall be deemed disapproved by the City. Developer may then provide written notice to the City, within five (5) business days

following expiration of the applicable City review period, indicating, in capitalized and boldfaced letters, that if the City fails to act on the Proposed Final Plans as so submitted or resubmitted within five (5) business days following the City's receipt of such notice, then such submitted or resubmitted Proposed Final Plans, as applicable, shall be deemed approved by the City in its proprietary capacity only pursuant to the provisions of this **Section 2.6.4**. For purposes of this **Section 2.6.4**, Developer shall deliver such notice by certified mail to the City Manager with a copy to the City Attorney. If the City fails to act on such Proposed Final Plans within five (5) business days following its receipt of such notice, then such Proposed Final Plans as so submitted or resubmitted shall be deemed approved by the City.

2.6.5 The Parties further agree and understand that notwithstanding the time requirements set forth in this **Section 2.6** for submittal and resubmittal to the City by Developer of a Proposed Final Plan and review and approval of the Proposed Final Plan by the City, Developer shall be responsible for ensuring that any Proposed Final Plan is submitted to the City in approvable form in a timely manner such that the City may have the time permitted by this **Section 2.6** to review and approve a Proposed Final Plan no later than the outside date for such approval set forth in the Schedule of Performance. Any approval or deemed approval by the City pursuant to this **Section 2.6** shall not constitute, substitute for, or guaranty approval of any Site Improvement Permit, Building Permit or other Project Approvals.

2.6.6 The Proposed Final Plans approved, or deemed approved, by the City pursuant to this **Section 2.6** shall be referred to herein as the "**Approved Final Plans**" with respect to the applicable Site Improvement Phase. Approved Final Plans that include all components of Construction Plans for the applicable Site Improvement Phase shall be completed and approved prior to Commencement of Construction of the applicable Site Improvement Phase. A copy of the Approved Final Plans shall be maintained on file with the City.

2.6.7 Not later than the times specified on the Schedule of Performance, but in any event prior to any Partial Assignment to a Merchant Builder or to the Historic Resources Assignee (if and to the extent Vertical Improvements with respect to the Historic Resources were not included in the Approved Final Plans), Developer shall prepare and submit to the City, with respect to each Vertical Improvements Phase, proposed final Construction Plans for the construction of the applicable Vertical Improvements consistent with the requirements of this **Section 2.6** (a "**Proposed Vertical Improvements Plans**"), and a proposed Prime Construction Contract consistent with the requirements of **Section 2.7** (the "**Vertical Improvements Prime Contract**"), if applicable. The City shall review and approve or disapprove each set of Proposed Vertical Improvements Plans in the manner described in **Section 2.6** above, and each proposed Vertical Improvements Prime Contract, if applicable, in the manner described in **Section 2.7** below, and for each Vertical Improvement Phase as approved by the City such submittals shall be referred to herein as "**Approved Vertical Improvements Plans**" or as an "**Approved Vertical Improvements Prime Contract**," as applicable.

2.7 Construction Contracts.

2.7.1 Unless Original Developer or a Merchant Builder, as the owner of the Property, itself acts as the prime contractor, for each Construction Phase the Developer or Merchant Builder, as applicable, shall enter into one or more construction contracts with a reputable prime general contractor (the "**Prime Contractor**") for construction of the Project in accordance with the Approved Final Plans and this Agreement (collectively, the "**Prime Construction Contract**"). The Prime Construction Contract (if any) shall provide for the work to be performed for fixed and specified maximum amounts or allowances, pursuant to the Approved Final Plans and the Approved Final Financing Plan. If separate construction contracts are entered into for the Site Improvements, the Historic Resources Work and the Vertical Improvements, or for separate Construction Phases, then the references herein to the "Prime Construction Contract" shall include each such contract, as applicable, with respect to the scope of work thereunder, and each reference herein to the "Prime Contractor" shall refer to each of the contractors thereunder.

2.7.2 Not later than the applicable date(s) set forth in the Schedule of Performance, Developer shall submit a copy of the proposed Prime Construction Contract (if any) to the City Manager, or his or her designee, for City approval solely as to the following: (a) that the amount of the costs of work has been reasonably estimated and is consistent with the amount set forth in the Approved Final Financing Plan; (b) that no changes to the provisions of the Prime Construction Contract requiring the approval of the City under **Section 5.4** shall be made without the prior consent of the City Manager, or his or her designee; (c) that the covenants as to Equal Opportunity, Prevailing Wages, Living Wages, First Source hiring, and non-discrimination set forth in **Sections 5.5** and **6.6** have been met; and (d) that the proposed Prime Construction Contract is otherwise consistent with this Agreement. Any City disapproval of the proposed Prime Construction Contract shall specify the reasons for such disapproval and the changes the City reasonably requires in order to obtain City approval. Unless the City Manager, or his or her designee notifies Developer in writing within ten (10) business days of submitting the proposed Prime Construction Contract that the proposed Prime Construction Contract has been approved or disapproved, it shall be deemed disapproved by the City as of the expiration of such ten (10) business day period. Developer may then resubmit to the City Manager, the revised proposed Prime Construction Contract within five (5) business days following such disapproval, or the original proposed Prime Construction Contract within five (5) business days following expiration of the City review period (in the event of deemed disapproval), in each case together with written notice indicating, in capitalized and boldfaced letters, that if the City fails to act on the revised proposed Prime Construction Contract or original proposed Prime Construction Contract, as applicable, as so resubmitted within five (5) business days following receipt of such notice, then such revised proposed Prime Construction Contract or original proposed Prime Construction Contract, as applicable, shall be deemed approved by the City pursuant to the provisions of this **Section 2.7.2**. For purposes of this **Section 2.7.2**, Developer shall deliver such notice by certified mail to the City Manager with a copy to the City Attorney. If the City Manager fails to act on such resubmitted revised proposed Prime Construction Contract or original proposed Prime Construction Contract, as

applicable, within five (5) business days following its receipt of such notice from the Developer, then such resubmitted revised proposed Prime Construction Contract or original proposed Prime Construction Contract, as applicable, shall be deemed approved by the City. The City's approval or deemed approval of the Prime Construction Contract shall merely constitute satisfaction of the pre-disposition condition set forth in this **Section 2.7**.

2.7.3 Developer shall enter into the Prime Construction Contract (if any) and any other contracts as may be necessary and appropriate for construction of the Project only with licensed contractors having the reputation, experience, skill, and financial capability and qualification for serving as a contractor on first-class construction projects of similar magnitude in Northern California.

2.7.4 The Parties agree that notwithstanding the time requirements set forth in this **Section 2.7** for submission to the City by Developer of the proposed Prime Construction Contract and review and approval of the Prime Construction Contract by the City, Developer is responsible for ensuring that the Prime Construction Contract is submitted to the City in approvable form in a timely manner such that the City may have the time permitted by this **Section 2.7** to review and approve the Prime Construction Contract not later than the applicable date set forth in the Schedule of Performance.

2.8 Guaranty or Initial Project Performance and Payment Security; Assignment of Developer Agreements, Plans and Approvals.

2.8.1 Guaranty or Initial Project Performance and Payment Security. At the Closing with respect to the First Site Improvement Phase, and prior to the Commencement of Construction of any subsequent Site Improvement Phase (and prior to the applicable date in the Schedule of Performance), Developer shall deliver to the City, at Developer's election, either (i) a written guaranty substantially in the form attached hereto as **Exhibit 2.8.1** executed by an Approved Guarantor (a "**Guaranty**"), guarantying Developer's obligations to Commence and Complete Construction of the applicable Site Improvement Phase of the Project in accordance with this Agreement, or (ii) Initial Project Performance and Payment Security with respect to the First Site Improvement Phase (and Subsequent Project Performance and Payment Security with respect to subsequent Site Improvement Phases) in accordance with **Section 5.6.1** and **Section 5.6.2** of this Agreement, as applicable. The applicable Historic District Assignee shall provide a Guaranty in accordance with the provisions of **Section 7.8 or 7.7** below, as applicable.

2.8.2 Assignment of Developer Agreements, Plans and Approvals. At the Closing with respect to the First Site Improvement Phase, and at the closing of the Conventional Construction Loan for any subsequent Site Improvement Phase, if any (but in any event prior to Commencement of Construction of any subsequent Site Improvement Phase) Developer shall deliver to the City an executed Assignment of Developer Plans and Specifications, and Approvals from Developer to the City, substantially in the form attached hereto as **Exhibit 2.8.2** (the "**Assignment of Developer Agreements, Plans and Approvals**"), subject to such changes as may be reasonably requested by Developer and any Project Lender. The Assignment of Developer

Agreements, Plans and Approvals shall expressly provide that the rights of the City therein and to the agreements, plans, specifications and approvals assigned thereby shall be subject and subordinate to any rights of Holders of Permitted Security Interests in and to such assigned agreements, plans, specifications and approvals and the assignment shall not take effect unless and until the City exercises the Repurchase Right set forth in **Section 10.7** below. The Historic Resources Assignee and the Merchant Builders shall provide such Assignment of Developer Agreements, Plans and Approvals in accordance with the provisions of **Section 7.8 or 7.7** below, as applicable.

2.9 Preliminary Master Homeowners Association Documents. Not later than the applicable date set forth in the Schedule of Performance, Developer shall submit to the City Manager and City Attorney for their review and written approval, which shall not be unreasonably withheld, conditioned or delayed, proposed forms of the Master HOA Documents required pursuant to **Section 6.3.3** (collectively, the "**Preliminary Master HOA Documents**"). If the City neither approves nor disapproves in writing the Preliminary Master HOA Documents within fifteen (15) business days after they are submitted to the City, Developer may then submit written notice to the City indicating, in capitalized and boldfaced letters, that if the City fails to act on the request for approval of such Preliminary Master HOA Documents within five (5) business days following the City's receipt of such notice, then such Preliminary Master HOA Documents shall be deemed approved by the City in its proprietary capacity only pursuant to the provisions of this **Section 2.9**. If Developer so submits to the City such written notice and if the City fails to act on the request for approval of such Preliminary Master HOA Documents within five (5) business days following the City's receipt of such notice, then such Preliminary Master HOA Documents shall be deemed approved by the City pursuant to the provisions of this **Section 2.9**. Developer hereby agrees to the inclusion of the requirements of this **Section 2.9** as a condition of any Project Approvals granted by City and, whether or not actually included as a condition of approval in the Project Approvals, such requirements shall be deemed included as such a condition of approval for all purposes under this Agreement. The Preliminary Master HOA Documents approved or deemed approved by the City under this **Section 2.9** are herein referred to as the "**City Approved Preliminary Master HOA Documents**."

2.10 Certificate of Readiness. Prior to the Closing, Developer shall certify to the City in writing, in a form acceptable to the City, that Developer is ready, willing and able, in accordance with the terms and conditions of this Agreement, to meet its obligations with respect to acquisition of the Property and construction of the Project, and that all pre-disposition requirements of Developer under **Article 2** of this Agreement have been fulfilled or waived by the City (hereafter referred to as the "**Certificate of Readiness**"). The delivery by Developer to the City of the Certificate of Readiness shall be a condition precedent to the City's obligation to convey the Property to Developer at the Close of Escrow.

2.11 Progress Reports. Commencing three (3) months after the Effective Date and quarterly thereafter until Completion of the Project, including the Offsite Improvements, Developer shall submit to the City a written progress report advising the City on progress made in the performance of the predevelopment tasks, development and construction of the Project, and rent up or any pre-sales of residential units within Project or Commercial Units within the Historic Core, as applicable, in such form and with such detail as the City may reasonably require ("**Progress Reports**"). Prior to the Commencement of Construction, Developer shall

include in the Progress Reports any anticipated changes to the Proposed Master Financing Plan and/or any Final Phase Financing Plan previously submitted to the City, and such other information reasonably requested by the City.

2.12 Weatherization of Historic Resources. Developer recognizes that the Historic Resources are in deteriorated condition, and it is in the Developer's and the Historic Resources Assignee's (if any), interest that certain work to limit damage to the buildings from the elements be performed on the Historic Resources as soon as possible, in order to prevent further deterioration and damage that may increase costs, cause delays and further adversely impact the Historic Resources Work. Accordingly, commencing on the Effective Date, Original Developer shall at Original Developer's sole cost perform, or with respect to the Historic Core may cause to be performed by the proposed Historic Resources Assignee, the work described on the work scope attached hereto as **Exhibit 2.12-A**, provided that prior to the Close of Escrow, the Developer's indemnification obligations under **Section 11.5** or elsewhere in this Agreement shall not apply with respect to the Original Developer's and/or Historic Resources Assignee's performance of the services required by this **Section 2.12**, except only to the extent of Claims caused by the willful misconduct or negligence of the Original Developer or Historic Resources Assignee. If an Event of Default occurs with respect to Developer's obligation to promptly commence and diligently pursue its obligations under this **Section 2.12**, then without further notice (other than the City Notice of Developer Default pursuant to **Section 10.4.2**) the City may elect (but shall not be obligated) to itself perform any of Developer's obligations under this Section, and to use the Deposit to pay the City's costs. If the City uses any portion of the Deposit pursuant to this **Section 2.12**, Developer shall replenish such amount(s) within thirty (30) days after receipt of written demand from the City. In order to allow access to the Project to perform such obligations prior to the Closing, the City and Original Developer and/or, at Original Developer's option, the proposed Historic Resources Assignee will enter into a Permit to Enter and Release of Liability Agreement in the form attached hereto as **Exhibit 2.12-B**. If this Agreement is terminated prior to Closing for any reason, Developer shall promptly complete any work in progress pursuant to this **Section 2.12**, remove all equipment, materials and debris from the site and leave the Historic District in a safe and secure condition.

2.13 Security. Developer further recognizes that budgetary constraints at the City make it difficult to provide on-going security at the Site in accordance with past practices. Accordingly, commencing on the Effective Date, Developer shall at Developer's sole cost engage a security firm to perform the scope of services attached hereto as **Exhibit 2.13-A** with respect to the Site, provided that prior to the Close of Escrow, the Developer's indemnification obligations under **Section 11.5** or elsewhere in this Agreement shall not apply with respect to the Developer's performance of the services required by this **Section 2.13**, except only to the extent of Claims caused by the willful misconduct or negligence of the Developer. Developer shall not be required to indemnify or defend the other party in connection with Developer's performance of its obligations hereunder. If an Event of Default occurs with respect to Developer's obligation to promptly commence and diligently pursue its obligations under this **Section 2.13**, then without further notice (other than the City Notice of Developer Default pursuant to **Section 10.4.2**) the City may elect (but shall not be obligated) to itself perform any of Developer's obligations under this Section, and to use the Deposit to pay the City's costs. If the City uses any portion of the Deposit pursuant to this **Section 2.13**, Developer shall replenish such amount(s) within thirty (30) days after receipt of written demand from the City. Upon the Close of Escrow and

continuing throughout the Term, Developer shall be responsible for the security of the Site. In order to allow access to the Project to perform such obligations prior to the Closing, the City and Original Developer will enter into a Permit to Enter and Release of Liability Agreement in the form attached hereto as **Exhibit 2.12-B**.

ARTICLE 3
CITY PREDISPOSITION ACTIONS

3.1 Overview. This **Article 3** sets forth various actions that the City shall seek diligently and in good faith to perform and achieve in order for the City to convey the Property to Developer in accordance with **Article 4**. Performance and achievement of the actions set forth in this **Article 3** constitute conditions precedent to Developer's obligation to Close. As conditions precedent to Developer's obligation to Close, the conditions set forth in this **Article 3** must first be met unless such times are extended in writing by Developer in its sole and absolute discretion. Only Developer can waive satisfaction of the conditions set forth in this **Article 3**. Additional conditions precedent to Developer's obligation to Close are set forth in **Section 4.6.2**. The City must have satisfied (or Developer must have so waived) every condition in this **Article 3** thirty (30) days prior to the Outside Closing Date, or else the Developer may terminate this Agreement pursuant to **Section 10.2** or **10.3**, as applicable.

3.2 Environmental Review for Project Approvals. To the extent not completed prior to execution of this Agreement, following the Effective Date, and subject to the provisions of **Section 2.3** and the Development Agreement, the City, at Developer's sole cost and expense, shall use diligent good faith efforts to complete any environmental review of any Project Approvals as may be required pursuant to CEQA and/or other Applicable Law.

3.3 Cooperation in Seeking Project Approvals. Subject to Developer's compliance with **Article 2**, the City shall help facilitate and cooperate with Developer, within the City's reasonable authority and at Developer's cost, in seeking any Other Agency Approvals. Notwithstanding the preceding provisions of this **Section 3.3** or any other provision herein to the contrary, nothing in this Agreement shall constitute, or be deemed to constitute, any representation, warranty or guaranty by the City of the issuance or timing of any Project Approvals.

ARTICLE 4
DISPOSITION OF PROPERTY

4.1 Sale and Purchase. Upon and subject to the terms, covenants and conditions set forth in this **Article 4** and elsewhere in this Agreement, the City agrees to sell and convey to Developer, and Developer agrees to purchase and accept from the City, the Property.

4.2 Purchase Price. The purchase price for the Property shall be an amount equal to Forty-Five Million Dollars ($45,000,000.00). In addition to the Purchase Price, Developer shall pay the City any Density Increase Payments as and when due pursuant to **Section 7.9** below.

The Purchase Price shall be payable as follows:

4.2.1 Deposit. Not later than five (5) business days after the date that City and Developer mutually agree on the FF&E Specifications for the Police and Fire Station, Developer shall deposit, in immediately available funds, Seven Hundred Thousand Dollars ($700,000.00) (the "**Deposit**") into Escrow. The Deposit shall be credited against the Purchase Price and released to the City at Closing. If this Agreement terminates prior to Closing pursuant to **Section 10.2** or by reason of a City Event of Default, the Deposit shall be refunded by the City to Developer in accordance with the applicable provisions of **Article 10**.

4.2.2 Balance of Funding at Closing. The Purchase Price, plus all other amounts required from Developer pursuant to **Section 4.4.1.1** in order to consummate the Closing in accordance herewith, less the Deposit, shall be deposited into Escrow by Developer in cash or other immediately available funds, for payment to the City at Closing.

4.2.3 Independent Consideration. Upon receipt by Escrow Agent of the Deposit, Escrow Agent shall release to the City from the Deposit the sum of One Hundred Dollars ($100) (the "**Independent Consideration**"). Notwithstanding anything to the contrary set forth herein, the Independent Consideration shall constitute independent and separate consideration paid by Developer for the rights extended to Developer under this Agreement. Developer and the City agree that the Independent Consideration: (a) shall not be deemed to be a part of the Deposit or the Purchase Price for any purposes hereunder; (b) shall be independent of any other consideration paid by Developer to the City under this Agreement; (c) shall be deemed to be fully earned by the City upon the date of this Agreement; (d) shall not be refundable to Developer; and (e) shall not be applied against the Purchase Price at Closing.

4.3 Escrow.

4.3.1 Opening of Escrow. To accomplish the conveyance of the Property from the City to Developer pursuant to this Agreement, the City and Developer shall, promptly following execution of this Agreement, establish an escrow with Escrow Holder (the "**Escrow**").

4.3.2 Close of Escrow. Escrow for the conveyance of the Property hereunder shall close ("**Close**," "**Close of Escrow**" or "**Closing**") on a date (the "**Closing Date**") mutually acceptable to the City and Developer within thirty (30) days after the Closing Conditions Satisfaction Date, but in no event later than May 21, 2022 (the "**Outside Closing Date**"); provided, that if the date set forth in the Judgment by which the City is required to sell the development areas of the Site is extended through the mutual agreement of the parties to the Judgment, then the City and Developer may mutually agree to extend the "Outside Closing Date" hereunder to such later date; provided further, that the City does not make any representation regarding the likelihood of, or incur any obligation to pursue, any extension of the sale date set forth in the Judgment. If Closing does not occur on or before the Outside Closing Date through no

fault of the Developer or the City, then this Agreement may be terminated by the City or Developer pursuant to **Section 10.2**. For purposes of this Agreement, "Close," "Close of Escrow" or "Closing" shall mean the date when all of the actions set forth in **Section 4.5.2** with respect to the Escrow shall have been completed in accordance with this Agreement.

4.3.3 Costs of Escrow. In connection with the Close of Escrow, Developer shall pay: (a) the premium costs of Developer's Title Policy, including the cost of any endorsements required by Developer; (b) all document preparation and recording fees and charges, (c) all Escrow Holder fees and other costs of Escrow, (d) all County and City transfer taxes and fees, (e) Developer's share of prorations pursuant to **Section 4.8**, and (f) any additional Closing costs approved by Developer. In connection with the Close of Escrow, the City shall pay the City's share of prorations pursuant to **Section 4.8.**

4.4 Delivery of Closing Documents and Funds.

4.4.1 Deliveries by Developer. At least one (1) business day before the Closing, Developer shall deposit into Escrow the following items ("**Developer Closing Funds and Documents**"), except that funds may be deposited on the Closing Date provided that such does not delay the date of Closing:

4.4.1.1 cash or other immediately available funds in an amount necessary to consummate the Closing in accordance herewith, including the Purchase Price (less the Deposit), and the Closing costs and prorations as set forth in **Sections 4.3.3** and **4.8**;

4.4.1.2 one (1) original duly executed and acknowledged counterpart of the Grant Deed of the Property from the City to Developer substantially in the form of **Exhibit 4.4.1.2** attached hereto (the "**City Grant Deed**");

4.4.1.3 one (1) original duly executed and acknowledged counterpart of the Notice of Onsite Affordable Housing Requirements substantially in the form of **Exhibit 5.5.5-A** attached hereto;

4.4.1.4 one (1) original duly executed Assignment of Developer Agreements, Plans and Approvals;

4.4.1.5 one (1) original duly executed Preliminary Change of Ownership Report for the Property;

4.4.1.6 one (1) duly executed certificate of Developer reaffirming the truth and accuracy, as of the Closing Date, of all representations and warranties of Developer hereunder, substantially in the form of **Exhibit 4.4.1.6** attached hereto (the "**Developer Date-Down Certificate**"); and

4.4.1.7 Developer shall duly execute, acknowledge, seal and deliver and otherwise provide appropriate resolutions, documentation, authorizations, and

such further assurances, instruments, and documents as the City or Escrow Holder may reasonably request in order to fulfill the intent of this Agreement and the transactions contemplated hereby.

4.4.2 Deliveries by the City. At least two (2) business days before the Closing, the City shall deposit into Escrow the following items (the "**City Closing Funds and Documents**"):

4.4.2.1 funds in an amount sufficient to pay the City's share of Closing costs and prorations as set forth in **Section 4.3.3** and **Section 4.8**;

4.4.2.2 one (1) original duly executed and acknowledged counterpart of the City Grant Deed;

4.4.2.3 one (1) original duly executed and acknowledged counterpart of the Notice of Onsite Affordable Housing Requirements;

4.4.2.4 one (1) original duly executed and acknowledged easement agreement, with a scope and otherwise in form and substance satisfactory to both Parties, pursuant to which the City grants Developer and its successors and assigns an access easement for access, ingress, and egress over the portion of the Site between the Property and the pier;

4.4.2.5 one (1) duly executed non-foreign certification for the Property in accordance with the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended;

4.4.2.6 one (1) duly executed California Form 593-W Certificate for the Property or comparable non-foreign person affidavit;

4.4.2.7 one (1) duly executed certificate of the City reaffirming the truth and accuracy, as of the Closing Date, of all representations and warranties of the City hereunder, substantially in the form of **Exhibit 4.4.2.7** attached hereto (the "**City Date-Down Certificate**"); and

4.4.2.8 the City shall duly execute, acknowledge, seal and deliver and otherwise provide appropriate resolutions, documentation, authorizations, and such further assurances, instruments, and documents as Developer or Escrow Holder may reasonably request in order to fulfill the intent of this Agreement and the transactions contemplated hereby.

4.5 Additional Escrow Provisions.

4.5.1 Escrow Instructions. This Agreement constitutes the joint escrow instructions of the City and Developer with respect to the conveyances of the Property to Developer, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement in accordance therewith. If, in the opinion of either Party, it is necessary or convenient in order to accomplish the Closing, such party

may provide supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control.

4.5.2 Actions by Escrow Agent. On the Closing Date, provided both the Developer Closing Conditions and the City Closing Conditions have been fulfilled or waived in writing by Developer and the City, as applicable, Escrow Agent shall undertake and perform the following acts in the following order:

4.5.2.1 pay and charge the City and Developer for Escrow costs, charges, and costs as provided in **Sections 4.3.3** and **4.8**;

4.5.2.2 record the City Grant Deed and obtain conformed copies thereof for delivery to Developer and the City;

4.5.2.3 record the Notice of Onsite Affordable Housing Requirements and obtain conformed copies thereof for delivery to Developer and the City;

4.5.2.4 record any other recordable documents delivered into Escrow and required hereunder to be recorded at Closing;

4.5.2.5 prepare and file with all appropriate governmental or taxing authorities uniform settlement statements and closing statements, if any such forms are provided for or required by law;

4.5.2.6 obtain and issue Developer's Title Policy and do all such other actions necessary to fulfill its Escrow obligations under this Agreement;

4.5.2.7 deliver to Developer:

(a) conformed copies of the recorded City Grant Deed and Notice of Onsite Affordable Housing Requirements and each other document recorded or filed in connection with the Close of Escrow;

(b) the original Developer's Title Policy;

(c) an original counterpart of the Assignment of Developer Agreements, Plans and Approvals and each other unrecorded document received by Escrow Holder hereunder;

(d) the original executed City Date-Down Certificate; and

(e) Developer's final settlement statement; and

4.5.2.8 deliver to the City:

(a) conformed copies of the recorded City Grant Deed and Notice of Onsite Affordable Housing Requirements and each other document recorded or filed in connection with the Close of Escrow;

(b) a copy of Developer's Title Policy;

(c) the original executed Developer Date-Down Certificate;

(d) an original counterpart of the Assignment of Developer Agreements, Plans and Approvals and each other unrecorded document received by Escrow Holder hereunder;

(e) the balance of the Purchase Price; and

(f) the City's final settlement statement.

4.6 Closing Conditions.

4.6.1 City Closing Conditions. The City's obligations to proceed with the Closing and to sell, transfer and convey the Property to Developer hereunder are conditioned upon the satisfaction or written waiver by the City of all of the following conditions precedent (the "**City Closing Conditions**"), which are solely for the benefit of the City:

4.6.1.1 Developer's Pre-Closing Obligations. All of Developer's Pre-Closing Obligations expressly identified on the Schedule of Performance shall have been satisfied or waived in writing by the City in its sole and absolute discretion, or shall be in a condition to be satisfied at the Closing, provided, however, the requirement that the Property be conveyed at the Closing in compliance with the California Subdivision Map Act shall not be waivable.

4.6.1.2 Authorizing Resolution. Developer shall have provided the City with a certified copy of a duly adopted resolution(s) approving and authorizing its execution, by the signatory below, of this Agreement and all instruments required to be executed and delivered by Developer pursuant thereto, and approving the transactions contemplated by this Agreement.

4.6.1.3 Formation Documents. Developer shall have delivered to the City a copy of each of the following: (i) its articles of organization or incorporation, as applicable, and operating agreement or bylaws, as applicable; and (ii) a certificate of good standing (and, to the extent applicable, a certificate of qualification to transact business in California) from the Secretary of State with respect to the Developer.

4.6.1.4 Recorded Memorandum. The Memorandum of DDA shall have been recorded against the Property.

4.6.1.5 Developer Closing Funds and Documents. Developer shall have duly executed and delivered to Escrow Holder all Developer Closing Funds and Documents.

4.6.1.6 Conventional Construction Loan Closing. If the Approved Final Financing Plan for the First Site Improvement Phase contemplates that Developer will finance the First Site Improvements Phase with a Conventional Construction Loan that will be obtained at the Closing, the Conventional Construction Loan Closing with respect to such Construction Phase and work shall be in a position to occur concurrently with the Closing in accordance with the applicable Approved Final Financing Plan. Notwithstanding the foregoing, Developer shall have the right to require the City to waive this City Closing Condition with respect to the Conventional Construction Loan Closing if Developer elects to commence construction of the First Site Improvement Phase with funding sources other than Conventional Construction Loan proceeds and provides the City with a revised Financing Plan that is approved by the City pursuant to **Section 2.5.2**.

4.6.1.7 Approval of Developer Financing Plan. The City shall have approved the Approved Final Financing Plan for the First Site Improvement Phase as provided in **Section 2.5**.

4.6.1.8 Evidence of Availability of Funds. The City shall have received and accepted the Evidence of Availability of Funds as provided in **Section 2.5**.

4.6.1.9 Project Financing. All conditions precedent to Project Financing Closing for Developer's acquisition of the Property, if any, and, subject to **Section 4.6.1.6**, for construction of the First Site Improvement Phase, if any, as set forth in the applicable Approved Final Financing Plan, have been met with the exception of any recording of documents and the payment of any necessary fees by Developer.

4.6.1.10 Discretionary City Approvals and Project Approvals. Developer shall have obtained all of the Discretionary City Approvals and shall have applied for, diligently pursued and used commercially reasonable efforts to obtain the other Project Approvals for the First Site Improvement Phase, and the applicable time periods within which to challenge, either administratively or judicially, such Discretionary City Approvals shall have expired without the filing (or if filed, there has been a favorable resolution) of any such administrative or judicial challenge; provided, however, that if a challenge has not been resolved as of the Outside Closing Date, the City shall waive such condition if the City Manager reasonably determines that Developer is diligently pursuing a favorable resolution and that such challenge is unlikely to have a material adverse impact on the Project or Developer's obligations under this Agreement.

4.6.1.11 Site Improvement Plans Submission. Developer shall have submitted plans for the Site Improvements to be constructed in the First Site Improvement Phase, including without limitation the Police and Fire Station, on or prior to the date provided on the Schedule of Performance.

4.6.1.12 Guaranty or Initial Project Performance and Payment Security. Developer shall have delivered to the City either a Guaranty or Initial Project Performance and Payment Security for the First Site Improvement Phase.

4.6.1.13 First Source Hiring Agreement. Developer shall have delivered to the City Developer's executed original counterpart of the First Source Hiring Agreement.

4.6.1.14 Developer Insurance. Developer shall have furnished the City with evidence of the insurance coverages meeting the requirements set forth in **Section 6.8**.

4.6.1.15 No Developer Event of Default. No Developer Event of Default shall then exist or, with the mere passage of time, will exist hereunder.

Notwithstanding any provision herein to the contrary, and without limiting any available rights and remedies of the City for a Developer Event of Default, if all the City Closing Conditions have not been satisfied or waived in writing by the City thirty (30) days prior to the Outside Closing Date, the City may terminate this Agreement pursuant to the applicable provisions of **Article 10**.

4.6.2 Developer Closing Conditions. Developer's obligations to proceed with the Closing and to acquire and accept the Property from the City hereunder are conditioned upon the satisfaction or written waiver by Developer, in its sole and absolute discretion, of all of the following conditions precedent ("**Developer Closing Conditions**"), which are solely for the benefit of Developer:

4.6.2.1 Conditions in Article 3. All conditions precedent to Developer's obligation to acquire the Property at the Closing as set forth in **Article 3** and elsewhere in this Agreement shall have been satisfied or waived in writing by Developer in its sole and absolute discretion; provided, however, the requirement that the Property be conveyed at the Closing in compliance with the California Subdivision Map Act shall not be waivable.

4.6.2.2 Project Financing. All conditions precedent to Project Financing Closing for Developer's acquisition of the Property, if any, and, subject to **Section 4.6.1.6**, for construction of the First Site Improvement Phase, if any, as set forth in the applicable Approved Final Financing Plan, have been met with the exception of any recording of documents and the payment of any necessary fees by Developer.

4.6.2.3 City Closing Funds and Documents. The City shall have duly executed and delivered to Escrow Holder all City Closing Funds and Documents.

4.6.2.4 Developer's Title Policy. Developer shall have received from Title Company assurances acceptable to Developer that Title Company is unconditionally committed to issue Developer's Title Policy to Developer at Closing in the form required by this Agreement.

4.6.2.5 No City Event of Default. No City Event of Default shall then exist or, with the mere passage of time, will exist hereunder.

4.6.2.6 Discretionary City Approvals and Project Approvals. Developer shall have obtained all of the Discretionary City Approvals and all Project Approvals for the First Site Improvement Phase, and the applicable time periods within which to challenge, either administratively or judicially, such Discretionary City Approvals and Project Approvals shall have expired without the filing (or if filed, there has been a favorable resolution) of any such administrative or judicial challenge; provided, however, that if a challenge has not been resolved as of the Outside Closing Date, Developer shall waive such condition if Developer reasonably determines that such challenge is unlikely to have a material adverse impact on the Project.

4.6.2.7 Site Improvement Permit. The City shall have issued or shall be prepared to issue a Site Improvement Permit for the construction of the First Site Improvement Phase.

4.6.2.8 CFD Formation. If and to the extent contemplated by the Approved Final Financing Plan and/or the Project O&M Plan, one or more CFDs for the Project shall have been approved by the City and formed, Developer shall have paid all accrued service fees in connection therewith, and the bonds in connection therewith shall be available for private placement. Any such CFD shall be consistent with the Approved Final Financing Plan and O&M Plan (if applicable) and the terms and conditions of the Development Agreement. The City and Developer shall work cooperatively and in good faith to establish the CFD and to reach mutual agreement as to additional detail regarding scope, terms and conditions affecting the CFD.

Notwithstanding any provision herein to the contrary, and without limiting any available rights and remedies of the City for a Developer Event of Default, if all Developer Closing Conditions have not been satisfied or waived in writing by Developer thirty (30) days prior to the Outside Closing Date, Developer may terminate this Agreement pursuant to the applicable provisions of **Article 10**.

4.6.3 Closing Conditions Satisfaction Date. The date on which all City Closing Conditions and Developer Closing Conditions (collectively, the "**Closing Conditions**") have been satisfied (*i.e.*, actually completed or addressed in a binding Subdivision Improvement Agreement duly executed by Developer and the City) or waived in accordance herewith is referred to herein as the "**Closing Conditions Satisfaction Date**."

4.7 Title.

4.7.1 Conveyance and Condition of Title. At Closing, the City shall convey title to the Property to Developer by grant deed substantially in the form of **Exhibit 4.4.1.4** attached hereto (the "**City Grant Deed**") free and clear of all liens, encumbrances, and rights of occupancy and possession, except the following (collectively, the "**Permitted Exceptions**"):

4.7.1.1 all exceptions indicated in the Preliminary Report prepared by Title Company, Order No. 1117019041-JM, Update dated March 22, 2019, a copy of which is attached hereto as **Exhibit 4.7.1.1** (the "**Title Report**"), provided that such exceptions shall not include any monetary encumbrances in the form of mechanics' liens for work performed directly by the City, deeds of trust or mortgages entered into by the City, judgment liens against the City, and delinquent tax liens, all of which shall be removed by payment from the City at or prior to the Closing;

4.7.1.2 this Agreement and the Memorandum of DDA;

4.7.1.3 any lien for current non-delinquent taxes and assessments or taxes and assessments accruing subsequent to the Closing Date;

4.7.1.4 all matters that would be disclosed by a current physical inspection or a survey of the Property, or that are actually known to Developer;

4.7.1.5 any exceptions, conditions or other matters created or caused by or consented to in writing by Developer, including without limitation pursuant to this Agreement; and

4.7.1.6 any other liens, easements, encumbrances, covenants, conditions and restrictions or other matters of record approved or specifically waived in writing by Developer.

4.7.2 Covenant Against Further Encumbrance. Prior to Closing, and other than Permitted Exceptions, the City shall not alienate, lien, encumber, transfer, option, lease, assign, sell, grant any right of occupancy or possession, transfer or convey its interest or any portion of its interest in the Property, or any portion thereof, or enter into any agreement to do so (each a "**Further Encumbrance**"), unless such Further Encumbrance is specifically approved in writing by Developer in its sole and absolute discretion.

4.7.3 Developer's Title Policy. At Closing, Title Company shall issue to Developer, at Developer's cost, a CLTA owner's policy of title insurance, with endorsements reasonably required by Developer, with a policy amount satisfactory to Developer in its reasonable discretion, insuring Developer's ownership interest in the Property subject only to the Permitted Exceptions ("**Developer's Title Policy**"); provided Developer may elect to obtain an ALTA extended owner's policy of title insurance, provided that issuance of such policy shall not be a condition to Closing.

4.8 Prorations. Ad valorem taxes and assessments levied, assessed or imposed on the Property for any period prior to the Closing, if any, shall be paid by the City. Ad valorem taxes and assessments levied, assessed or imposed on the Property, the Project or any other improvements on the Property, for the period from and after the Closing shall be paid by Developer. The costs of any utility services for the Property, if any, shall be prorated between the City and Developer as of the Closing Date. Notwithstanding the above, the Parties acknowledge that no property taxes or assessments should have accrued on the Property while owned by the City due to the fact that it is in public ownership; however to the extent that

property taxes or assessments have been assessed prior to the Closing, it shall be Developer's responsibility to pay its prorated share of such taxes (with respect to the period from and after the Closing) or resolve the issue, at its sole cost, with the State Board of Equalization.

4.9 Real Estate Commissions. The City, on the one hand, and Developer, on the other hand, represents and warrants that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of the transactions contemplated by this Agreement, through any real estate broker or other person who can claim a right to a commission or finder's fee. The City and Developer further represent and warrant that it has not entered into any agreement, and has no obligation, to pay any such commission or finder's fee. If a commission or finder's fee is claimed through either Party in connection with the transactions contemplated by this Agreement, then the Party through whom the commission or finder's fee is claimed shall indemnify, defend (with counsel reasonably acceptable to the indemnified Party) and hold the other Party harmless from and against any such Claim. The provisions of this **Section 4.9** shall survive expiration of the Term or other termination of this Agreement and shall remain in full force and effect.

4.10 "AS IS" Conveyance.

4.10.1 City Materials. The City represents and warrants, to the best of the City's knowledge, as of the Effective Date, and Developer acknowledges, that the City has furnished Developer with copies of or provided Developer with access to the following, to the extent within the City's possession or reasonable control: (a) the CEQA and NEPA review documents with respect to previously proposed development of the Site (collectively, the "**Existing CEQA/NEPA Documents**"); (b) reports, orders and other information relating to the environmental condition and environmental remediation of the Property (including the presence thereon of Hazardous Materials) which can be accessed at: https://geotracker.waterboards.ca.gov/ or https://terraphase.sharepoint.com/:f:/s/PointMolate/Ep_8TL7jzLtPjgUp40WsXvkB8HwXway0jWTSZncQvL0NDw?e=yObwKr (collectively referred to as "**Environmental Disclosures**"); and (c) any and all unrecorded leases, service contracts, easements, licenses and/or other unrecorded agreements with third parties affecting the Property that would, if not terminated prior to Closing, extend beyond the Closing Date (collectively, the "**Unrecorded Agreements**"). The Existing CEQA/NEPA Documents, Environmental Disclosures and Unrecorded Agreements are herein collectively referred to as the "**City Materials**." The City does not make any representation or warranty as to the completeness or accuracy of any of the City Materials. If this Agreement terminates for any reason prior to Close of Escrow, Developer shall promptly return to the City all of the City Materials (and any copies thereof made by Developer).

4.10.2 Disclosure. Developer acknowledges and agrees that, by means of the Environmental Disclosures, the City has complied with the notice and disclosure requirements of California Health and Safety Code Section 25359.7(a) with respect to the Property.

4.10.3 Full Opportunity. Developer acknowledges, agrees, represents, and warrants that, prior to Closing, Developer has been given a full opportunity to obtain,

review, inspect and investigate each and every aspect of the Property, either independently or through agents of Developer's choosing, including without limitation the following:

(a) The size and dimensions of the Property.

(b) The availability and adequacy of water, sewage, fire protection, and any utilities serving the Property.

(c) All matters relating to title including the extent and conditions of title to the Property, taxes, assessments, and liens.

(d) All Applicable Law, limitations on title, and other restrictions or requirements concerning or affecting the Property, including zoning, use permit requirements and building codes.

(e) Natural hazards, including flood plain issues, currently or potentially concerning or affecting the Property.

(f) The physical, legal, economic and environmental condition and aspects of the Property, and all other matters concerning the conditions, use or sale of the Property, including any permits, licenses, agreements, and liens, zoning reports, engineers' reports and studies and similar information relating to the Property. Such examination of the condition of the Property has included examinations for the presence or absence of Hazardous Materials, and review of all Phase I environmental assessments and Environmental Disclosures and information submitted at any time to RWQCB, deemed necessary or desirable by Developer.

(g) Any easements and/or access rights concerning or affecting the Property.

(h) Any contracts and other documents or agreements concerning or affecting the Property.

(i) All other matters of material significance concerning or affecting the Property.

4.10.4 Access to Property.

4.10.4.1 Temporary Right of Entry. The City hereby grants to Original Developer and, if and to the extent applicable, the Historic Resources Assignee, a temporary right to enter the entire Site prior to Closing, Monday through Friday between 7:00 a.m. and 7:00 p.m. and on weekends and holidays between 8:00 a.m. and 6:00 p.m. and upon and subject to the provisions of this **Section 4.10.4.1**, to perform any Property review and preliminary planning activities which require access to the Property (the "**Temporary Right of Entry**"). The applicable Developer shall only be entitled to exercise the Temporary Right of Entry if Original Developer or Historic Resources Assignee, as applicable, then has in full force and effect and has delivered to the City certificates of coverage for all insurance required hereunder pursuant to **Section 6.8**. The

applicable Developer shall notify the City in writing at least twenty-four (24) hours prior to entering the Property to undertake any investigations, inspections, studies or tests upon the Property ("**Developer Property Testing**"), which notice shall indicate with specificity the scope and timeframe of any such proposed Developer Property Testing. Prior to the Closing Date, and subject to the provisions of this **Section 4.10.4.1**, Developer shall deliver or make available to the City for its review and copying any Phase I or Phase II environmental review report or other environmental reports prepared by or on behalf of Developer relating to the condition of the Property (including the presence thereon of Hazardous Materials); provided, however that such reports shall be provided without any representation or warranty, including without limitation as to the accuracy or completeness of the contents of such reports. Developer shall also allow the City representatives to be present at any time Developer enters upon the Property. Developer agrees, on behalf of its employees, agents, and contractors to cause all work to comply with all Applicable Law. Nothing in this **Section 4.10.4.1** shall be deemed to create any right of Developer to terminate or condition its obligation to proceed with the Closing based upon the results of any Developer Property Testing or to render the conveyance hereunder of the Property in any condition other than AS-IS Condition as set forth in **Section 4.10.5**.

4.10.4.2 Indemnity. Developer hereby releases and shall indemnify, defend, protect and hold the City and other City Parties harmless from and against any and all Claims directly or indirectly arising out of or resulting from the acts, omissions, negligence or willful misconduct of Developer or any Developer Party under or in connection with the exercise of the Temporary Right of Entry or any Developer Property Testing; provided, however, that such indemnity shall not extend to conditions on the Site that are merely discovered by Developer, including, but not limited to, environmental conditions, or to Claims arising out of the acts of the City or any City Parties except to the extent any such conditions are exacerbated by Developer or any Developer Party's negligent or intentional acts or omissions. In addition, in the event Developer or any Developer Party causes any damage to any portion of the Site, Developer shall promptly restore the Property as nearly as possible to the physical condition existing immediately prior to Developer's entry onto the Site. Developer shall at all times keep the Site free and clear of all liens, encumbrances, and clouds upon title that result or arise from the exercise of the Temporary Right of Entry. The provisions of this **Section 4.10.4.2** shall survive the Closing and expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

4.10.5 "AS IS" CONVEYANCE. Developer acknowledges and agrees that the City is selling and conveying, and Developer is acquiring and accepting, the Property and assuming the obligations with respect to the Project on an "AS IS" "WITH ALL FAULTS" basis, condition, and state of repair, inclusive of any and all faults and defects, legal, physical, or economic, whether known or unknown ("**AS-IS Condition**") and the City shall not be responsible for any demolition, site remediation, preparation or monitoring, removal, construction or installation of any improvements, soil conditions, or removing any subsurface obstruction or correcting any subsurface condition. Effective as of the Closing, Developer releases City and other City Parties from any and all Claims which may arise or result directly or indirectly from or in connection with the presence,

removal, storage or release of any Hazardous Materials on the Site (including those identified in the Environmental Disclosures and/or as part of the On-going Remediation, Notice of Corrective Action Requirement or RWQCB Order, and/or otherwise disclosed to Developer). Developer further acknowledges and agrees that, except as expressly set forth in **Section 9.1** ("**City Representations and Warranties**"), neither the City (or any other City Party) have made or make any representation or warranty, express or implied, regarding the Site or the Project, including but not limited to its physical or environmental condition or fitness or suitability for any particular use or purpose, and Developer is relying solely upon its own expertise as a developer of projects similar to the Project and its own independent investigation of the Site to determine its acceptability to Developer for Developer's ownership and anticipated development and use thereof. The City shall have no responsibility for the suitability of the Site for the Project, and if the conditions of the Site are not entirely suitable for the Project, then Developer shall be solely responsible for putting the Site in a condition suitable for the Project. Effective as of the Closing, Developer hereby waives any right of reimbursement or indemnification from the City or other City Parties for Developer's costs related to any physical conditions on the Site or the correction thereof, including without limitation those costs which may arise from the presence, removal, storage or release of any Hazardous Materials on the Site (including those identified in the Environmental Disclosures and with respect to the On-going Remediation, Notice of Corrective Action Requirement or RWQCB Order).

In furtherance of the intentions set forth herein, Developer acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

> **"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."**

Developer hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the California Civil Code or any similar provision of the statutory or non-statutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this **Section 4.10.5** or **Section 4.10.6** below. The foregoing release and waiver provisions of this **Section 4.10.5** and **Section 4.10.6** below shall survive the Closing and expiration of the Term or other termination of this Agreement and shall remain in full force and effect.

4.10.6 On-Going Remediation. Developer acknowledges the following:

4.10.6.1 Certain portions of the Site are the subject of on-going remediation of hazardous materials under the oversight authority of RWQCB (the "**On-going Remediation**"), as further described in the Environmental Disclosures, including without limitation the Site Cleanup Requirements Order No. R2-2011-0087 issued by the RWQCB (the "**RWQCB Order**"), and that the City has not obtained a no further action ("**NFA**") determination from RWQCB or any other agency with respect to all or any

portion of the Site. At Closing, Developer shall assume all obligations of the City with respect to the On-going Remediation of the Site (including without limitation the Property and portions of the Site being retained by the City) pursuant to such documentation as is mutually agreed upon by Developer, the City and/or RWQCB, provided that Developer shall not unreasonably object to any documentation that is consistent with this **Section 4.10.6.1** and customarily required by RWQCB, and shall perform such obligations from and after the Closing pursuant to **Section 6.7**.

4.10.6.2 On March 13, 2019 the City received from RWQCB a California Water Code Section 13267 Technical Report Requirement Order – Corrective Action, Former Point Molate Naval Fuel Depot (the "**Notice of Corrective Action Requirement**"), a copy of which has been provided to Developer. At Closing, as part of Developer's assumption of obligations with respect to the On-going Remediation, Developer shall assume all obligations of the City to complete required corrective action pursuant to the Notice of Corrective Action Requirement and shall perform and complete such corrective action from and after the Closing pursuant to **Section 6.7**.

4.10.6.3 (i) The Property currently is encumbered by that certain Covenant to Restrict Use of Property Environmental Restriction (Re: Former Naval Fuel Depot Point Molate – Richmond, CA), by and between the City and RWQCB, recorded in the Official Records of Contra Costa County on March 29, 2010 as Document Number 2010-0060368-00 (the "**Existing Restrictive Covenant**"), (ii) the Existing Restrictive Covenant prohibits residential uses of the Property and certain physical activities on the Property, among other things, and (iii) it shall be Developer's responsibility, at Developer's sole expense and risk, to obtain RWQCB's approval to any activities or uses required for the development of the Project which are otherwise prohibited under the Existing Restrictive Covenant and to obtain any release and/or amendment to the Existing Restrictive Covenant as may be required in connection with the Project. The City makes no representation, warranty or covenant with respect to the Existing Restrictive Covenant or the feasibility or process to obtain any such approval, release or amendment from RWQCB.

4.10.7 City Disclaimers. Developer acknowledges and agrees that except as expressly set forth in this Agreement: (i) neither the City nor any other City Party has made any representations, warranties, or promises to Developer, or to anyone acting for or on behalf of Developer, concerning the condition of the Site or any other aspect of the Site; (ii) the condition of the Site has been independently evaluated by Developer prior to the Closing; and (iii) any information including any engineering reports, architectural reports, feasibility reports, marketing reports, title reports, soils reports, environmental reports, analyses or data or other similar reports, analyses, data or information of whatever type or kind, if any, which Developer has received or may hereafter receive from the City or any other City Party were and are furnished without warranty of any kind and on the express condition that Developer has made its own independent verification of the accuracy, reliability and completeness of such information and that Developer will not rely on any of the foregoing.

4.10.8 Developer's Waiver. In the event that, prior to Close of Escrow, Developer becomes aware of any event or condition, other than an intentional breach or willful misconduct on the part of the City, that would constitute a breach or default by the City or a failure of any condition precedent to Developer's obligations hereunder, but Developer proceeds with the Close of Escrow notwithstanding such event or condition, then Developer shall be deemed to have waived and released any claim or cause of action arising therefrom, and the City shall have no liability by reason of any such breach, default or condition.

4.10.9 Unrecorded Agreements. At least ninety (90) days prior to the Closing, Developer shall notify the City which Unrecorded Agreements Developer requests that the City terminate prior to Closing, and the City shall terminate those Unrecorded Agreements specified by Developer prior to the Closing.

4.10.10 Survival. The provisions of this **Section 4.10** shall survive the Close of Escrow.

ARTICLE 5
CONSTRUCTION OF PROJECT

5.1 Obligation to Construct Project. Following the Close of Escrow, Developer shall Commence Construction and Complete Construction of each Construction Phase and the Project in accordance with the Approved Final Plans, the Project Approvals and all other Governing Documents, within the times established therefor in the Schedule of Performance, subject to Force Majeure Delay. Notwithstanding the foregoing, the parties acknowledge that the Schedule of Performance sets forth the reasonable preliminary estimates of the time periods required for certain activities, and Developer may request reasonable modification to the Schedule of Performance as more information becomes available with respect to the Project. Without limiting the foregoing, Developer may request extension of the outside date for Commencement of Construction of the applicable Construction Phase in the Schedule of Performance in the event of unreasonable delay in issuance of Site Permits or Building Permits that exceeds the normal processing time for a project of the type and complexity contemplated for the applicable Construction Phase, provided that Developer submits its application for Site Permits or Building Permits for such Construction Phase (and such application is deemed complete in the City's reasonable discretion) as expeditiously as reasonable possible following the City's approval of the Proposed Final Plans for such Construction Phase and thereafter timely responds to all City comment letters and otherwise exercises diligent and good faith efforts and cooperation in connection with the Site Permit or Building Permit review and approval process. The City Manager shall consider all such reasonable requests for modification to the Schedule of Performance in good faith and in his or her reasonable discretion. In addition, to the extent the Schedule of Performance does not address required time periods for the design and construction of all Vertical Improvement Phases, Developer shall provide a supplemental Schedule of Performance for each Vertical Improvement Phase as a condition to the earlier of the Commencement of Construction or Partial Assignment of a Vertical Improvement Phase. Without limiting the foregoing, Developer shall proceed diligently and expeditiously with all actions required to construct the Project, including the Offsite Improvements, including without

limitation all actions as necessary to satisfy the requirements and conditions for final subdivision map approval for the Project.

5.2 Costs of Construction. Developer shall bear all costs of design, construction and development of the Project.

5.3 Progress Reports. Until Completion of Construction of the Project, Developer shall provide to the City the Progress Reports pursuant to **Section 2.11**.

5.4 Change in Construction of Project.

5.4.1 If, during the course of construction of the Project, Developer desires to make any material change in the Project, including to the Offsite Improvements, from the Approved Final Plans, Developer shall submit the proposed change to the City in writing for the City approval in writing. The City shall act in good faith in approving such requests from Developer. No change which is required solely for compliance with building codes or other government health and safety regulation, and which change is substantially consistent with the Approved Final Plans, shall be deemed a material change hereunder. Developer may make non-material changes to the Project without the City consent; provided, however, that the City's determination as to the material or non-material nature of any proposed or actual change to the Project shall be final and binding.

5.4.2 If the City rejects a change to the Project proposed by Developer and requiring the City approval under **Section 5.4.1**, the City shall provide Developer with specific reasons therefor in writing. Unless a proposed change to the Project is approved in writing by the City within fifteen (15) business days after submittal, it shall be deemed disapproved by the City and the Approved Final Plans shall continue in full force and effect and govern construction of the Project. However, if the City does not affirmatively disapprove in writing the proposed change within such fifteen (15) business day period, Developer may then submit to the City written notice indicating, in capitalized and boldfaced letters, that if the City fails to act on the request for approval of such proposed change within five (5) business days following such second notice, then such proposed change will be deemed approved by the City in its proprietary capacity only pursuant to the provisions of this **Section 5.4**, and if the City fails to disapprove such proposed change within five (5) business days following the City's receipt of such second notice, then the proposed change shall be deemed approved by the City in its proprietary capacity only pursuant to the provisions of this **Section 5.4**.

5.4.3 A change necessitated by an emergency construction situation, such as unexpected soils condition, and substantially consistent with the Approved Final Plans, may be made by Developer without the City consent, provided Developer provides the City with prompt notification of such change by electronic mail or fax, including the reason for, the details and cost of such emergency change.

5.4.4 Subject to the preceding provisions of this **Section 5.4**, during the course of construction of the Project, Developer shall have the right to amend any

consulting or construction contracts in order to implement any change to the Project described in the preceding provisions of this **Section 5.4**.

5.5 Compliance with Applicable Laws.

5.5.1 Generally. Developer shall cause all work performed in connection with construction of the Project, including the Offsite Improvements, to be performed in compliance with: (a) all Applicable Laws, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction.

5.5.2 Permits. The work on each Construction Phase and the Project shall proceed only after procurement of each permit, license, or other authorization (including without limitation any required easements from third parties) that may be required by any governmental agency having jurisdiction, and Developer shall be responsible, at its cost, for the procurement and maintenance thereof, as may be required of Developer and all entities engaged in work on the Project, including the Offsite Improvements. Without limitation, Developer shall secure or cause to be secured any and all Site Improvement Permits and Building Permits and approvals which may be required by City and/or any other governmental agency having jurisdiction, including permits for the demolition and removal of any temporary structures or improvements on the Site and right of entry or encroachment permits for performance of required public right-of-way and other off-site improvements. City staff will work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of such permits and approvals. However, the execution of this Agreement does not constitute the granting of, or a commitment to grant or obtain, any permits or approvals required by the City and/or any other government agency.

5.5.3 Local Business and Local Hire. The Project, including the Offsite Improvements, shall be subject to the RMC's local business and local hire requirements, including the City's Business Opportunity Ordinance (RMC, Chapter 2.50) and Local Employment Program Ordinance (RMC, Chapter 2.56) (the "**Local Business and Local Hire Requirements**"). Pursuant to RMC Chapter 2.56, and prior to the Closing, Developer shall also enter into a First Source Hiring Agreement with the City, substantially in the form of **Exhibit 5.5.3** attached hereto (the "**First Source Hiring Agreement**") with any changes approved by the City. Developer shall provide the City with written acknowledgement by the Prime Contractor (if any) of the requirements of RMC Section 2.56.030(c), which code section shall be reproduced in full within the written acknowledgement. The written acknowledgement shall also include an express commitment by the Prime Contractor or Developer, as applicable, to use its best efforts to see that all of its contractors and sub-contractors comply with all Local Business and Local Hire Requirements.

5.5.4 Project Labor Agreement. Prior to the Effective Date, Developer has entered into one or more Project Labor Agreements (collectively, the "**PLA**") with all building trades which shall be applicable to all Improvements, including the Site Improvements (including Offsite Improvements) and Vertical Improvements, whether

public or private, and provided fully executed copies to the City. Developer shall provide the City with a list of the building trade crafts which are to be employed on the Project, including the Offsite Improvements, and for which the State of California Department of Apprenticeship Standards has approved an apprenticeship program.

5.5.5 Inclusionary Housing. The Project will be subject to the City's Inclusionary Housing Ordinance as set forth in the Development Agreement. The requirements of the Inclusionary Housing Ordinance other than the construction of the Required Onsite Affordable Units (which Developer must provide within the Project) may, in the sole discretion of Developer, be satisfied either by (i) the payment of a fee to the appropriate City of Richmond authority in lieu of incorporating inclusionary housing into the Project, or (ii) the construction of additional onsite "affordable units" beyond the construction of the Required Onsite Affordable Units. The Parties anticipate that, as of the Closing Date, the individual parcels, lots, and/or condominiums upon which the Required Onsite Affordable Units will be constructed within the Project will not have been created and/or identified. As such, it will not be possible to finalize and record the City Regulatory Agreements (as defined below) or the transfer restrictions contained in the Notices of Affordability Restrictions (as defined below) against the Required Onsite Affordable Housing Units at the Closing. Therefore, the City requires that notice of Developer's obligation to construct the Required Onsite Affordable Units and obligations under the City Regulatory Agreements be placed of record as of the Closing Date. Accordingly, Developer and the City shall enter into and record against the development areas within the First Site Improvement Phase the Notice of Onsite Inclusionary Housing Requirements in the form attached hereto as **Exhibit 5.5.5-A** (the "**Notice of Onsite Affordable Housing Requirements**"). At such time as the Required Onsite Affordable Units are precisely identified, the City and Developer shall execute and record against each Required Onsite Affordable Unit (I) the Regulatory Agreement and Declaration of Restrictive Covenants (For Sale Units), substantially in the form of **Exhibit 5.5.5-B** attached hereto, or the Regulatory Agreement and Declaration of Restrictive Covenants (For Rent Units), substantially in the form of **Exhibit 5.5.5-C** attached hereto, as applicable (each individually a "**City Regulatory Agreement**" and collectively, the "**City Regulatory Agreements**"); and (II) the Notice of Affordability Restrictions (For Sale Units), substantially in the form of **Exhibit 5.5.5-D** attached hereto, or the Notice of Affordability Restrictions (For Rent Units), substantially in the form of **Exhibit 5.5.5-E**, as applicable (each individually a "**Notice of Affordability Restrictions**" and collectively, the "**Notices of Affordability Restrictions**"). Upon the recording of the City Regulatory Agreements and Notices of Affordability Restrictions against the Required Onsite Affordable Units, the Notice of Onsite Affordable Housing Requirements shall automatically terminate and be released with respect all portions of the Property. Notwithstanding the foregoing, concurrently with the recording of the City Regulatory Agreements and Notice of Onsite Affordable Housing Requirements, the City shall execute and record in the Official Records one or more Quitclaim Deeds in the form attached hereto as **Exhibit 5.5.5-F,** as Developer may reasonably determine to be necessary or desirable to release all of the Property and the Improvements thereon from the Notice of Onsite Affordable Housing Requirements.

5.5.6 Project Phasing. Developer shall include in the First Site Improvement Phase of the Project all of the First Phase Master Infrastructure (including Offsite Improvements) and First Phase Master Developer Amenities, all as shown on the Site Phasing Plan. In addition, the Parties agree to work cooperatively to explore the feasibility of constructing certain of the Offsite Improvements either in advance of the First Site Improvement Phase, or as an accelerated component of the First Site Improvement Phase, with the focus of this cooperative effort to be on those particular Offsite Improvements the earlier completion of which would benefit the First Site Improvement Phase, the surrounding community, and the City. The Offsite Improvements shall be deemed to be complete under this Agreement when finally accepted by the City, when finally accepted by another authority if another authority has jurisdiction over the work, and/or when finally accepted by a public utility if a public utility has jurisdiction over the work.

5.5.7 Park Improvements. The cost of Developer's construction and maintenance of the park component of the Offsite Improvements shall be credited toward satisfaction of any Government Code Section 66477 *et seq*. ("**Quimby Act**") requirements which may apply to the Project as determined by the City. This provision shall not preclude Developer from receiving credits for other land or improvements that are eligible.

5.5.8 Operations and Maintenance Funding Plan. Prior to the approval of any Site Improvement Permits or Building Permits for the Project, including the Offsite Improvements if permits for the Offsite Improvements are issued separately from or prior to the Site Improvement Permits or Building Permits for other Improvements in the Project, Developer shall, at its sole cost and expense, prepare and submit to City for approval, a plan for funding the operation and maintenance of: (a) the Master Infrastructure, including without limitation the Project's internal streets, (b) the Master Developer Amenities, and (c) the Offsite Improvements located within the Site (the "**Project O&M Plan**"). Upon approval of the Project O&M Plan, Developer shall at its sole cost and expense undertake and execute the Project O&M Plan using financing mechanisms approved by the City that may include CFD/Assessment District and/or HOA funding. The City's sole obligation for operation and maintenance of Site Improvements and the Project shall be limited to the public street commonly referred to as Stenmark Drive which, after acceptance of the Site Improvements will be the responsibility of the City and any Offsite Improvements that are located outside the boundaries of the Site.

5.5.9 Equal Opportunity. Developer covenants for itself and its successors and assigns, that during the construction and operation of the Project there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, gender identity, marital status, national origin, ancestry or disability in the hiring, firing, promoting or demoting of any person engaged in the construction work. Developer and its contractors, employees and agents shall comply with all Applicable Laws, including all equal opportunity and fair employment law and regulations applicable to the Project, and including all applicable provisions of the City's Nondiscrimination Clauses in City Contracts Ordinance (RMC, Chapter 2.28), including

RMC Section 2.28.030, obligating every contractor or subcontractor under a contract or subcontract with City for public work or for goods or for services to refrain from discriminatory employment or subcontracting practices on the basis of race, color, sex, sexual orientation, gender identity, religious creed, national origin, ancestry or disability of any employee, any applicant for employment or any potential subcontractor.

5.5.10 Prevailing/Living Wages.

5.5.10.1 Payment of Prevailing/Living Wages. Developer shall and shall cause each of its contractors (including the Prime Contractor, if applicable) and its and their subcontractors to pay prevailing wages and living wages in the construction of the Project as those wages are determined pursuant to Labor Code Sections 1720 *et seq*. and implementing regulations of the Department of Industrial Relations and the City of Richmond's Living Wage Ordinance (RMC Chapter 2.60) (the "**City Living Wage Ordinance**"). Developer, including the Original Developer, Historic Resources Assignee and each Merchant Builder, shall also comply with the other applicable provisions of Labor Code Sections 1720 *et seq*., implementing regulations of the Department of Industrial Relations and RMC Chapter 2.60. Developer shall and shall cause each of its contractors (including the Prime Contractor, if applicable) and its and their subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 *et seq*. and implementing regulations of the Department of Industrial Relations. Copies of the currently applicable current per diem prevailing wages are available from the California Department of Industrial Relations website, www.dir.ca.gov. During the construction of the Project, Developer shall or shall cause its contractors (including the Prime Contractor, if applicable) to post at the Property the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City and other City Parties from and against any and all Claims arising out of the failure of Developer, the Prime Contractor and each other contractor or subcontractor to pay living wages pursuant to the RMC Chapter 2.60 and prevailing wages as determined pursuant to Labor Code Section 1720 *et seq*. and implementing regulations or to comply with the other applicable provisions of Labor Code Sections 1720 *et seq*. and implementing regulations of the Department of Industrial Relations in connection with construction or any other work undertaken in connection with the Project, which indemnification obligation shall be assumed by a Merchant Builder pursuant to a Merchant Builder Partial Assignment with respect to the Vertical Improvements it is constructing.

5.5.10.2 Maintenance of Payroll Records. Developer shall and shall cause its contractors (including the Prime Contractor, if applicable) and its and their subcontractors to maintain accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker and others employed on the Project. Each payroll record shall contain or be verified by a written declaration made under penalty of perjury, stating both of the following: (1) the information contained in the payroll record is true and correct, and (2) the employer has complied with the requirements of Labor Code Section 1771 (prevailing wage provisions),

Section 1811 (eight (8)-hour day, forty (40)-hour week provisions), and Section 1815 (overtime compensation) for any work performed by his or her employees on the Project, including the Offsite Improvements. Developer shall and shall require its contractors (including the Prime Contractor, if applicable) and its and their subcontractors to provide certified payroll records to the City each week, no later than ten (10) days after the end of a weekly pay period. Payroll records shall be maintained and made available in accordance with Labor Code Section 1776. In addition, Developer shall and shall require its contractors (including the Prime Contractor, if applicable) and subcontractors promptly to deliver to the City, upon request, documents verifying compliance with the Living Wage Ordinance, which include documents which evidence that each affected employee has been notified regarding the wages required to be paid pursuant to the Living Wage Ordinance. Notice of living wages shall also be posted at the Project construction site. The obligations hereunder shall be assumed by a Merchant Builder pursuant to a Merchant Builder Partial Assignment with respect to the Vertical Improvements it is constructing.

5.5.11 Sales and Use Tax Allocations.

5.5.11.1 Sub-Permit. Developer shall, in accordance with the special tax allocation procedures set forth in attached **Exhibit 5.5.11.1** (the "**Special Tax Allocation Procedures**"), require each of its contractors (including the Prime Contractor, if applicable) and its and their subcontractors to exercise their option to obtain a Board of Equalization sub-permit for the jobsite and allocate all eligible use tax payments to the City. Prior to beginning the construction of the Project, including the Offsite Improvements, Developer shall require each contractor (including the Prime Contractor, if applicable) and subcontractor to provide the City with either a copy of the sub-permit or a statement that use tax does not apply to their portion of the job.

5.5.11.2 Direct Payment. Developer shall, in accordance with the Special Tax Allocation Procedures, review the direct payment process established under California Revenue and Taxation Code 7051.3 and, if eligible, use the permit so that the local share of its use tax payments is allocated to City. Developer shall provide City with either a copy of the direct payment permit or a statement certifying ineligibility to qualify for the permit.

5.5.12 Senate Bill 854 Requirements.

5.5.12.1 Contractor Registration. If and to the extent applicable, Developer shall abide by SB 854 providing: (a) no contactor or subcontractor may be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the California Public Contract Code, or engage in the performance of any contract for public work, unless currently registered with DIR and qualified to perform public work pursuant to California Labor Code Section 1725.5 (California Government Code Section 1771.1(a)); (b) no contractor or subcontractor may be awarded a public works contract unless registered with the DIR to perform public work pursuant to Labor Code Section 1725.5 (Government Code Section 1771.1(b)); and (c) work performed on the project is subject to compliance monitoring and enforcement by DIR (Government Code Section 1771.4).

5.5.13 Job Site Notices. Developer shall or shall cause the Prime Contractor, if any, to post at the job site notices in compliance with Title I California Code of Regulations, Section 16451.

5.5.14 Ban the Box. The Project shall be subject to the City's Ordinance Banning the Requirement to Provide Information of Prior Criminal Convictions on All Employment Applications (RMC, Chapter 2.65).

5.5.15 Public Art. The Project shall be subject to the City's One-Percent for Public Art on Private Projects Program (RMC Chapter 12.62).

5.6 Project Performance, Payment and Warranty Security.

5.6.1 Initial Project Performance and Payment Security. If Developer elects not to deliver a Guaranty of Developer's obligations to Commence and Complete Construction of the First Site Improvement Phase pursuant to **Section 2.8.1** at the Closing, then at least five (5) business days prior to Closing, Developer shall furnish, or cause the Prime Contractor (if any) to furnish, to the City faithful performance and labor and material bonds or other form of security acceptable to the City securing Completion of Construction of the First Phase Master Infrastructure (including Offsite Improvements) and the First Phase Master Developer Amenities, each in an amount not less than one hundred percent (100%) of the respective scheduled cost of construction of the First Phase Master Infrastructure and the First Phase Master Developer Amenities, as set forth in the Approved Construction Budget, in form authorized by the Subdivision Map Act and otherwise approved by the City (which approval shall not be unreasonably withheld, conditioned or delayed) and which also meet the requirements of Developer's lenders or other institutions providing Project Financing, if any, and naming the City as co-obligee. The bonds and/or other forms of security required to be furnished pursuant to this **Section 5.6.1** are herein collectively referred to as the "**Initial Project Performance and Payment Security**."

5.6.2 Subsequent Project Performance and Payment Security. Prior to City issuance of a Site Improvement Permit or Building Permit, as applicable, for each subsequent Construction Phase (Site Improvement Phase or subphase or Vertical Improvement Phase), Developer shall furnish, or cause the Prime Contractor, if any, to furnish, to the City bonds or other form of security acceptable to the City securing Completion of Construction of each such Construction Phase, each in an amount not less than one hundred percent (100%) of the scheduled cost of construction of such subsequent Construction Phase as set forth in the Approved Construction Budget, in form authorized by the Subdivision Map Act and otherwise approved by the City (which approval shall not be unreasonably withheld, conditioned or delayed) and which also meet the requirements of Developer's (including without limitation Merchant Builder's) lenders or other institutions providing Project Financing, if any, and naming the City as co-obligee. The bonds and/or other forms of security required to be furnished pursuant to this **Section 5.6.2** are herein collectively referred to as the "**Subsequent Project Performance and Payment Security**." In connection with the transfer of portions of the Property to Merchant Builders pursuant to the terms of this Agreement, if reasonably

requested by Developer, City shall cooperate with Developer and Merchant Builder on the substitution and replacement of Subsequent Project Performance Payment Security (and corresponding subdivision improvement agreement) posted by Developer with new Subsequent Project Performance and Payment Security (and corresponding subdivision improvement agreement) posted by Merchant Builder, and subject to the assumption and satisfaction of all such obligations by the Merchant Builder, the release of Developer from the original Subsequent Project Performance and Payment Security (and corresponding subdivision improvement agreement), subject to the terms of this Agreement. Notwithstanding anything to the contrary in this **Section 5.6.2** or elsewhere in this Agreement, the City will not require Subsequent Project Performance and Payment Security pursuant to this Agreement with respect to any Vertical Improvements (except to the extent required as Vertical Construction Security), or with respect to any Historic Resources Work for which the City has obtained a Guaranty from an Approved Guarantor; provided, however, that the foregoing shall not waive or limit any obligation by the Developer (including without limitation the Original Developer, Historic Resources Assignee or any Merchant Builder) (i) to provide bonds or other form of security as required pursuant to Applicable Law (including, without limitation, the Subdivision Map Act) or any Project Approvals, or (ii) to provide the Initial Project Performance and Payment Security or Subsequent Project Performance and Payment Security, as applicable, for any Site Improvements, unless Developer has elected to provide a Guaranty with respect to such Site Improvements.

5.6.3 Site Improvement Warranty Security. At the time of the issuance by the City of a Certificate of Completion for any Site Improvement Phase (or, if City elects in its sole discretion, for a portion of a Site Improvement Phase), the Project Performance and Payment Security for such Site Improvement Phase shall be reduced to a maintenance bond in the amount of ten percent (10%) of the original Project Performance and Payment Security, which maintenance bond shall guarantee and warranty the Site Improvements in such Site Improvement Phase for a period of one (1) year following Completion of Construction of the applicable Site Improvement Phase (or, if the City approves in its sole discretion, following Completion of Construction of a portion of the Site Improvements within the applicable Site Improvement Phase (the "**Site Improvement Warranty Period**"), against any defective work or labor done or defective materials furnished with respect thereto. The maintenance bond shall be in form authorized by the Subdivision Map Act and otherwise approved by the City (which approval shall not be unreasonably withheld, conditioned or delayed) and shall also meet the requirements of Developer's lenders or other institutions providing Project Financing, if any, and naming the City as co-obligee (the "**Site Improvement Warranty Security**"). Notwithstanding any provision in this Agreement or the Site Improvement Warranty Security to the contrary, the Site Improvement Warranty Security shall survive Developer's Ownership Period for the Site Improvement Warranty Period. To the extent the Historic Resources Assignee or any Merchant Builder constructs any Site Improvements in connection with the Historical District or any Vertical Phase, as applicable, Historic Resources Assignee and the Merchant Builders shall provide the Site Improvement Warranty Security in accordance with the provisions of this **Section 5.6.3**.

5.7 Insurance Requirements. Prior to the Commencement of Construction of the Project and until Completion of Construction of the Project, Developer and each applicable Merchant Builder on the Project shall procure and maintain all insurance required pursuant to **Section 6.8**.

5.8 Entry by the City. Developer shall permit the City, through its respective council members, directors, officers, agents, or employees, at all reasonable times to enter into the Project (i) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement, and (ii), following Completion of Construction, to inspect the Project to determine that the same is in conformance with the requirements of this Agreement. The City shall not cause any delay in the construction or operation of the Project by its entry pursuant to this **Section 5.8**. Developer acknowledges that the City is not under any obligation to supervise, inspect, or inform Developer of the progress of, construction or operation of the Project and Developer shall not rely upon the City therefore. Any inspection by the City during construction of the Project is entirely for its purposes in determining whether Developer is in compliance with this Agreement and is not for the purpose of determining or informing Developer of the quality or suitability of construction. Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, the Prime Contractor (if any), each other contractor and subcontractor, and material suppliers. The rights granted to the City pursuant to this **Section 5.8** are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority. Notwithstanding any provision of this Agreement to the contrary, Developer shall not bear any liability to the City for injury to any City employee or representative occurring during the exercise of the City's right of entry pursuant to this **Section 5.8**, unless such injury arises out of the gross negligence or willful misconduct of Developer or any of its contractors or subcontractors.

5.9 Certificates of Completion.

5.9.1 Promptly after Completion of Construction of each of (i) a particular Construction Phase and (ii) the Project in accordance with those provisions of this Agreement relating solely to the obligations of Developer to construct the Project (including the dates for Commencing and Completing Construction of such Construction Phase and the Project, as applicable), the City shall issue to Developer, Historic Resources Assignee, or Merchant Builder, as applicable, an instrument so certifying, substantially in the applicable form attached hereto as **Exhibit 5.9.1-A** (Site Improvements), **Exhibit 5.9.1-B** (Vertical Improvements), and **Exhibit 5.9.1-C** (Project) (such certificate with respect to a particular Construction Phase being herein referred to as a "**Certificate of Construction Phase Completion**" and such certificate of completion with respect to the Project being herein referred to as a "**Certificate of Project Completion**"). The issuance of a Certificate of Completion shall constitute a conclusive determination that the covenants in this Agreement with respect to the obligations of Developer, its permitted successors and assigns, to construct the particular Construction Phase and the Project, as applicable (including the dates for the Commencement and Completion of Construction thereof), have been met. If the City does not issue a Certificate of Completion, the City shall, upon Developer's, the Historic Resources Assignee, or the applicable Merchant Builder's written request, specify in

writing to Developer or the Merchant Builder the reasons therefor and the steps that must be taken by Developer or the Merchant Builder in order for the City to issue such Certificate of Completion.

5.9.2 Each Certificate of Completion shall be in such form as will enable it to be recorded among the Official Records of Contra Costa County. This certification and determination shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code.

5.10 Liens and Stop Notices.

5.10.1 Developer shall not allow to be placed on the Site or any part thereof or any adjacent property any lien or stop notice arising from any work or materials performed or provided or alleged to have been performed or provided by the Prime Contractor, if any, or any other Developer's contractors, subcontractors, agents or representatives. If any such claim of lien or stop notice is given or recorded, Developer shall within thirty (30) days of such recording or service: (i) pay and discharge the same; or (ii) effect the release thereof by recording and delivering to the City a surety bond in sufficient form and amount.

5.10.2 Provided the requirements set forth in **Section 5.10.1** have not been met by Developer, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices after providing at least ten (10) days prior written notice to Developer of City's intent to satisfy such liens or stop notices. In such event, Developer shall be liable for and the City shall be entitled to reimbursement by Developer for such paid lien or satisfied stop notice.

5.11 Guarantor Update. If applicable, on or before April 1, July 1, October 1 and January 1 of each year until Completion of the applicable Improvement Phase, Developer shall cause each Guarantor of such Improvement Phase (if any) to provide to the City reasonable and customary written evidence from one or more bona fide financial institutions, substantiating that the Guarantor then satisfies the financial requirements to be an Approved Guarantor.

5.12 Right of Entry. In order to allow the Developer (including the Original Developer, Historic Resources Assignee, if any, and any Merchant Builders) access to portions of the Site that are not within the Property in order to complete, maintain and secure the Project, including without limitation the Offsite Improvements and certain Master Infrastructure and Master Developer Amenities and the Historic Core Work, the City hereby grants to Developer a right to enter the entire Site to construct the Project and perform any activities required or allowed under this Agreement which require such access, all in compliance with and on the terms and conditions of this Agreement. Developer shall at all times keep the Site free and clear of all liens, encumbrances, and clouds upon title that result or arise from the exercise of such party's right of entry.

5.13 Survival. The provisions of this **Article 5** shall survive the Close of Escrow and shall continue during the Term.

ARTICLE 6
CONTINUING DEVELOPER OBLIGATIONS

6.1 Applicability. Developer shall comply with the provisions of this **Article 6** throughout the Term, unless a different period of applicability is specified in a particular section of this **Article 6**.

6.2 Use of Property and Project. Developer shall use, or cause to be used, the Property and the Project during Developer's Ownership Period with respect to the Project, consistent with the Governing Documents, the Approved Final Plans, this Agreement and Applicable Law.

6.3 Management of Project.

6.3.1 At all times following the Closing Date and until Completion of the Project and termination of Developer's Ownership Period, all portions of the Project shall be managed by Developer in accordance with the applicable provisions of this **Article 6**.

6.3.2 Upon Completion of the Project, Developer shall cause management of the Project other than (i) the Historic Resources, which shall be maintained by Developer and Historic Resources Assignee, as applicable, and (ii) the publicly dedicated portion of Stenmark Drive, to be assumed by the Master HOA, effective upon termination of Developer's Ownership Period with respect to the Project (other than the Historic Resources), in accordance with the terms and conditions of the Final Master HOA Documents (as defined below), the applicable provisions of this **Article 6** and all other applicable provisions of the Governing Documents; provided, however, that nothing herein shall relieve or release Developer from any of its obligations under the Site Improvement Warranty Security, which obligations shall survive Developer's Ownership Period and the Term for the Site Improvement Warranty Periods, or for Developer's obligations to manage and maintain the Historic Resources.

6.3.3 Not later than the date of closing for the first sale or occupancy of any Commercial Unit or Residential Unit by Developer to the anticipated occupant thereof or any earlier date required by Applicable Law, Developer shall establish, in accordance with applicable provisions of the Davis Stirling Act and all other Applicable Law, a master association for all residential and commercial owners (the "**Master HOA**") to own (as applicable), perform and fund the ongoing management, accounting, operation, insurance, maintenance, repair and replacement of any and all private roadways, landscaping, recreation and open space, and other common areas and facilities within the Project, including common area as defined in the Davis Stirling Act (collectively, "**Project Common Area**"). In addition, with respect to each residential Vertical Phase, not later than the date of closing for the first sale by Developer of a Residential Unit to the anticipated occupant thereof or any earlier date required by

Applicable Law, Developer shall establish, in accordance with applicable provisions of the Davis Stirling Act and all other Applicable Law, one or more homeowners associations with respect to such Vertical Phase (each, a "**Vertical HOA**") to own (as applicable), perform and fund the ongoing management, accounting, operation, insurance, maintenance, repair and replacement of any and all private roadways, landscaping, recreation and open space within such Vertical Phase, and other common areas and facilities within such Vertical Phase, including common area as defined in the Davis Stirling Act, to the extent not managed by the Master HOA; provided, to the extent the provisions of any existing Vertical HOA contemplate annexation of the applicable Vertical Phase, Developer may annex the applicable Vertical Phase into such Vertical HOA. Unless otherwise mutually agreed upon in writing by the Parties following the Effective Date, the Project Common Area shall not include the Offsite Improvements or the Historic Resources; provided, however, that upon mutual agreement by the Developer and the City, the Final Master HOA Documents may include provisions to annex into the Project Common Area certain Offsite Improvements and to provide for the maintenance of such Offsite Improvements by the Master HOA, to be funded by Master HOA dues and/or real property assessments by the CFD as contemplated in **Section 4.6.2.8**; provided, however, in no event shall any such special district require contribution or payment by the City. The proposed final plan for establishment, governance and funding of each HOA and the proposed final governing documents of the Master HOA and each Vertical HOA (collectively, and as applicable to the Master HOA or the applicable Vertical HOA, the "**Proposed Final HOA Documents**"), including articles, bylaws, covenants, conditions and restrictions, and initial budget, including the proposed final revenue and expense projections for the applicable HOA (the "**Proposed Final HOA Revenue and Expense Projections**"), shall be timely submitted by Developer to the California Department of Real Estate ("**DRE**") for approval by the DRE in accordance with Applicable Law prior to the closing for the first sale by Developer of a Residential Unit. With respect to the Master HOA, the Proposed Final HOA Documents submitted by Developer to DRE shall be consistent with the City Approved Preliminary Master HOA Documents, and all Proposed Final HOA Documents shall be subject to the review and written approval of the City Manager and the City Attorney, which shall not be unreasonably withheld, conditioned or delayed. Not later than fifteen (15) business days prior to Developer's submittal of any Proposed Final HOA Documents to DRE, Developer shall submit the Proposed Final HOA Documents to the City. If Developer so submits to the City such Proposed Final HOA Documents and the City neither approves nor disapproves in writing such Proposed Final HOA Documents within fifteen (15) business days after they are submitted to the City, Developer may then submit written notice to the City indicating, in capitalized and boldfaced letters, that if the City fails to act on the request for approval of such Proposed Final HOA Documents within five (5) business days following the City's receipt of such notice, then such Proposed Final HOA Documents shall be deemed approved by the City in its proprietary capacity only pursuant to the provisions of this **Section 6.3.3**. If Developer so submits to the City such written notice and if the City fails to act on the request for approval of such Proposed Final HOA Documents within five (5) business days following the City's receipt of such notice, then such Proposed Final HOA Documents shall be deemed approved by the City pursuant to the provisions of this **Section 6.3.3**. The Proposed Final HOA Documents for

the Master HOA as approved by DRE and approved or deemed approved by the City are referred to herein as the "**Final Master HOA Documents**." Any review and approval or deemed approval by the City of the Proposed Final HOA Documents shall not constitute or be deemed to constitute any representation, warranty, assurance or guaranty of the legal, financial or other adequacy of any of the HOA Documents, for which Developer and the HOA shall remain fully responsible. The HOA Documents shall name the City as express third party beneficiary with the right (but not any obligation) to independently enforce the HOA's obligations to maintain the Project Common Area and other improvements thereunder. Developer hereby agrees to the inclusion of the requirements of this **Section 6.3.3** as a condition of any Project Approvals granted by City and, whether or not actually included as a condition of approval in the Project Approvals, such requirements shall be deemed included as such a condition of approval for all purposes under this Agreement.

6.4 Maintenance.

6.4.1 Obligation and Standard of Maintenance.

6.4.1.1 Prior to Project Completion. At all times following the Closing Date and prior to Completion of the Project and termination of Developer's Ownership Period with respect to the Project, Developer, at its sole cost, shall maintain all portions of the Property and Project in a neat, orderly, safe and secure condition (including but not limited to abatement and removal of weeds and rubbish and maintenance of perimeter fencing) and in accordance with industry health and safety standards and Applicable Law.

6.4.1.2 Following Project Completion. From and following Completion of the Project and (i) until termination of Developer's Ownership Period with respect to the Project Common Area (*i.e.*, upon transfer to the applicable HOA), Developer shall maintain the Project Common Area, and (ii) until the later of the termination of Developer's Ownership Period, Developer or applicable Merchant Builder constructing such Vertical Improvements shall maintain the Vertical Improvements, including external and internal appearance and functionality of such portions of the Project to a standard not less than the standard evidenced by other projects in the San Francisco Bay area comparable to the Project. Without limiting the preceding provisions of this **Section 6.4.1.2**, Developer shall maintain such portions of the Project in good repair and working order, and in a neat, clean, orderly and secure condition, including the walkways, driveways, alleyways and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements.

6.4.2 Violation of Maintenance Obligations. In the event that, at any time prior to the termination of Developer's maintenance obligations under **Sections 6.4.1.1** and **6.4.1.2**, the City is made aware of a condition in contravention or violation of Developer's maintenance obligations thereunder (although the City shall have no duty of inspection or other obligation to investigate the condition of the Project), then the City shall notify Developer in writing of such condition, and Developer shall have thirty (30) days from receipt of such notice to cure said condition, subject to Force

Majeure Delay, provided, however, that in the event such cure cannot reasonably be effected in such thirty (30) day period, then Developer shall have such additional time as may be reasonably required in order to effect such cure, not to exceed one hundred eighty (180) days. Notwithstanding the preceding sentence, the failure of the City to provide any such notice shall not be deemed a breach of this Agreement by the City and shall not relieve or release Developer from any of its maintenance or other obligations under this Agreement or Applicable Law. In the event Developer fails to cure such condition within such thirty (30)-day period (or longer period, if applicable), subject to Force Majeure Delay, such failure shall constitute a Developer Event of Default and the City shall have the right, but not any obligation and without derogation of their rights and remedies under the Site Improvement Warranty Security, to perform all acts necessary to cure such condition, and/or to take any other recourse at law or in equity the City may then have, and Developer shall pay to the City, within ten (10) days of written demand therefor, all costs incurred by the City in taking any of the foregoing actions. The Parties further agree that, without limitation, the foregoing rights and remedies conferred upon the City include the right to establish and enforce a lien or other encumbrance against the Property and the Project, but such lien shall be subject to liens and encumbrances previously recorded in accordance with this Agreement.

6.5 Taxes and Assessments. Following the Close of Escrow, Developer shall pay any and all real (including possessory interest) and personal property taxes, assessments and charges assessed, imposed or levied upon the Property and/or the Project and/or any personal property used in connection therewith or any interest in any of the foregoing attributable to Developer's Ownership Period (collectively, "**Project Taxes**"), and any and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed or imposed against Developer, or payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Site (including without limitation the Property) or the Project, and shall remove any such levy or attachment made on the Site, Property or the Project and payable by Developer pursuant to this **Section 6.5** or otherwise within thirty (30) days following the date of such levy or attachment. Developer shall have the right, however, to contest in good faith, any Project Taxes. In the event Developer exercises its right to contest any Project Taxes, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest. Developer's payment obligations under this **Section 6.5** shall apply only to amounts attributable to Developer's Ownership Period.

6.6 Non-Discrimination. Developer covenants for itself, its successors and assigns that there shall be no unlawful discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, gender identity, marital status, national origin, ancestry or disability in the sale, lease, sublease transfer, use, occupancy, tenure or enjoyment of the Project nor shall Developer or any person claiming under or through Developer (including the HOA) establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project.

6.7 Hazardous Materials.

6.7.1 Certain Covenants. Developer hereby covenants for itself, its successors and assigns at all times from and after the Closing, the following:

6.7.1.1 Obligations regarding On-going Remediation. Developer shall timely and diligently pursue and complete, to the satisfaction of the RWQCB and the Other Agencies (as applicable), and to the reasonable satisfaction of the City, the On-going Remediation and all corrective action required by the Notice of Corrective Action Requirement and the RWQCB Order, and shall obtain an NFA from the RWQCB with respect to the Site. Such obligations shall include, without limitation, all environmental clean-up and compliance obligations necessary to properly manage existing Hazardous Materials during development and construction of the Project, including the Offsite Improvements, in compliance with the RWQCB Order, the Notice of Corrective Action Requirement and all applicable Hazardous Materials Laws. Further, Developer shall timely and diligently pursue and obtain, to the reasonable satisfaction of the City, such approvals, amendments, waivers and/or releases from RWQCB under the Existing Restrictive Covenant as may be reasonably required to allow for the development and use of the Project as contemplated by this Agreement. Without limiting the foregoing, Developer shall be responsible for removal and closure of the tanks as shown on **Exhibit 6.7.1.1** in accordance with all applicable Hazard Materials Laws and shall obtain and NFA confirmation of the removals and closures, as applicable, from the RWQCB, DTSC, the City and the Other Agencies (as applicable).

6.7.1.2 No Hazardous Materials Activities. Developer shall not (a) cause or permit the Property or Project or any part thereof, or (b) cause the Site or any part thereof, to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials, except as may be incidental to the development, construction, and operation of the Project and the ordinary business and residential activities of owners, tenants, occupants, and users of the Project in accordance with the Project Approvals and is in compliance with all applicable Hazardous Materials Laws.

6.7.1.3 Hazardous Materials Laws Compliance. Developer shall comply with and keep and maintain the Property and the Project in compliance with, and shall not cause or permit the Property or the Project, or any part thereof, to be in violation of, any Hazardous Materials Laws. Without limiting the foregoing, Developer shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action or other remediation that may be required in connection with the Project pursuant to any Hazardous Materials Laws (including without limitation in connection with the On-going Remediation and pursuant to the RWQCB Order and/or as required by the Notice of Corrective Action Requirement) at Developer's sole cost, and the City and City Parties shall have no responsibility or liability with respect thereto.

6.7.1.4 Notices. Upon receiving actual knowledge of the same, Developer shall immediately notify the City in writing of the following matters: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions

instituted, completed or threatened against Developer, the Property or the Project pursuant to any applicable Hazardous Materials Laws; (B) any and all Claims made or threatened by any third party against Developer, the Property or the Project relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "**Hazardous Materials Claims**"); or (C) the presence of any Hazardous Materials in, on or under the Property or the Project. Developer shall be deemed to have notified the City under this **Section 6.7.1.4** if and to the extent such information was included within the Environmental Disclosures or the condition or circumstance described in (A), (B) or (C) of this **Section 6.7.1.4** existed when the Property was owned by the City or is the subject of the On-going Remediation, the Notice of Corrective Action Requirement or the RWQCB Order. The City shall have the right (but not obligation) to join and participate in, as a party if they so elect, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims, and Developer shall pay to the City their reasonable attorney's fees (including in-house attorneys' fees) incurred in connection therewith.

6.7.1.5 Remedial Action. Without the City's prior written consent, which shall not be unreasonably withheld, and not including any activities in connection with or related to the On-going Remediation, the Notice of Corrective Action Requirement or the RWQCB Order which shall be Developer's obligation from and after the Closing, Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Project (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims. Subject to the foregoing, Developer shall immediately take, at Developer's sole expense, all remedial action in response to the presence of any Hazardous Materials on, under, or about the Project required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials Claims.

6.7.1.6 Inspection by the City. Upon reasonable prior written notice to Developer, the City, its employees and agents, may (but shall not be obligated to) from time to time enter and inspect the Property and the Project for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property and/or Developer's compliance with the provisions of this Agreement regarding Hazardous Materials.

6.7.2 Indemnity. Without limiting the applicability or extent of any other indemnity obligations of Developer set forth elsewhere in this Agreement, from and after the Closing, Developer covenants for itself, its successors and assigns to indemnify, protect, hold harmless and defend (by counsel reasonably acceptable to the City) the City and all other City Parties, from and against any and all Claims directly or indirectly arising out of or attributable to, in whole or in part, any of the following (provided that if the City exercises its right to re-acquire or repurchase the Property pursuant to **Section 10.7**, then with respect to the portion of the Property re-acquired or repurchased

by the City the indemnification in this **Section 6.7.2** shall apply only to causes and events that occur or accrue after the Close of Escrow and prior to the effective date of reconveyance to the City):

(a) the failure of Developer from and after the Closing, to comply with any Hazardous Materials Law relating in any way whatsoever to the use, handling, treatment, presence, release, threatened release, discharge, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Property or the Project;

(b) the use, handling, treatment, presence, release, threatened release, discharge, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Property or the Project occurring after the Closing; or

(c) any activity carried on or undertaken on or off the Project, subsequent to the Closing, and whether done so by Developer or any successor in title or any employees, agents, contractors or subcontractors of Developer or any successor in title, or any third persons at any time subsequent to the Closing occupying or present on the Property or the Project (other than, as applicable, the City or any other City Parties), in connection with the use, handling, treatment, presence, release, threatened release, discharge, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials at any time located or present on or under the Property or the Project.

The foregoing indemnity obligations of Developer shall further apply to the On-going Remediation and to matters subject to the RWQCB Order and/or the Notice of Corrective Action Requirement, and to any residual contamination on or under the Property or the Project, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this **Section 6.7.2** shall survive the Closing and expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

6.8 Insurance Requirements.

6.8.1 Required Coverages. During Developer's Ownership Period with respect to the Project or such longer period specified in the Schedule of Insurance Requirements (as defined below), Developer, at its sole cost, shall procure and maintain in force with respect to the Property and the Project the insurance policies and coverages set forth in this **Section 6.8** and shall comply with all other insurance requirements set forth in this **Section 6.8**.

6.8.1.1 Property Insurance. Property insurance with respect to the completed Project, covering all risks of loss included in a "special form" or "all risk" insurance policy, and including coverage for earthquake (but only if it is required in connection with any Conventional Construction Loan or other Project Loan and if it is

commercially available and affordable at a reasonable price and with a reasonable deductible) and flood, for one hundred percent (100%) of the replacement cost value thereof, with deductible, if any, acceptable to the City (except as hereafter provided), naming "the City and/or the City's designee and City and their successors and assigns" as a Loss Payee, as their interests may appear; *provided however*, that flood insurance shall (i) be required only if and to the extent available at commercially reasonable rates either from recognized insurance carriers or through the National Flood Insurance Program, and (ii) be subject to a deductible not exceeding the greater of One Million Dollars ($1,000,000) or such greater amount as may be necessary to make such flood insurance coverage available at commercially reasonable rates as reasonably determined by Developer.

6.8.1.2 Liability and Other Insurance. Such policies of liability, builder's risk and other insurance with such coverages and amounts set forth in **Exhibit 6.8.1.2** attached hereto (the "**Schedule of Insurance Requirements**"). All references in the Schedule of Insurance Requirements to "City" shall be deemed to refer to "the City and/or the City's designee and City and their successors and assigns" and all references therein to "Contractor" shall be deemed to refer to "Developer."

6.8.2 Contractor Requirements. Developer shall cause its contractors (including the Prime Contractor, if applicable) and its and their subcontractors performing work on the Project to maintain insurance meeting all applicable requirements set forth in the Schedule of Insurance Requirements. Developer shall cause the Master HOA to maintain insurance meeting all applicable requirements set forth in the Schedule of Insurance Requirements.

6.8.3 General Requirements.

6.8.3.1 All policies of liability insurance required hereunder shall be written on an occurrence basis unless otherwise approved by the City in its sole and absolute discretion and shall name the City, City and their respective board members, council members, directors, officers, agents, and employees as additional insureds.

6.8.3.2 All policies of insurance shall be endorsed to provide thirty (30) days' prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the City pursuant to **Section 11.1**.

6.8.3.3 Not later than the Closing, and prior to initiating any work on the Project, and thereafter upon the City's request at any time during the Term, Developer shall provide, or cause to be provided, to the City certificates of insurance, in such form and with such insurers admitted in California and otherwise reasonably acceptable to the City, evidencing compliance with the requirements of this **Section 6.8**.

6.9 State Historic Preservation MOA. Developer hereby covenants for itself, its successor and assigns at all times from and after the Closing to comply with all requirements of the State Historic Preservation MOA and all other federal, state and local requirements for historic preservation and adaptive reuse in the restoration, construction, use and maintenance of

the Historic Resources, and to perform all obligations of the City under the State Historic Preservation MOA.

6.10 Covenants Running with Land. The covenants and other provisions of this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, and their respective successors and assigns, and shall run with the land comprising the Property. The City is deemed the beneficiary of the covenants and other provisions of this Agreement for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants and other provisions of this Agreement have been provided. The covenants and other provisions of this Agreement shall run in favor of the City without regard to whether the City has been, remains or is an owner of any land or interest in the Property or any other property within the Site. Subject to the limitations on remedies set forth in **Article 10**, the City shall have the right, upon a Developer Event of Default, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such Developer Event of Default to which it is entitled under the terms of this Agreement.

ARTICLE 7
ASSIGNMENT AND TRANSFERS

7.1 Definitions. As used in this **Article 7**, the term "**Transfer**" means:

7.1.1 Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Project, the Property or any part thereof or any interest therein or any contract or agreement to do any of the same; or

7.1.2 Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer or any contract or agreement to do any of the same; or

7.1.3 Any change in Control of Developer; or

7.1.4 Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer; or

7.1.5 The leasing of part or all of the Property or the improvements thereon; provided, however, that the following shall not be deemed a "Transfer" for purposes of this **Article 7:**

7.1.5.1 following the issuance of Certificate of Occupancy for the applicable Residential Units, leases of any individual Residential Units (provided they are less than all Residential Units within the Project) by a Residential Unit Owner to tenant occupants; and

7.1.5.2 following the issuance of Certificate of Occupancy for the applicable commercial space, space leases of (or licenses, concessions or occupancy agreements for) any commercial space in the Historic District, or any retail or neighborhood serving uses outside of the Historic District, in each case with a term of less than thirty-five (35) years; and

7.1.5.3 any master lease(s) of all or any portion of the buildings and land in the Historic District to a master tenant entity that is entered into solely for the purpose of selling to one or more tax credit investor(s) any available federal income tax credits for historic rehabilitation ("**Historic Tax Credits**") pursuant to Internal Revenue Code §§ 38 and 47, and 16 U.S.C.A. §§ 470 et seq. and applicable and successor statutes and regulations thereunder, subject to the City's reasonable confirmation of such purpose.

7.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of acquisition of the Property and development and operation of the Project and its subsequent use in accordance with the terms hereof. Original Developer acknowledges that the qualifications and identity of Original Developer are of particular concern to the City, in view of:

7.2.1 The importance of the development of the Property to the general welfare of the community;

7.2.2 The reliance by the City upon the unique qualifications and ability of Original Developer to serve as the catalyst for development of the Property and upon the continuing interest which Original Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the City in the development of the Property;

7.2.3 The fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of Original Developer or the degree thereof is for practical purposes a transfer or disposition of the Property;

7.2.4 The fact that the Property is not to be acquired or used for speculation, but only for development and disposition by Original Developer, and its permitted successors and assigns, in accordance with the Agreement; and

7.2.5 The importance to the City and the community of the standards of use, operation and maintenance of the Property.

Original Developer further acknowledges that it is because of such qualifications and identity that the City is entering into this Agreement with Original Developer and that Transfers are permitted only as expressly provided in this Agreement.

7.3 Restrictions on Transfers. The restrictions on Transfers set forth in this **Article 7** shall apply throughout the Term; provided, however, that any Transfers of Affordable Onsite Units shall continue to be governed and restricted by the applicable City Regulatory Agreement and the applicable Notice of Affordability Restrictions in accordance with the terms thereof.

Except as expressly permitted in this **Article 7**, Developer represents and agrees that Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer (other than a Permitted Transfer), either voluntarily or by operation of law, without the prior written approval of the City, which may be granted, withheld or conditioned in the City's sole and absolute discretion. Any Transfer or attempted Transfer made in contravention of this **Article 7** shall be null and void and of no force or effect and shall be deemed to be a Developer Event of Default under this Agreement whether or not Developer knew of or participated in such Transfer, provided that if a Transfer occurs without Developer's knowledge and is capable of being cured, then a Developer Event of Default shall not occur if the Transfer is cured within the applicable cure period in **Section 10.4.2**.

7.4 Permitted Transfers. Notwithstanding the provisions of **Section 7.3**, after the Closing the Transfers set forth below in this **Section 7.4** (each a "**Permitted Transfer**") shall be permitted and, subject to the provisions of this **Section 7.4**, are hereby approved by the City:

7.4.1 Any Transfer of any residential parcel or subdivision of the Property to a Merchant Builder of Residential Units for the purpose of constructing Residential Units and related improvements thereon, subject to the terms and conditions of **Section 7.7** below.

7.4.2 Any Transfer of any commercial lot on the Property to a commercial Merchant Builder for the purpose of constructing Commercial Units and related improvements thereon, subject to the terms and conditions of **Section 7.7** below. In the case of a Transfer of a newly constructed commercial lot (but not within the Historic Resources) by Historic Resources Assignee to a commercial Merchant Builder, for purposes of compliance with **Section 7.7** all references therein to "Original Developer" shall be deemed to refer to Historic Resources Assignee (or its previously permitted or approved assignee, if any).

7.4.3 Any Transfer of the portion of the Property containing the Historic Resources (except for the Retained Historic District Improvements) to Orton, or to an entity in which Orton and Original Developer are joint venturers, for the purpose of performing the Historic Resources Work, subject to the terms and conditions of **Section 7.8** below.

7.4.4 Any Transfer creating a Permitted Security Interest pursuant to the applicable Approved Financing Plan and **Section 8.1**.

7.4.5 Any Transfer directly resulting from the foreclosure of a Permitted Security Interest or the granting of a deed in lieu of foreclosure of a Permitted Security Interest, and any subsequent Transfer by the Holder thereof following such foreclosure or deed in lieu of foreclosure.

7.4.6 Any Transfer of an easement interest to utility providers to facilitate the delivery of utilities to the Project, or any dedication or conveyance of portions of the Property to the City or, if required by the Project Approvals, to any other governmental agency in connection with the Project.

7.4.7 Any Transfer of the Project Common Area or any portion thereof to an HOA following receipt of the Certificate of Completion for the applicable Site Improvement Phase, or for a portion of the Project Common Area if the City elects in its sole discretion to issue a Certificate of Completion for a portion of the Project Common Area prior to the Site Improvement Phase in order to allow earlier conveyance to the HOA.

7.4.8 Any Transfer of a Residential Unit by means of sale or lease to the anticipated or actual occupant thereof (or to a buyer intending to lease such Residential Unit to the actual occupant thereof) in accordance with the provisions of this Agreement.

7.4.9 Any Transfer or series of Transfers of Membership Interests in Original Developer and/or the Developer Members of Original Developer, provided that, after giving effect to such Transfers in the aggregate, JNI LLC or its Developer Affiliates (i) retain Control of the Original Developer and/or a Developer Member of Original Developer; and (ii) are the development manager, managing member, or general partner, as applicable, responsible for the day-to-day management of the development of the Project.

7.4.10 Any Transfer by Original Developer to a Developer Affiliate, provided that, after giving effect to such Transfer, JNI LLC or its Developer Affiliates (i) retain Control of the Original Developer and/or a Developer Member of Original Developer; and (ii) are the development manager, managing member, or general partner, as applicable, responsible for the day-to-day management of the development of the Project.

7.4.11 Any Transfer made solely for the purposes of obtaining and selling Historic Tax Credits to a tax credit investor.

7.4.12 Any Transfer of all or any portion of the Historic District or any direct or indirect interest therein after receipt of a Certificate of Completion and Certificate of Occupancy for the Historic Resources Work with respect to the property or ownership interest covered by the Transfer.

7.4.13 Any Transfer of a Commercial Unit outside the Historic Core or any direct or indirect interest therein after receipt of a Certificate of Completion and Certificate of Occupancy for the Commercial Unit with respect to the property or ownership interest covered by the Transfer.

Other than with respect to a Permitted Transfer resulting from a Foreclosure pursuant to **Section 7.4.5** hereof, which requires no notice to the City (provided that a deed in lieu of foreclosure or subsequent Transfer by the Holder after foreclosure will require prior notice), Developer shall notify the City of a Permitted Transfer at least thirty (30) days prior to the proposed permitted transfer; provided such notice may be provided within ten (10) days after transfer in case of Permitted Transfer pursuant to **Section 7.4.8** above. In addition, the City shall be entitled to review such documentation as may be reasonably required by the City to confirm

that the Transfer is a Permitted Transfer. The transferee of a Permitted Transfer (or, in the case of a change in legal entity ownership that constitutes a Permitted Transfer, the entity with respect to which the Permitted Transfer has occurred), or any other Transfers approved in advance in writing by the City under this **Article 7**, is herein referred to as a "**Permitted Transferee**."

7.5 Other Transfers with the City Consent. All proposed Transfers other than Permitted Transfers shall be subject to the City's consent in its sole and absolute discretion (except as otherwise provided in **Section 7.4.3** above) in accordance with the provisions of this **Section 7.5**. Developer shall notify the City of any proposed Transfer (excluding any Permitted Transfer) at least forty-five (45) days prior to the anticipated completion date for any such Transfer. The City shall act on any proposed Transfer within fifteen (15) business days after receipt from Developer of a written request for approval of the proposed Transfer and/or any related Transfer Documents (as applicable), including such financial information and other documentation (which may include a proposed assignment and assumption agreement) which the City, in its reasonable business judgment, determines is necessary to evaluate the proposed Transfer and the proposed transferee's experience, reputation, qualifications and financial capacity (each a "**Request for Consent to Transfer**"). If the City neither approves or disapproves in writing the Request for Consent to Transfer within such fifteen (15) business day period, the Request for Consent to Transfer shall be deemed disapproved by the City as of the expiration of such fifteen (15) business day period; provided, Developer may then provide written notice to the City, within five (5) business days following expiration of such fifteen (15) business day period, indicating, in capitalized and boldfaced letters, that if the City fails to act on the Request for Consent to Transfer within ten (10) business days following the City's receipt of such second notice, then the Request for Consent to Transfer shall be deemed approved by the City, and if the City fails to act on the Request for Consent to Transfer within such ten (10) business day period, the proposed Transfer shall be deemed approved.

7.6 Effect of Transfer. Except as provided in **Section 7.7 or 7.8** below, no Permitted Transfer or other Transfer pursuant to this Agreement shall relieve or release the transferor Developer from any of its obligations or liabilities under this Agreement, unless approved in writing by the City in its sole and absolute discretion prior to such Transfer.

7.7 Merchant Builder Partial Assignment. Notwithstanding anything to the contrary, if Original Developer proposes to sell to any Merchant Builder a portion of the Property consisting of one or more Vertical Improvement Phases, subject to the execution and delivery of a Partial Assignment of Disposition and Development Agreement in the form of **Exhibit 7.7** attached hereto, with any changes to such form approved by the City in City's reasonable discretion (the "**Merchant Builder Partial Assignment**") such Merchant Builder shall be responsible for complying with the provisions of this Agreement with respect to the portion of the Property purchased by such Merchant Builder, and Original Developer shall be released from such obligations with respect to the portion of the Property transferred to such Merchant Builder to the extent set forth in the partial assignment of this Agreement; provided, however, Original Developer shall in all cases retain responsibility for all indemnity obligations set forth herein to the extent of causes and events that occurred or accrued prior to the effective date of the Merchant Builder Partial Assignment except to the extent such obligations are expressly assumed by the Merchant Builder in the Merchant Builder Partial Assignment. Without limiting the

foregoing, any proposed Merchant Builder Partial Assignment shall be further subject to the following terms and conditions:

7.7.1 The proposed Merchant Builder shall be subject to the City Manager's prior written approval. The City shall not unreasonably withhold approval of a proposed Merchant Builder if the City determines, in its reasonable discretion and based on sufficient documentation provided by Original Developer, that the proposed Merchant Builder (a) exists in good standing and is qualified to do business within the State of California, (b) is publicly traded or is generally recognized as a reputable, established developer of the product type, size and nature of the proposed Vertical Improvements, either nationally or in Northern California, (c) has experience and is capable of timely completing projects of similar scope and quality as the applicable Vertical Phase, and (d) is capable of either (i) timely funding the costs of acquisition of the Vertical Improvement Phase and development and construction of the associated Vertical Improvements from its own funds, or (ii) qualifying for, and timely receiving, commercially reasonable financing for the acquisition, development and construction of the applicable Vertical Phase from a reasonably acceptable financial institution or equity source, and (e) if applicable, has the experience and financial resources to perform the Original Developer's obligations hereunder that are assumed by the Merchant Builder (if any). If the City Manager reasonably determines that the Merchant Builder is not sufficiently capitalized to perform the obligations to be assumed pursuant to the Merchant Builder Partial Assignment, as a condition to approval of the Merchant Builder the City Manager may require that the Merchant Builder provide Vertical Construction Security in an amount reasonably required to provide sufficient capitalization in the City Manager's reasonable judgment. For purposes of this **Section 7.7.1**, a Merchant Builder will be deemed sufficiently capitalized if the Merchant Builder provides to the City reasonable and customary written evidence from one or more bona fide financial institutions, or otherwise reasonably acceptable to the City, substantiating that such entity has on hand (in the aggregate) cash, marketable securities and other liquid assets with a present value not less than the greater of Twenty Million Dollars ($20,000,000.00) and fifty percent (50%) of the then outstanding amount of unpaid Project Costs for the applicable Vertical Improvement Phase.

7.7.2 The Original Developer has constructed the Master Infrastructure and Offsite Improvements necessary to serve the Vertical Improvement Phase, and all work necessary to create developable lots within the Vertical Improvement Phase including, without limitation, all required infrastructure as needed to serve the Vertical Improvement Phase in accordance with this Agreement and the Approved Final Plans, and the Merchant Builder has released the City from all liability and responsibility for the failure to complete, the condition of, and any future modifications made by Original Developer to any Site Improvements (including without limitation any Master Infrastructure, Master Developer Amenities and Offsite Improvements that are not complete at the time of the assignment); provided, however the foregoing shall not require Original Developer to complete infrastructure improvements and utilities within the applicable Vertical Improvement Phase so long as such improvements are required to be performed by the Merchant Builder pursuant to the Project Approvals for the applicable Vertical Phase and/or are assumed by the Merchant Builder pursuant to the B

Map and/or a binding Subdivision Improvement Agreement for the applicable Vertical Phase, duly executed by the Merchant Builder and the City.

7.7.3 The Merchant Builder shall assume all obligations under this Agreement with respect to the development, construction, maintenance, operating and use of the applicable Vertical Improvement Phase and associated Vertical Improvements, pursuant to the Merchant Builder Partial Assignment. Such assumed obligations will include, without limitation, Original Developer's obligations under the PLA with respect to the applicable Vertical Improvements, which PLA will be partially assigned by Original Developer and assumed by the Merchant Builder pursuant to an agreement reasonably acceptable to the City simultaneously with the Merchant Builder Partial Assignment.

7.7.4 If not previously provided by the Original Developer, as a condition to the Partial Assignment and the City's approval of same (except as the City Manager may otherwise agree), the Merchant Builder shall submit, and the City shall approve, the following:

7.7.4.1 A vesting tentative map for the Vertical Phase, showing individual residential and commercial lots (a "**B Map**"), and Proposed Final HOA Documents for the applicable Vertical HOA ("**Vertical HOA Documents**"), which will be subject to City approval in accordance with **Section 6.3.3**.

7.7.4.2 the Proposed Vertical Improvements Financing Plan (including construction budget and evidence of financing commitments) for the applicable Vertical Improvements, which will be subject to City approval in accordance with the procedure in **Section 2.5.4**.

7.7.4.3 the Proposed Vertical Improvement Plans for the construction of the applicable Vertical Improvements shall have been approved by the City in its regulatory capacity prior to the Partial Assignment.

7.7.4.4 the Initial Project Performance and Payment Security for the applicable Site Improvements for the applicable Vertical Improvement Phase, as required by **Section 5.6**.

7.7.4.5 if the Proposed Vertical Improvements Financing Plan indicates the Merchant Builder intends to finance the applicable Vertical Improvements with a Conventional Construction Loan, the Conventional Construction Loan Closing with respect to such Phase shall be in a position to occur concurrently with the Merchant Builder Partial Assignment.

7.7.4.6 if required pursuant to **Section 7.7.1**, a completion guaranty from an Approved Guarantor, bonds, letters of credit, certificates of deposit and/or other form(s) of adequate security for the faithful performance of the Merchant Builder's obligations that provides reasonable assurance regarding the obligation for the Completion of the Vertical Improvements, in an amount required to cause the Merchant Builder (after taking into account such additional security) to be sufficiently capitalized, as

proposed by Developer and approved by the City Manager (any of the foregoing as approved by the City, "**Vertical Construction Security**"; provided that if the Merchant Builder intends to Complete the Vertical Improvements in tranches rather than at one time, then the Merchant Builder will provide Vertical Construction Security prior to the Commencement of Construction of each tranche (rather than with respect to the entire Vertical Improvement Phase), provided the Merchant Builder proposes the proposed schedule and phasing of such tranches as part of the supplemental Schedule of Performance provided pursuant to **Section 7.7.4.7** below and provides acceptable Vertical Construction Security for the first tranche as a condition to the Merchant Builder Partial Assignment.

7.7.4.7 a supplemental Schedule of Performance for the Vertical Improvement Phase, in content and detail acceptable to the City Manager; provided that such Schedule of Performance shall be commercially reasonable taking into account the customs and practices of the Merchant Builder and homebuilding industry but shall in any event address equivalent performance milestones relevant to the Vertical Improvement Phase as are addressed in the Schedule of Performance for the Site Improvement Phases.

7.8 Historic Resources Partial Assignment. Notwithstanding anything to the contrary, if Original Developer proposes to sell to Historic Resources Assignee the Historic Core, subject to the execution and delivery of a Partial Assignment of Disposition and Development Agreement in the form of **Exhibit 7.8** attached hereto, with any changes to such form approved by the City in City's reasonable discretion (the "**Historic District Partial Assignment**"), the Historic Resource Assignee shall be responsible for complying with the provisions of this Agreement with respect to the portion of the Property purchased by the Historic Resource Assignee to the extent such obligations are expressly assigned to, and assumed by, the Historic Resources Assignee in the Historic District Partial Assignment (the "**Assumed Historic District Obligations**"). The Original Developer shall be released from the Assumed Historic District Obligations but shall retain all obligations hereunder not so expressly assumed; provided, however, Original Developer shall in all cases retain responsibility for all indemnity obligations set forth herein to the extent of causes and events that occurred or accrued prior to the effective date of the Historic District Partial Assignment except to the extent such obligations are expressly assumed by the Historic Resource Assignee in the Historic District Partial Assignment. Without limiting the foregoing, any proposed Historic District Partial Assignment shall be further subject to the following terms and conditions:

7.8.1 Orton is hereby approved as the Historic Resources Assignee, so long as J.R. Orton III satisfies the Guarantor Liquidity Requirement and the Guarantor Net Worth Requirement and serves as the Guarantor for the Historic Resources Work. Any other proposed Historic Resources Assignee and associated Guarantor shall be subject to the City Manager's prior written approval and satisfaction of the other requirements to qualify as an Approved Guarantor. The City shall not unreasonably withhold approval of a proposed Historic Resources Assignee if the City determines, in its reasonable discretion and based on sufficient documentation provided by Original Developer, that the proposed Historic Resources Assignee (a) exists in good standing and is qualified to do business within the State of California, (b) is publicly traded or is generally recognized as a reputable, established developer of the projects that are similar

to the Historic District, (c) has experience and is capable of timely completing projects of similar scope and quality as the Historic Resources Work, and (d) is capable of either (i) timely funding the costs of acquisition of the portion of the Historic District to be transferred and development and construction of the associated Historic Resources Work and the obligations assumed from the Original Developer from its own funds, or (ii) qualifying for, and timely receiving, commercially reasonable financing for the acquisition, development and construction of the applicable Historical Resources Work and the obligations assumed from the Original Developer from a reasonably acceptable financial institution or equity source.

7.8.2 Historic Resources Assignee shall assume all obligations under this Agreement with respect to the development, construction, maintenance, operating and use of the portion of the Historic Core transferred, pursuant to the Historic District Partial Assignment. Such assumed obligations will include, without limitation, Original Developer's obligations under the PLA with respect to the applicable Vertical Improvements, which PLA will be partially assigned by Original Developer and assumed by the Historic Resources Assignee pursuant to an agreement reasonably acceptable to the City simultaneously with the Historic District Partial Assignment.

7.8.3 If not previously provided by the Original Developer, as a condition to the Partial Assignment to the Historic Resources Assignee, the following conditions apply:

7.8.3.1 The portion of the Historic District to be transferred must constitute a legal lot in accordance with the Subdivision Map Act.

7.8.3.2 The City shall have received a conceptual financing plan including a pro forma capitalization table including both debt and equity amounts, with non-binding letters of interest from banks, if applicable. In addition, prior to Commencement of Construction of any Historic Core Work or other Vertical Improvements, the Historic Resources Assignee shall agree to provide a Proposed Vertical Improvements Financing Plan (including construction budget and evidence of financing commitments) for the applicable Historic Core Work and Vertical Improvements, which will be subject to City approval in accordance with the procedure in **Section 2.5.4**.

7.8.3.3 The City shall have received conceptual plans for the anticipated core and shell work for the Historic Resources Work in the Historic Core as provided in **Section 2.6.1**. In addition, prior to Commencement of Construction of any Historic Core Work or other Vertical Improvements, the Proposed Vertical Improvement Plans for the construction of the applicable Vertical Improvements shall have been approved by the City in its regulatory capacity.

7.8.3.4 If both (i) Orton is not the Historic Resources Assignee, and (ii) J.R. Orton III does not provide a completion guaranty pursuant to **Section 7.8.3.5** below, then prior to Commencement of any Historic Core Work or other Vertical Improvements, the Historic Resources Assignee shall agree to provide the Initial Project

Performance and Payment Security for the applicable Site Improvements for the applicable Vertical Improvement Phase, as required by **Section 5.6**.

7.8.3.5 Prior to Commencement of Construction of any Historic Core Work or other Vertical Improvements, the Historic Resources Assignee shall agree to provide a completion guaranty from an Approved Guarantor in the form of the Guaranty, guaranteeing the Historic Resource Assignee's obligations that provides reasonable assurance regarding the obligation for the Completion of the Historic Core Work, Vertical Improvements and any Site Improvements assumed from the Original Developer, in the amount of 100% of the budgeted cost of Completion of the Historic Core Work, other Vertical Improvements and any such Site Improvements, as proposed by Developer and approved by the City Manager (any of the foregoing as approved by the City, the "**Historic Resources Work Construction Security**").

7.8.3.6 If the Schedule of Performance does not address required time periods for the Historic Resources Work, a supplemental Schedule of Performance for the applicable Vertical Improvement Phase, in content and detail acceptable to the City Manager.

7.8.4 For the purposes of determining the Original Developer's documentary transfer tax obligation to the City from the sale or other Transfer of the Historic Core to the Historic Resources Assignee, the documentary transfer tax shall be computed by multiplying the applicable tax rate as set forth in Article XIII of the RMC by the new assessed value of the Historic Core as determined by a final non-appealable assessment lawfully made by the Contra Costa County Assessor ("**Assessor**") as of the date of such sale or Transfer, with no deductions, credits, or offsets of any kind whatsoever. The Parties acknowledge that the City claims that the cash consideration for any sale or Transfer of the Historic Core by the Original Developer to the Historic Resources Assignee may not represent the fair market value of the Historic Core, and also that Original Developer disputes such claim. Each of Original Developer and Historic Resources Assignee reserves any and all legal rights to challenge or appeal any such new assessment of the Historic Core by the Assessor for property tax purposes and any determination by the City or County of the fair market value of the Historic Core for purposes of determining any applicable documentary transfer tax, including without limitation the right to pay any such property tax assessment or documentary transfer tax without waiving the right to appeal the same and thereafter to file one or more claim(s) for refund(s) thereof. Original Developer's payment to the City of the documentary transfer tax for the Historic Core with respect to any sale or Transfer to Historic Resources Assignee shall not be due or payable until the thirtieth (30th) day after the later of the following: (i) the Assessor's delivery to Historic Resources Assignee and Original Developer of a new notification of assessed value of the Historic Core and the expiration of all applicable appeals periods for the filing of an appeal therefrom without the filing of any such appeal; or (ii) if an appeal from such notification of assessed value is timely filed by or on behalf of Historic Resources Assignee, the final resolution of such appeal without any further appeal therefrom being timely filed.

7.9 Density Increase Payment. If any Building Permit for Vertical Improvements (including without limitation any Historic Resources Work), together with all Building Permits previously issued for the Project (including all Vertical Phases and including, without limitation, any Historic Resources Work) that have not expired, authorizes the construction of New Residential Units (as defined below) in excess of 1260 for the entire Project (any such units that exceed 1260, the "**Excess Units**"), then as a condition to issuance of a Building Permit for an Excess Unit, Developer shall pay to the City a "**Density Increase Payment**" equal to the product of (i) the number of Excess Units, and (ii) Twenty-Five Thousand Dollars ($25,000.00). "**New Residential Units**" means residential units in newly constructed buildings or additions to existing buildings within the Project, and does not include residential units created in the existing Historic Resources that do not increase the square footage of the existing buildings. For avoidance of doubt, if Building Permits issued prior to a Merchant Builder Partial Assignment, Historic Resources Partial Assignment or Vertical Improvement Plan approval already have authorized 1260 or more New Residential Units in the aggregate, then the Density Increase Payment will be $25,000.00 for each New Residential Unit authorized by a Building Permit for the applicable Vertical Phase (including without limitation Historic Resources Work).

ARTICLE 8
SECURITY FINANCING AND RIGHTS OF HOLDERS

8.1 No Encumbrances Except for Project. Subject to the provisions of this **Article 8**, mortgages, deeds of trust, sale and lease-back, or any other appropriate form of security interest or conveyance required to secure Project Financing ("**Security Interest**") are permitted if and to the extent such Security Interest is solely and exclusively for the purpose of securing Project Loans and/or other bona fide loans of funds to Developer to be used by Developer solely and exclusively for financing or refinancing the acquisition, construction, reconstruction or rehabilitation of the Project, any and all costs (including without limitation interest and fees) associated with such financing, and any other expenditures necessary and appropriate to develop, own and operate the Property in accordance with an Approved Final Financing Plan and other provisions of this Agreement ("**Permitted Security Interest**"). Developer shall notify the City in writing in advance of any Security Interest proposed to be granted by Developer or otherwise attaching voluntarily or involuntarily to the Property or the Project or any portion thereof or interest therein. Other than a Permitted Security Interest, Developer shall not enter into any Security Interest without the prior written approval of the City and shall promptly notify the City of the creation or attachment of any Security Interest. Developer shall provide the City with a copy of the deed of trust or mortgage evidencing any Permitted Security Interest within ten (10) days following its recording in the Official Records of the County Recorder.

8.2 Holder Not Obligated to Construct Project. The Project Lender or other holder of any Permitted Security Interest, including any such holder who obtains title to Developer's interest in the Property or the Project or any portion thereof as a result of foreclosure proceedings or transfer in lieu of foreclosure (each, a "**Holder**") shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion (unless the Holder is also the Guarantor), unless the Holder expressly assumes such obligation by written notice to the City or by written agreement with the City. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to

devote the Property or the Project or any portion thereof to any uses or to construct any Improvements thereon other than those uses and Improvements expressly and specifically authorized by this Agreement.

Whether or not a Holder elects to assume Developer's obligation to construct such improvements, nothing in this Agreement shall be construed to permit such Holder to construct any Improvements other than the Improvements expressly and specifically authorized under this Agreement. If the Holder elects to assume Developer's obligation to construct the Project, the Holder shall not be bound by the Schedule of Performance, provided that, upon assuming such obligation, the Holder and the City shall execute and append hereto a new mutually agreeable Schedule of Performance and the Holder shall complete the Project in accordance with such new Schedule of Performance. If, after acquiring Developer's interest in the Property or the Project, the Holder elects not to assume Developer's obligation to complete the Project, the Holder shall so notify the City in writing within one hundred eighty (180) days after the Holder's acquisition of the Developer's interest in the Property or the Project (or such longer period of time as may be approved by the City Manager), and, unless the City exercises its option to acquire the Holder's interest in the Property pursuant to **Section 8.4** below, the Holder shall use good faith efforts to sell such interest within one hundred eighty (180) days after delivery of such notice to the City to a buyer who will be obligated to complete the Project on the terms and conditions of this Agreement.

8.3 Notice of Default to Holders and Right to Cure. Whenever the City shall deliver any City Notice of Developer Default hereunder, the City shall, concurrently, or as close thereto as reasonably practical, deliver a copy of such City Notice of Developer Default to each Holder of record of any Permitted Security Interest who has previously made a written request to the City therefore. If Developer does not cure or remedy the Developer Event of Default within the applicable cure period set forth in this Agreement, then City shall provide notice of such ("**Developer Non Cure Notice**") to each Holder of record of any Permitted Security Interest who has previously made a written request to the City therefore. Each such Holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy or commence to cure or remedy any such default within (a) fifteen (15) days (with respect to monetary defaults only) after receipt of the Developer Non Cure Notice, (b) sixty (60) (with respect to non-monetary defaults), after receipt of the Developer Non Cure Notice or such reasonable period of time beyond sixty (60) days, if such non-monetary default is not susceptible to being cured within such sixty (60) days, and to add the cost thereof to the debt and lien of its Permitted Security Interest. In case of a default which is not susceptible of being cured by such Holder (such as a bankruptcy of Developer), such Developer Event of Default does not have to be cured. If such default shall be a default which can only be cured or remedied by such Holder upon obtaining possession of the Property or any portion thereof, the time to cure or remedy such default shall be tolled for so long as such Holder promptly commences and diligently prosecutes efforts to obtain possession through a receiver, foreclosure, deed in lieu of foreclosure or otherwise, but in no event shall this tolling period exceed one hundred twenty (120) days from the date of the applicable Developer Non Cure Notice. In the event there is more than one such Holder, the right to cure or remedy a breach or default of Developer under this **Section 8.3** shall be exercised by the Holder first in priority or as the Holders may otherwise agree in writing among themselves (and provide written notice thereof to the City), but there shall be only one

exercise of such right to cure and remedy a breach or default of Developer under this **Section 8.3**.

8.3.1 Nothing contained in this Agreement shall be deemed to permit or authorize or obligate such Holder (except any such Holder that is also a Guarantor) to undertake or continue the construction or completion of the Project (except such Holder shall be permitted to continue such construction to the extent necessary to conserve or protect the Project or construction already made) without first having expressly assumed Developer's obligations to the City with respect to the Project by written agreement satisfactory to the City and such Holder.

8.3.2 Any Holder (except any Holder that is also a Guarantor) shall only be liable for or bound by Developer's obligations hereunder during the period that the Holder is in possession of such portion of the Property or the Project in which the Holder has an interest and, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest in such Property and the Project.

8.3.3 Any Holder properly completing a Construction Phase and/or the Project shall be entitled, upon written request made to the City, to a Certificate of Completion from the City with respect thereto.

8.4 Failure of Holder to Complete Development. In any case where one hundred eighty (180) days after the Holder has obtained possession of the Property (or any portion thereof) by foreclosure or deed in lieu of foreclosure or otherwise (or such longer period of time as may be approved by the City Manager), the Holder of any Permitted Security Interest has not exercised its option to construct, or if it has exercised the option to construct and has not proceeded diligently with construction (subject to Force Majeure Delay), then the City, if it so elects, shall be entitled to the conveyance from the Holder of the Holder's interest in the Property upon payment to the Holder, in immediately available funds, of an amount equal to the sum of the following:

8.4.1 The unpaid debt secured by the Permitted Security Interest ("**Permitted Security Interest Debt**") immediately prior to the time the Property became vested in the Holder;

8.4.2 All reasonable expenses incurred by the Holder with respect to the foreclosure or deed-in lieu of foreclosure of the Permitted Security Interest;

8.4.3 The net expenses, if any (exclusive of general overhead), incurred by the Holder as a direct result of the subsequent ownership and management of the Property and the Project (net of rentals and other revenues received subsequent to the foreclosure or deed in lieu of foreclosure);

8.4.4 The costs of any Improvements to the Property made by such Holder and authorized by this Agreement; and

8.4.5 An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the Permitted Security Interest Debt and had the Permitted Security Interest Debt continued in existence in accordance with its terms to the date of payment by the City.

8.5 Right of the City to Cure Permitted Security Interest Default. In the event that (a) Developer has committed a breach or default under a Permitted Security Interest prior to Completion of the Project, and (b) the Holder thereof has not exercised its option hereunder to complete the Project, then the City shall have the right but not the obligation to cure the default prior to the completion of any foreclosure under the Permitted Security Interest. In the event the City elects to so cure (and cures) such default, Developer shall reimburse the City for all costs and expenses incurred by the City in curing such default. Also in such event, Developer hereby grants the City a lien upon Developer's interest in the Property and the Project to the extent of such costs and expenses. Any such lien shall be subject and subordinate to the lien of any Permitted Security Interest hereunder.

8.6 Right of the City to Satisfy Other Liens. After the Closing and prior to the recordation of a Certificate of Project Completion hereunder and after Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property or any portion thereof (other than Permitted Security Interests), the City shall have the right but not the obligation to satisfy any such lien or encumbrance; provided, however, that nothing in this Agreement shall require Developer to pay or make provision for the payment of any tax, assessment, lien or charge only if and for so long as (a) Developer in good faith shall contest in writing, to the government agency or other entity imposing or levying the same, the validity or amount thereof, (b) such delay in payment shall not subject the Property or the Project or any portion thereof to the risk of forfeiture or sale, and (c) Developer shall, prior to the date such tax, assessment, lien or charge becomes delinquent, have provided to the City or its nominee a bond or other form of security as may be reasonably required by the City from time to time in order to ensure payment of such taxes, assessments, lien or charge and prevent any sale, foreclosure or forfeiture of the Property or the Project or any portion thereof by reason of such nonpayment.

8.7 Holder Requested Modifications. In the event a Holder of a Permitted Security Interest, as a condition of providing Project Financing, requests any modification of this Agreement in order to protect its interests in the Property or the Project under this Agreement or to satisfy its underwriting requirements, the City shall consider such request reasonably and in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the parties under this Agreement.

8.8 Holder as Guarantor. Notwithstanding any provision herein to the contrary, the provisions of this **Article 8** shall not be deemed to limit, expand or modify the rights or obligations under the Guaranty of any Holder that also is the Guarantor, whose rights and obligations under the Guaranty shall be governed solely by the provisions thereof and such provisions shall govern and control in the event of any conflict between such provisions and the provisions of this **Article 8**.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES

9.1 City Representations and Warranties. The City, in its capacity as seller of the Property and not in any regulatory capacity, hereby represents, warrants and covenants all of the following to Developer as of the Effective Date and the Closing Date, all of which shall survive the Close of Escrow and shall be subject to the provisions of **Section 4.10** and any actual knowledge of Developer prior to Close of Escrow (whether pursuant to **Section 4.10** or otherwise):

9.1.1 Authority. The City has the capacity and full right, power and lawful authority to grant, sell and convey the Property and carry out the transactions as provided herein, and the execution, delivery and performance of this Agreement by the City, has been fully authorized by all requisite actions on the part of the City.

9.1.2 Valid Binding Agreements. This Agreement and the other Governing Documents and all other documents and instruments which have been executed and delivered by the City pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered to Developer, and executed and delivered by Developer, constitute, legal, valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws affecting creditors' rights, or by the application of equitable principles.

9.1.3 No Conflict. To the best of the City's knowledge, the City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the City is a party or by which it is bound.

9.1.4 Litigation. To the best of the City's knowledge, and except for the Judgment and as otherwise disclosed by the City Materials, there are no claims, causes of action or other litigation, arbitration or proceedings pending or threatened with respect to the ownership, operation or environmental condition of the Property or any part thereof including disputes with mortgagees, governmental authorities, utility companies, contractors, adjoining landowners or suppliers of goods and services, that would prevent the City from meeting any of its respective obligations under this Agreement or would otherwise adversely affect Developer's exercise of its rights or Developer's compliance with its obligations under this Agreement.

9.1.5 No Violations. To the best of the City's knowledge, and except as otherwise disclosed by the City Materials or as expressly stated otherwise in this Agreement (including without limitation, the On-going Remediation, the Notice of Corrective Action Requirement and RWQCB Order), there are no violations of any health, safety, pollution, zoning or other laws, ordinances, rules or regulations with respect to the Property, which have not heretofore been entirely corrected.

9.1.6 No City Event of Default. As of the Closing Date, there does not exist, nor with the mere passage of time will there exist, any City Event of Default.

9.1.7 Continued Correctness. Subject to the last full paragraph of this **Section 9.1**, all representations and warranties of the City contained in this **Section 9.1** or as expressly stated elsewhere in this Agreement are true and correct in all material respects.

Each of the representations and warranties made by the City in this Agreement shall be true and correct in all material respects on the Effective Date hereof (except for the representation and warranty set forth in **Section 9.1.6**, which shall be true and correct in all material respects on the Closing Date), and shall be deemed to be made again as of the Close of Escrow, and shall then be true and correct in all material respects. The City does not make any representation or warranty, express or implied, other than those by the City specifically and expressly stated in this **Section 9.1** or as expressly stated elsewhere in this Agreement. The City does not make any representation, express or implied, that the Property or its condition is suitable for Developer's intended use. The City shall notify Developer within twenty (20) days of becoming aware of any facts or circumstances which would cause any the foregoing representations and warranties contained in this **Section 9.1** not to be true as of the Closing (referred to in this paragraph as "exceptions"). Failure by the City to provide such notice shall be deemed a breach of this Agreement by the City. Any such exception(s) to a City representation or warranty arising prior to Close of Escrow shall not be deemed a breach of this Agreement by the City hereunder, but shall constitute an exception which Developer shall have a right to approve or disapprove. If Developer elects to proceed with Close of Escrow following disclosure of such exception(s), Developer shall be deemed to have approved such exception(s) and the City's representations and warranties shall be deemed to have been made as of the Closing, subject to such exception(s). In the event such exception(s) are materially adverse to Developer's completion of the sale and purchase of the Property contemplated by this Agreement, following notice to the City of Developer's disapproval and a reasonable opportunity to cure, in no event less than thirty (30) days nor more than sixty (60) days, Developer's sole and exclusive rights and remedies shall be those set forth in **Section 10.2.3**.

9.2 Developer Representations and Warranties. Developer hereby represents, warrants and covenants all of the following to the City, as of the Effective Date and the Closing Date, all of which shall survive the Close of Escrow and shall be subject to any actual knowledge of the City prior to Close of Escrow:

9.2.1 Authority. Developer is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware and qualified to transact business in the State of California, and the Principals Control and own at least fifty-one percent (51%) of the Membership Interests in Developer. Any Guarantor that is not an individual is duly organized, validly existing and in good standing under the laws of the state of its formation and is qualified to transact business in the State of California. The copies of the documents evidencing the formation, organization and governance of Developer and each such Guarantor which have been delivered to the City are true and complete copies of the originals. Developer has the capacity and full right, power and lawful authority to purchase, acquire and accept the Property and carry out the

transactions as provided herein, and the execution, delivery and performance of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer.

9.2.2 Valid Binding Agreements. This Agreement and the other Governing Documents and all other documents and instruments which have been executed and delivered by Developer or the Guarantor, as applicable, pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Developer and/or the Guarantor, as applicable, enforceable against them in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws affecting creditors' rights, or by the application of equitable principles.

9.2.3 No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the other Governing Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any Applicable Law, or any provision of the organizational documents of Developer or any Developer Member or the Guarantor, or will conflict with or constitute a breach of or a default under any agreement to which Developer or any Developer Member or the Guarantor is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer or any Developer Member or the Guarantor, other than liens established in accordance with this Agreement.

9.2.4 No Developer Event of Default. As of the Closing Date, there does not exist, nor with the mere passage of time will there exist, any Developer Event of Default.

9.2.5 Continued Correctness. Subject to the last full paragraph of this **Section 9.2**, all representations and warranties of Developer contained in this **Section 9.2** or as expressly stated elsewhere in this Agreement are true and correct in all material respects.

9.2.6 Compliance With Applicable Law. The Project and construction of the Project will comply with all Applicable Law.

9.2.7 Pending Proceedings. Developer has no knowledge of any default under any law or regulation or under any order of any court, board, commission or agency, and there are no known claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer or any Developer Member, at law or in equity, before or by any court, board, commission or agency which might, if determined adversely to Developer or any Developer Member, materially affect Developer's ability to perform its obligations contemplated by this Agreement.

9.2.8 Financial Statements. The financial statements of Developer and other financial data and information furnished by Developer to the City fairly present the information contained therein. As of the Closing Date, there has not been any adverse, material change in the financial condition of Developer or any Developer Member from that shown by such financial statements and other data and information provided prior thereto.

9.2.9 Taxes. Developer and each Developer Member has filed all federal and other material tax returns and reports required to be filed, and has paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon it, its income or properties otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. Developer has no knowledge of a proposed tax assessment against Developer or any Developer Member that could, if made, be reasonably expected to have a material adverse effect upon the assets, liabilities (actual or contingent), operations, or condition (financial or otherwise) of Developer, taken as a whole, which would be expected to result in a material impairment of the ability of Developer to Complete the Project or meet its other obligations in accordance with the terms of this Agreement.

Each of the representations and warranties made by Developer in this Agreement, shall be true and correct in all material respects on the Effective Date hereof (except for the representation and warranty set forth in **Section 9.2.4**, which shall be true and correct in all material respects on the Closing Date), and shall be deemed to be made again as of the Close of Escrow, and shall then be true and correct in all material respects. Developer does not make any representation or warranty, express or implied, other than those by Developer specifically and expressly stated in this **Section 9.2** or as expressly stated elsewhere in this Agreement. Developer shall notify the City within twenty (20) days of becoming aware of any facts or circumstances which would cause any the foregoing representations and warranties contained in this **Section 9.2** not to be true as of the Closing (referred to in this paragraph as "exceptions"). Failure by Developer to provide such notice shall be deemed a breach of this Agreement by Developer. Any such exception(s) to a Developer representation or warranty arising prior to Close of Escrow shall not be deemed a breach of this Agreement by Developer hereunder, but shall constitute an exception which the City shall have a right to approve or disapprove. If the City elects to proceed with Close of Escrow following disclosure of such exception(s), the City shall be deemed to have approved such exception(s) and Developer's representations and warranties shall be deemed to have been made as of the Closing, subject to such exception(s). In the event such exception(s) are materially adverse to the City's completion of the sale and purchase of the Property contemplated by this Agreement, following notice to Developer of the City's disapproval and a reasonable opportunity to cure, in no event less than thirty (30) days nor more than sixty (60) days, the City's sole and exclusive rights and remedies shall be those set forth in **Section 10.2.3**.

ARTICLE 10
DEFAULT AND REMEDIES

10.1 Application of Remedies. This **Article 10** shall govern the Parties' respective remedies for a default under this Agreement and the Parties' respective rights to terminate this Agreement under certain circumstances in the absence of any default.

10.2 No Fault of Parties Prior to Closing.

10.2.1 If other than as a result of a Developer Event of Default, all Developer Closing Conditions are not satisfied or waived by Developer by the Outside Closing Date, such event shall constitute a basis for City to terminate this Agreement prior to the Closing, provided that City is not in default hereunder:

10.2.2 The following events constitute a basis for Developer to terminate this Agreement prior to the Closing, provided that Developer is not in default hereunder:

(a) The City is unable to convey the Property to Developer as contemplated hereunder as a result of the action or inaction of any other governmental agency with jurisdiction or any other circumstances beyond the City's reasonable control; or

(b) If other than as a result of a City Event of Default, all the City Closing Conditions are not satisfied or waived by the City by the Outside Closing Date.

10.2.3 Upon the occurrence of an event described in **Section 10.2.1** or **Section 10.2.2** or in another section of this Agreement that specifically references the rights and remedies set forth in this **Section 10.2.3**, and at the election of the Party with the right to elect to terminate this Agreement pursuant to this **Section 10.2** or another section of this Agreement that specifically references the rights and remedies set forth in this **Section 10.2.3** (and provided such Party is not then in default hereunder), and subject to the last sentence of this **Section 10.2.3**, this Agreement may be terminated by such Party upon not less than thirty (30) days' prior written notice to the other Party. Upon and following a termination pursuant to this **Section 10.2.3**: (i) Escrow Agent shall return the Deposit to Developer; (ii) any funds remaining in the Pre-development City Fund and Entitlement Fee Fund after payment of all costs incurred as of the time of such termination shall be returned to Developer; (iii) Developer shall release and deliver to the City and the City shall retain the Developer Agreements, Plans and Approvals; (iv) any costs incurred by Developer in connection with the negotiation, preparation and implementation of this Agreement shall be completely borne by Developer; and (v) neither Party shall have any rights against or liability to the other Party, except with respect to those provisions of this Agreement that expressly and specifically state that they survive termination of this Agreement.

10.3 Fault of the City.

10.3.1 Except as to events constituting a basis for termination under **Section 10.2**, each of the following events, if uncured after expiration of the applicable

cure period, shall constitute an event of default hereunder by the City ("**City Event of Default**"):

(a) The City without good cause fails to convey the Property within the time and in the manner specified in **Article 4** following the satisfaction or written waiver by the City of all City Closing Conditions, and Developer is otherwise entitled hereunder to such conveyance;

(b) The City, in its proprietary capacity as opposed to its regulatory capacity, does not engage in commercially reasonable and good faith efforts to cause satisfaction of all conditions set forth in **Article 3**; or

(c) The City breaches any other material provision of this Agreement or any other Governing Documents.

10.3.2 Upon the occurrence of an event described in **Section 10.3.1**, Developer shall first notify the City in writing of its purported breach or failure, and the City shall have thirty (30) days from receipt of such notice to cure such breach or failure. If the City does not cure within such thirty-day period or, if the breach or failure is not susceptible of cure within such thirty-day period, the City fails to commence the cure within such thirty-day period and thereafter to prosecute the cure diligently to completion within a reasonable time thereafter, but in no event later than one hundred twenty (120) days after receipt of such notice, then such uncured breach or failure shall constitute an the City Event of Default, whereupon: (i) Escrow Agent shall return the Deposit to Developer; (ii) the funds remaining in the Pre-development City Fund and Entitlement Fee Fund after payment of all costs incurred as of the time of such breach shall be returned to Developer; (iii) the City shall release to Developer all rights, title and interest of the City in and to the Developer Agreements, Plans and Approvals; (iv) Developer shall have the right to seek specific performance of the City's obligations under this Agreement, including the conveyance of the Property to Developer; and (v) subject to the provisions of **Section 10.12**, the Developer shall be entitled to any other rights and remedies afforded it at law or in equity.

10.4 Fault of Developer.

10.4.1 Except as to events constituting a basis for termination under **Section 10.2**, each of the following events, if uncured after expiration of the applicable cure period, shall constitute an event of default hereunder by Developer ("**Developer Event of Default**"):

(a) Developer does not cause timely satisfaction of all of the Developer's Pre-Closing Obligations and its other obligations with respect to Closing, as set forth in **Article 4**, subject to Force Majeure Delay;

(b) Developer refuses or is unable for any reason (including, but not limited to, lack of funds) to accept the conveyance of the Property from the City within the time and in the manner specified in **Article 4** following the satisfaction or written waiver by Developer of all Developer Closing Conditions;

(c) Following Closing, Developer fails to Commence or Complete Construction, or cause the Commencement or Completion of Construction of any Construction Phase or the Project in the time and manner set forth in **Article 5** and the Schedule of Performance (as such may be amended), subject to Force Majeure Delay;

(d) Developer completes a Transfer, whether voluntarily or involuntarily, except as expressly permitted under **Article 7**;

(e) Developer (i) prior to Closing, does not submit all required applications for, and attempt diligently and in good faith to procure in a timely manner, the Discretionary City Approvals, or (ii) after Closing, (A) does not submit all required applications for, and attempt diligently and in good faith to procure in a timely manner, applications as required to Commence Construction of the First Site Improvement Phase, within the time period set forth in the Schedule of Performance, including any and all Building Permits and other Project Approvals or (B) after submitting such applications, abandons any further attempts to timely procure when there is a reasonable likelihood that such Building Permits and other Project Approvals would otherwise be issued by the proper authority within the time period set forth for Commencement of Construction of the First Site Improvement Phase in the Schedule of Performance, subject to Force Majeure Delay;

(f) Developer abandons or suspends construction of the Project, other than for a Force Majeure Delay, for a period of sixty (60) consecutive days after written notice by the City of such abandonment or suspension; provided, however, that periods of time without any construction activity occurring between separate phases or portions of the Historic Resources Work and Vertical Phases shall not constitute abandonment or suspension of work provided Developer is in compliance with the Schedule of Performance.

(g) Any representation or warranty of Developer contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City;

(h) A Bankruptcy/Insolvency Event occurs with respect to Developer or any Principal or Guarantor;

(i) Developer authorizes or allows recordation against the Property or the Project (or any portion thereof) of a lien that is not a Permitted Security Interest prior to the recordation of a Certificate of Project Completion;

(j) Developer breaches or defaults under any Project Loans, and such breach or default is not cured by Developer within the time provided for such cure under the applicable loan documents; or

(k) Developer breaches any other material provision of this Agreement or any other Governing Documents, subject to Force Majeure Delay.

10.4.2 Remedies. Upon the occurrence of an event described in **Section 10.4.1**, the City shall first notify Developer in writing of its purported breach or

failure ("**City Notice of Developer Default**"), and Developer shall have thirty (30) days from receipt of such City Notice of Developer Default to cure such breach or failure. If Developer does not cure within such thirty (30)-day period or, if the breach or failure is not susceptible of cure within such thirty (30)-day period, Developer fails to commence the cure within such thirty-day period and thereafter to prosecute the cure diligently to completion within a reasonable time thereafter, but in no event later than one hundred eighty (180) days after receipt of such notice, then such uncured breach or failure shall constitute a Developer Event of Default; provided, however, that if any such breach or failure occurs prior to the Closing, then in no event shall Developer's cure period extend beyond the Outside Closing Date unless the deadlines set forth in the Judgment are extended. If a Developer Event of Default occurs, the City shall be afforded all of the following rights and remedies:

(a) Prior to Closing. If a Developer Event of Default occurs prior to the Closing, the City may: (i) terminate in writing this Agreement by giving Developer a ten (10) day written notice of such termination; provided, however, that the City's rights and remedies pursuant to the indemnification provisions and the Parties' rights under other provisions of this Agreement that specifically state they will survive termination of this Agreement will survive such termination; (ii) receive liquidated damages pursuant to **Section 10.5** (provided, however, that any funds remaining in the Pre-development Fund and/or the Entitlement Fee Fund after payment of all costs incurred as of the date of termination shall be returned to Developer); and (iii) obtain the Developer Agreements, Plans and Approvals pursuant to **Section 10.6**. If a Developer Event of Default occurs pursuant to **Section 2.12** or **Section 2.13**, in addition to the foregoing remedies the City shall have the remedy provided in such section.

(b) Between Closing and Issuance of Certificate of Project Completion. If a Developer Event of Default occurs after the Closing but prior to the date on which the City issues a Certificate of Project Completion, the City may: (i) terminate in writing this Agreement; provided, however, that the City's rights and remedies pursuant to the indemnification provisions and the Parties' rights under other provisions of this Agreement that specifically state they will survive termination of this Agreement will survive such termination; (ii) prosecute an action for damages against Developer; (iii) obtain the Developer Agreements, Plans and Approvals pursuant to **Section 10.6**; (iv) subject to the rights of any Holder of a Permitted Security Interest under **Article 8**, exercise the rights and remedies described in **Section 10.7**; and (v) subject to the provisions of **Section 10.11**, exercise any other rights and remedies against Developer afforded the City at law or in equity. Notwithstanding the foregoing, after the issuance of a Certificate of Construction Phase Completion the City may not exercise the remedies in clauses (i), (iii) or (iv) of this **Section 10.4.2(b)** with respect to the portion of the Project included in such Construction Phase, provided that the City will have the remedies in **Section 10.4.2(c)**.

(c) After Issuance of Certificate of Project Completion. If a Developer Event of Default occurs after issuance by the City of a Certificate of Project Completion, the City may: (i) prosecute an action for damages against Developer; (ii) seek specific performance of this Agreement or injunctive relief against Developer; and (iii) subject to

the provisions of **Section 10.12**, exercise any other remedy against Developer afforded the City at law or in equity.

(d) No Cross-Default. Notwithstanding any provision of this Agreement to the contrary, following any partial assignment of this Agreement to the Historic Resources Assignee and/or a Merchant Builder:

(i) a Developer Event of Default under this Agreement by Original Developer shall not (i) be deemed to constitute a Developer Event of Default under this Agreement by the Historic Resources Assignee and/or any Merchant Builder; (ii) give rise to any Repurchase Right with respect to the any portion of the Property not then owned by the Original Developer, or (iii) give rise to any other rights or remedies against the Historic Resources Assignee or the Historic Core and/or any Merchant Builder or any portion of the Property owned by any Merchant Builder, whether under **Section 10.4.2** or otherwise;

(ii) a Developer Event of Default under this Agreement by the Historic Resources Assignee shall not (i) be deemed to constitute a Developer Event of Default under this Agreement by the Original Developer and/or any Merchant Builder; (ii) give rise to any Repurchase Right with respect to the any portion of the Property not then owned by the Historic Resources Assignee, or (iii) give rise to any other rights or remedies against the Original Developer or any Merchant Builder or any portion of the Property owned by Original Developer and/or any Merchant Builder, whether under **Section 10.4.2** or otherwise; and

(iii) a Developer Event of Default under this Agreement by any Merchant Builder shall not (i) be deemed to constitute a Developer Event of Default under this Agreement by the Original Developer, the Historic Resources Assignee and/or any other Merchant Builder; (ii) give rise to any Repurchase Right with respect to the any portion of the Property not then owned by the defaulting Merchant Builder, or (iii) give rise to any other rights or remedies against the Original Developer, Historic Resources Assignee or any other Merchant Builder, or any portion of the Property owned by Original Developer, any other Merchant Builder and/or the Historic Resources Assignee, whether under **Section 10.4.2** or otherwise.

10.5 Liquidated Damages. **IN THE EVENT THAT THE CLOSING HEREUNDER DOES NOT OCCUR BY REASON OF A DEVELOPER EVENT OF DEFAULT THAT IS NOT CURED WITHIN THE APPLICABLE CURE PERIOD, THE PARTIES AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES THAT THE CITY MAY SUFFER. THEREFORE, THE PARTIES HEREBY AGREE THAT A REASONABLE ESTIMATE OF SUCH DAMAGES IS THE AMOUNT OF THE DEPOSIT (INCLUDING ALL ACCRUED INTEREST), AND THAT IN SUCH EVENT THE DEPOSIT SHALL BE RELEASED FROM ESCROW AND PAID TO AND RETAINED BY THE CITY AS LIQUIDATED DAMAGES AND, EXCEPT AS OTHERWISE SET FORTH IN SECTIONS 10.4.2(a), AS THE CITY'S SOLE AND EXCLUSIVE REMEDY FOR SUCH DEVELOPER EVENT OF DEFAULT. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY**

WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS SECTION 10.5, THE PARTIES AGREE THIS LIQUIDATED DAMAGES PROVISION DOES NOT, AND SHALL NOT BE DEEMED TO, LIMIT IN ANY WAY DEVELOPER'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT. BY INITIALING IN THE SPACE BELOW, THE PARTIES ACKNOWLEDGE THE FOREGOING AND SPECIFICALLY AFFIRM THEIR RESPECTIVE AGREEMENTS SET FORTH IN THIS SECTION 10.5. THE PROVISIONS OF THIS SECTION 10.5 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

_____ _____

Developer's Initials the City's Initials

10.6 Developer Agreements, Plans and Approvals. If there occurs a Developer Event of Default prior to the Closing that gives rise to the right of the City under this **Article 10** to exercise rights or remedies under this **Section 10.6**, then Developer shall, and if the City exercises its right to terminate this Agreement pursuant to Section 10.4.2(a), then concurrently with such termination Developer shall, at no cost to the City, immediately and irrevocably release and turn over to the City or its designee all Developer Agreements, Plans and Approvals. If there occurs a Developer Event of Default after the Closing but prior to Completion of the Project that gives rise to the right of the City under this **Article 10** to exercise rights or remedies under this **Section 10.6**, and if the City exercises the Repurchase Right set forth in **Section 10.7**, then concurrently with the conveyance of the Repurchased Property to the City, Developer shall, at no cost to the City, immediately and irrevocably release and turn over to the City or its designee all Developer Agreements, Plans and Approvals pursuant to the Assignment of Developer Agreements, Plans and Approvals with respect to any Construction Phase for which the City has not yet issued a Certificate of Construction Phase Completion with respect to the Repurchased Property. The City and/or its assignee or designee shall be free to use any such Developer Agreements, Plans and Approvals in accordance with their terms.

10.7 Option to Repurchase, Reenter and Repossess. The City shall have the right, at its option, in addition to any and all other rights and remedies under the Governing Documents, to repurchase, reenter and take possession of the Property or any portion thereof that is then owned by the defaulting Developer with all Improvements thereon (the "**Repurchase Right**"), if (i) the Developer fails to Commence Construction on any Construction Phase on or prior to the date in the Schedule of Performance and such failure is not cured within the time periods set forth in **Section 10.4.2** and further subject to Force Majeure Delays, or (ii) after the Closing and prior to the issuance of the Certificate of Completion of the Project, or a Certificate of Construction Phase Completion with respect to the applicable Construction Phase, there is a Developer Event of Default that is not cured within the time periods set forth in **Section 10.4.2**, and further subject to Force Majeure Delays, on the terms and conditions of this **Section 10.7**. This Repurchase Right shall terminate with respect to any portion of the Property for which a Certificate of Construction Phase Completion has been issued by the City. In the event of a Historic District Partial Assignment and/or a Merchant Builder Partial Assignment, the provisions of **Section 10.4.2(d)** shall apply to the exercise of any such Repurchase Right.

10.7.1 Pursuant to Article 8, such Repurchase Right shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit;

(a) Any Permitted Security Interest; or

(b) Any rights provided in this Agreement for the protection of the Holder of a Permitted Security Interest.

10.7.2 To exercise its Repurchase Right with respect to all or any portion of the Property:

10.7.2.1 the City shall provide written notice to Developer of its election to exercise such right not later than the date (the "**Repurchase Election Date**") that is forty-five (45) days after expiration of the applicable cure period with respect to the breach or failure giving rise to such Developer Event of Default, subject to the rights of the Holder of any Permitted Security Interest pursuant to **Article 8**; and

10.7.2.2 Not later than forty-five (45) days after the repurchase price is determined as hereafter provided, Developer shall reconvey the Property (or portion thereof) by grant deed to the City and the City shall concurrently pay to Developer in cash an amount equal to:

(a) The fair market value of the applicable portion of the Property (including any Improvements located thereon) being purchased (the "**Repurchased Property**"), as determined pursuant to **Section 10.7.2.3** below; minus

(b) The value of any unpaid liens or encumbrances on the applicable portion of the Property which the City assumes or which the City takes subject to.

10.7.2.3 The fair market value of the Repurchased Property shall be determined as follows. Following delivery of the Repurchase Election Date, the City shall furnish to the defaulting Developer a written statement from a qualified real estate

appraiser stating the appraiser's opinion of fair market value of the Repurchased Property. If Developer disagrees with the fair market value submitted by the City, then within thirty (30) days after receipt of the City's submittal, Developer shall have the right to submit to the City an appraisal by a qualified real estate appraiser of fair market value of the Repurchased Property. If the higher estimate is not more than one hundred ten percent (110%) of the lower estimate, the fair market value shall be established as the average of the two appraisals. If not, the two appraisers acting on behalf of the City and Developer, shall, within thirty (30) days after Developer's appraisal has been submitted, jointly appoint a third qualified real estate appraiser (the "**Referee**"). If the two appraisers are unable to agree upon the selection of a Referee, then the Referee shall be selected within thirty (30) days thereafter by an arbitrator pursuant to the rules of the American Arbitration Association. The Referee shall, within thirty (30) days after appointment, render his/her/their decision, which decision shall be strictly limited to choosing one of the two determinations made by the two appraisers chosen by the City and Developer with respect to fair market value, which shall be binding upon the City and Developer. Developer shall pay the cost of both appraisals and of the Referee.

The rights and remedies of the City established in this **Section 10.7** and elsewhere in this Agreement are to be interpreted in light of the fact that the City will convey the Property to Developer hereunder for development and disposition of the Project as provided in this Agreement and not for speculation.

10.8 Survival. Upon any termination of this Agreement under this **Article 10**, all Developer indemnification obligations and other provisions of this Agreement that specifically state they will survive termination of this Agreement will survive such termination. This **Section 10.8** exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

10.9 Rights and Remedies Cumulative. Except as otherwise expressly provided herein, no right, power, or remedy given to the City by the terms of this Agreement or any other Governing Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any Applicable Law or otherwise against Developer and/or any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

10.10 Waivers. The City Manager may at his or her discretion waive in writing on behalf of the City, and without Developer completing an amendment to this Agreement, (i) upon written request by Developer, any non-substantive terms and conditions of this Agreement or any other Governing Documents, and (ii) otherwise with Developer's consent, not to be unreasonably withheld, conditioned or delayed, any non-substantive terms and conditions of this Agreement or any other Governing Documents that do not increase any of Developer's obligations or liabilities hereunder. The City Manager also may at his or her discretion agree on behalf of the City to any modification of the Schedule of Performance or Site Phasing Plan proposed by Developer. No waiver of any default or breach by Developer or of the City hereunder shall be implied from any

omission by the City or Developer, as applicable, to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the City to or of any act by Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or any other Governing Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the City or Developer in the exercise of any right, power, or remedy hereunder or under any other Governing Documents, unless in the exercise of any such right, power, or remedy all obligations of the City to Developer or Developer to the City, as applicable, are paid and discharged in full.

10.11 Mortgagee Protection. Any rights of the City under this **Article 10** shall not defeat, limit or render invalid any Permitted Security Interest hereunder or any rights provided for in this Agreement for the protection of Holders of Permitted Security Interests. Any conveyance of the Property to the City pursuant to this **Article 10** shall be subject to Permitted Security Interests then existing hereunder.

10.12 Limitations of Liability.

10.12.1 Non-Liability of Officials, Employees and Agents. No member, official, employee or individual agent of the City shall be personally liable to Developer, or any successor in interest to Developer, in the event of any default or breach by the City or for any amount which may become due to Developer or such successor or on any obligation under the terms of this Agreement. No Principal, Developer Member, officer, director, employee or individual agent of Developer shall be personally liable to the City, or any successor in interest to the City, in the event of any default or breach by Developer or for any amount which may become due to the City or such successor or on any obligation under the terms of this Agreement or any other Governing Documents; provided however that the foregoing shall not, and shall not be deemed to, release or relieve any Guarantor from any obligations under the Guaranty.

10.12.2 Limitations on Consequential Damages. Neither Party shall have any liability hereunder to the other for any consequential, indirect or punitive damages.

10.12.3 Limitation on Developer Recourse. Subject to the provisions of **Section 10.12.2**, and notwithstanding any provision herein to the contrary, Developer's recourse for any recovery against the City for any City Event of Default hereunder shall be limited exclusively to the City's interest in the Property.

ARTICLE 11
GENERAL PROVISIONS

11.1 Notices, Demands and Communications. Any notice, demand or other communication required to be given by Developer or the City under or pursuant to this

Agreement shall be in writing and shall be sufficiently given if (a) addressed as set forth below and (b) delivered in one of the following ways, and shall be deemed to have been delivered or received (i) three (3) days after the date when deposited in the United States registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), (ii) when personally delivered, (iii) when sent by facsimile or electronic (email) transmission, provided receipt was promptly confirmed in writing by another means of notice allowed in this **Section 11.1** within one (1) business day, or (iv) one business day after the date deposited with a nationally recognized courier service (e.g., Federal Express) for next day delivery. The current principal office addresses, email addresses and facsimile numbers of the City and Developer are as follows:

the City: City of Richmond
450 Civic Plaza
Richmond, CA 94804
Attention: City Manager
Telephone: (510) 620-6512
Facsimile: (510) 620-6542
Email: City_Manager@ci.richmond.ca.us

AND

City Attorney's Office
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804
Attention: City Attorney
Telephone: (510) 620-6509
Facsimile: (510) 620-6518
Email: City_Attorney@ci.richmond.ca.us

Developer: Winehaven Legacy LLC
c/o Argent Management LLC
2392 Morse Avenue
Irvine, CA 92614
Attention: Marc Magstadt
Telephone: (949) 777-4002
Facsimile: (949) 777-4050
Email: mmagstadt@argentmanagementllc.com

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by notice as provided in this **Section 11.1**.

If failure to respond to a specified notice, request, demand or other communication within a specified period would result in a deemed approval, a conclusive presumption, a prohibition against further action or protest, or other adverse result specifically provided under this

Agreement, the notice, request, demand or other communication shall state clearly and unambiguously on the first page, with reference to the applicable provisions of this Agreement, that failure to respond in a timely manner could have a specified adverse result.

11.2 Conflict of Interest. No member, official or employee of the City shall make any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

11.3 Force Majeure. Subject to the limitations set forth below, performance by any Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; pandemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement or challenging any of the Project Approvals); weather or soils conditions which, in the reasonable written opinion of the Prime Contractor (or, if there is no Prime Contractor, in the written opinion of a general contractor proposed by Developer and acceptable to the City, both parties acting reasonably), will necessitate delays; inability to secure necessary labor, materials or tools; acts of the other Party; acts or failure to act of any public or governmental agency or entity (other than any acts or failure to act of the City that do not constitute a City Event of Default, except as hereafter provided) despite the diligent and good faith efforts of the Party claiming the delay; or any other causes (other than Developer's inability to obtain financing for the Project, unless caused solely by extraordinary, generally applicable market conditions that result from some other event of force majeure listed above) beyond the control or without the fault of the Party claiming an extension of time to perform (each a "**Force Majeure Delay**"). An extension of time hereunder for any Force Majeure Delay shall be for the period of the Force Majeure Delay and will be deemed granted if notice by the Party claiming such extension is sent to the other Party within ninety (90) days from the date the Party seeking the extension first discovers or receives notice of the cause of such Force Majeure Delay and such extension of time is not rejected in writing by the other Party, as not complying with the provisions of this **Section 11.3**, within fifteen (15) days of receipt of the notice claiming a Force Majeure Delay. Developer's inability or failure to obtain financing or otherwise timely satisfy the City Conditions Precedent to Closing on or before the Outside Closing Date shall not be deemed to be a Force Majeure Delay. Times of performance under this Agreement may also be extended by the mutual written agreement of the City and Developer. Notwithstanding the foregoing or any other provision herein to the contrary, (i) the applicability of Force Majeure Delay to particular obligations of the Parties hereunder are specified in the Schedule of Performance, (ii) Force Majeure Delay shall not extend or excuse the Outside Closing Date unless the timelines set forth in the Judgment are extended, and (iii) Force Majeure Delay shall not act to extend or forgive any monetary obligation or condition related to the payment of money.

11.4 Intentionally Deleted

11.5 Developer General Indemnity. Without limiting and in addition to any indemnification obligations of Developer set forth elsewhere in this Agreement, Developer shall indemnify, defend (with counsel reasonably acceptable to the City), protect and hold harmless the City and the City Parties from and against any and all Claims directly or indirectly arising out

of or relating to Developer's ownership, occupancy, or development of the Property or construction of the Project by Developer or the Prime Contractor (if any) or other Developer's contractors, subcontractors, agents, employees or tenants (including without limitation pursuant to the right of entry granted in **Section 5.12**), or Developer's obligations or performance or non-performance under this Agreement or any other Governing Documents, and whether such Claims accrue or are discovered during the Term or after the expiration or other termination of this Agreement. Developer's indemnity obligations (but not the duty to defend) under this **Section 11.5** shall not apply to the extent any Claims are finally determined to have been caused by the willful misconduct or gross negligence of the City. Insurance limits shall not operate to limit Developer's indemnity obligations under this **Section 11.5** or elsewhere in this Agreement. Insurance limits shall not operate to limit Developer's indemnity obligations under this **Section 11.5** or elsewhere in this Agreement. The provisions of this **Section 11.5** and all other indemnity obligations of Developer hereunder shall survive expiration of the Term and any termination of this Agreement, and shall remain in full force and effect.

11.6 Recordation of Memorandum of DDA. As soon as reasonably practicable following execution of this Agreement, the Parties shall duly execute and record against the Property a memorandum of this Agreement, substantially in the form of **Exhibit 11.6** attached hereto ("**Memorandum of DDA**"), in the records of the County Recorder of Contra Costa County. In the event that this Agreement is terminated for any reason, all Parties agree to promptly execute and record, in form satisfactory to the City, a termination of this Agreement and the Memorandum of DDA.

11.7 Interpretation. Article and Section headings in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Agreement. As used herein: (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) locative adverbs such as "herein," "hereto," "hereof," and "hereunder" shall refer to this Agreement in its entirety and not to any specific section or paragraph; (c) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to;" (d) "shall" and "must" are mandatory and "may" is permissive; and (e) "or" is not necessarily exclusive. The Parties have jointly participated in the negotiation and drafting of this Agreement, and this Agreement shall be construed fairly and equally as to the Parties, without regard to any rules of construction relating to the Party who drafted a particular provision of this Agreement.

11.8 Governing Law; Venue. This Agreement is entered into in and shall be governed by and construed in accordance with the laws of the State of California, without reference to any of its conflict of laws principles. The exclusive venue for any disputes or legal actions hereunder shall be the Superior Court of California in and for the County of Contra Costa and all parties waive their respective rights to change venue pursuant to Section 394 of the Code of Civil Procedure.

11.9 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is

held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

11.10 Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees (including in-house attorneys' fees) and costs incurred in such action. For purposes of this provision, the fees of in-house attorneys shall be based on the fees then regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which such services were rendered who practice in San Francisco Bay Area law firms.

In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Agreement and/or the power of the City to enter into this Agreement or perform its obligations hereunder, and/or to attack or set aside any Project Approvals, Developer shall defend such action (with counsel reasonably acceptable to the City), and shall indemnify and hold the City harmless against all Claims arising from or in connection with such action. Upon commencement of any such action, the City and Developer shall meet in good faith and seek to establish a mutually acceptable method of defending such action.

11.11 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the Parties and the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer by Developer except as permitted in **Article 7**. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any heir, successor, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under Applicable Law.

The terms of this Agreement shall run with the land comprising the Property, and shall bind all successors in title to the Property or any portion thereof during the Term of this Agreement, except that the provisions of this Agreement that are specified to survive expiration of the Term or termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such expiration or termination. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases the Property or the applicable portion of the Property from the requirements of this Agreement.

Notwithstanding this Section 11.11, provided that a final certificate of occupancy has been issued for the applicable Residential Unit or Commercial Unit, this Agreement shall not be binding on a Residential Unit or Commercial Unit from and after the date of closing for the sale of (i) such completed Residential Unit to a member of the home-buying public for the purpose of ownership, occupancy and/or rental of such Residential Unit, or (ii) such completed Commercial Unit to a third party owner for the purpose of ownership, occupancy and/or rental of such Commercial Unit; provided, however, that (a) the foregoing shall not be deemed to release (i) the

Original Developer, Historic Resources Assignee or Merchant Builder, as applicable, from the Developer's obligations with respect to the Vertical Construction Phase in which the applicable Residential Unit or Commercial Unit is located until a Certificate of Construction Phase Completion has been issued for such Vertical Construction Phase, or (ii) the Original Developer from the Developer's obligations with respect to the Project until a Certificate of Project Completion has been issued, and (b) the provisions of this Agreement that are specified to survive expiration of the Term or termination of this Agreement shall run with the land in perpetuity.

11.12 Joint and Several Obligations. If Developer is comprised of two (2) or more entities, all covenants, obligations, liabilities, representations and warranties of Developer hereunder shall be the joint and several covenants, obligations, liabilities, representations and warranties of each such entity.

11.13 No Third-Party Beneficiary. No person or entity other than the City, the Developer, and their permitted successors and assigns shall be third party beneficiaries of this Agreement or have any right of enforcement or action under or with respect to this Agreement.

11.14 Relationship of Parties. Nothing in this Agreement, in any actions or negotiations leading to this Agreement, in any acts or omissions under this Agreement, or otherwise is intended to or does establish the City and Developer as partners, co-venturers, or principal and agent with one another. Accordingly, except as expressly set forth herein, the City shall have no rights, powers, duties or obligations with respect to the construction, development, operation, maintenance, management, marketing or sales of the Project. Developer shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City from and against any Claims made against the City arising from a claimed relationship of partnership or joint venture between the City and Developer with respect to the construction, development, operation, maintenance or management of the Project.

11.15 Provisions Not Merged With City Grant Deed. None of the provisions of this Agreement shall be merged by or in the City Grant Deed or any other instrument transferring title to the Property or any portion thereof, and neither the City Grant Deed nor any other such instrument shall affect or impair the provisions of this Agreement.

11.16 Entire Understanding of the Parties. Except as expressly set forth herein, this Agreement, including all recitals and exhibits hereto, constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement.

11.17 City Approval. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, waiver or other action by the City is required or permitted under this Agreement or other City Document, such action may be given, made, or taken by the City Manager on behalf of the City, or by any person who shall have been designated in writing to Developer by the City Manager, without further approval or authorization required by the City Council, and any such action shall be in writing; provided, however, that the City Manager may seek such authorization when he or she deems it appropriate in his or her sole and absolute discretion. The City Manager may also, at his or her discretion, agree in writing to modification of the dates by which actions are to be completed or to waive

non-substantive terms and conditions of this Agreement, to make non-substantive amendments to this Agreement in furtherance of the goals and objectives of this Agreement, or to make reasonable modifications to this Agreement requested by Project Lenders. The City Manager or his or her designee is authorized to execute and deliver, on behalf of the City, any ancillary documents and to take any action necessary or desirable to effectuate the provisions and intent of this Agreement, including, without limitation, the Memorandum of DDA, the City Grant Deed, the Notice of Onsite Affordable Housing Requirements, the City Regulatory Agreements, the Notice of Affordability Restrictions and appropriate escrow instructions.

11.18 Discretion Retained By City. The City's execution of this Agreement does not constitute any Project Approval or other approval by City and in no way limits the discretion of City in the environmental review or the permit and approval process in connection with development, construction or operation of the Project or otherwise commit the City's discretionary powers in any particular manner. Nothing in this Agreement shall in any way limit the discretion of the City in acting in that regulatory capacity, and no action or inaction by the City acting in that regulatory capacity shall be a breach or default under this Agreement. Without limiting the preceding sentence, and notwithstanding the title of this Agreement or that the City is a party of this Agreement, neither this Agreement nor any provision thereof shall be deemed under any circumstance to render this Agreement or constitute a development agreement as set forth in California Government Code Sections 65864 *et seq*.

11.19 Waiver. No waiver of any provision of this Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver unless the written waiver so specifies.

11.20 Counterparts; Facsimile/Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The Parties shall be entitled to rely upon facsimile copies or electronic copies of the Parties' signatures to this Agreement and any instrument executed in connection herewith. Notwithstanding the foregoing, promptly after sending a facsimile or electronic copy of its signature hereon, each Party shall promptly provide the others with an executed original counterpart, although the failure to provide such counterpart shall not limit the effectiveness of this Agreement.

11.21 Amendments. The Parties can amend this Agreement only by means of a writing signed by all Parties.

11.22 Operating Memoranda. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through Operating Memoranda approved by the Parties which, after execution, shall be attached to this Agreement as addenda

and become a part hereof (the "**Operating Memoranda**"). This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate. Operating Memoranda may be executed on the City's behalf by the City Manager. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Any significant modification to the terms of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with **Section 11.22**, and must be approved by the City Council.

11.23 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld, delayed or conditioned, except where it is specifically provided that a sole discretion standard applies. Except as otherwise expressly provided herein, in the event the City does not approve or disapprove of a submittal or other matter described herein within any applicable time period specified herein, such inaction shall be deemed to constitute disapproval by the City of such submittal or other matter as of the expiration of such time period.

11.24 Further Assurances. Each of the Parties agrees to execute and deliver all further documents and to take all further actions reasonably necessary or appropriate to effectuate the purposes and intent of this Agreement.

11.25 Expenses. Except as otherwise expressly provided herein (including within any Approved Final Financing Plan), the Parties shall bear their respective expenses incurred in connection with the preparation, execution and performance of this Agreement, including all fees and expenses of agents, representatives, attorneys and accountants.

11.26 Computation of Time. All references in this Agreement to "days" shall mean calendar days unless expressly referred to as "business days." The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a Saturday, Sunday or holiday, and then that day is also excluded. If the day for performance of any obligation under this Agreement is a Saturday, Sunday or holiday, then the time for performance of that obligation shall be extended to the first following day that is not a Saturday, Sunday or holiday. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

11.27 Conflict Between Governing Documents. In the event of any conflict between the provisions of this Agreement and the provisions of any other Governing Documents, the provisions of this Agreement shall control to the extent of such conflict. Furthermore, in the event of any conflict between this Agreement and the Development Agreement, this Agreement shall control.

11.28 Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or

representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

Approved as to form:

City Attorney

Attest:

City Clerk

CITY:

CITY OF RICHMOND,
a municipal corporation and charter city

By: _____
City Manager

DEVELOPER:

WINEHAVEN LEGACY LLC,
a Delaware limited liability company

By: _____
Name: Marc L. Magstadt
Title: Authorized Signatory

EXHIBIT B

Recorded at the Request of
Old Republic Title Company-
Oakland
11701941

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
City of Richmond
450 Civic Plaza
Richmond, CA 94804
Attn: City Manager

Record for the Benefit of
the City of Richmond
Pursuant to Government Code Section 6103

FOR RECORDER'S USE ONLY

CERTIFIED A TRUE COPY OF THE ORIGINAL
RECORDED IN THE OFFICIAL RECORDS OF
CONTRA COSTA COUNTY ON October 23, 2020
Under Recorder's Serial No. 2020-0247749
Old Republic Title Company - Oakland
By: Sasha Bohrer

Fee recording requested EC 27388 & 27388.1

(Space Above This Line Reserved for Recorder's Use Only)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF RICHMOND

AND

WINEHAVEN LEGACY LLC

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Development Agreement**" or this "**Agreement**") is made and entered into as of October 21, 2020 ("**Agreement Date**") by and between the CITY OF RICHMOND, a municipal corporation organized and existing under the laws of the State of California ("**City**"), and WINEHAVEN LEGACY LLC, a Delaware limited liability company ("**Developer**"). City and Developer are referred to individually as "Party," and collectively as the "Parties."

RECITALS

This Agreement is entered upon the basis of the following facts, understandings and intentions of City and Developer.

A. The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development, and discourage investment in and commitment to comprehensive planning that would make maximum efficient utilization of resources at the least economic cost to the public.

B. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 *et seq.* of the Government Code (the "**Development Agreement Legislation**"), which authorizes City and a developer having a legal or equitable interest in real property to enter into a binding development agreement, establishing certain development rights in the property.

C. Pursuant to Government Code Section 65865, City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in the City of Richmond Municipal Code ("**RMC**") section 15.04.811 *et seq.* (the "**City Development Agreement Regulations**"). This Development Agreement has been processed in accordance with the City Development Agreement Regulations.

D. The City is the owner of approximately 412 gross acres of property commonly known as the Point Molate Site, located within the City of Richmond, County of Contra Costa, State of California, and more particularly described and depicted in **Exhibit A** (the "**Site**"). As part of the Point Molate Reuse Plan adopted by the City Council in 1997 ("**Reuse Plan**") and proposed Disposition and Development Agreement, the City is to convey a portion of the Site to Developer for the development of the Point Molate Mixed-Use Project. Developer has a legal or equitable interest in that portion of the Site consisting of approximately eighty-two (82) acres as depicted and identified on the attached **Exhibit B** as Parcels 1 through 44, inclusive (the "**Property**"). The precise boundaries of the vesting tentative tract map attached as **Exhibit B** and the Property to be conveyed by the City to Developer are subject to revision prior to the Closing Date to reflect minor adjustments in the vesting tentative tract map as proposed by the Developer and approved by the City or otherwise as may be conditioned by the City.

E. Developer intends to develop an environmentally suitable mixed-use project as described in **Exhibit C** attached hereto ("**Project**"), including any program for development that conforms with the Point Molate Planned Area District ("**PM-PAD**"), comprising the Zoning and the Point Molate Master Planned Area Plan (found in the Point Molate Design Guidelines), and falls within the mix and envelope of land uses evaluated in the Point Molate Mixed-Use Project Subsequent Environmental Impact Report, State Clearinghouse No. 2019070447 (the "**SEIR**") and the "Development Capacity" set forth in Section 1.020 of the PM-PAD Zoning.

F. The complexity, magnitude and long-range nature of the Project would be difficult for Developer to undertake if City had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project. As a result of the execution of this Development Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project. Furthermore, while City may approve other projects after the Agreement Date that place a burden on City's infrastructure, it is the intent and agreement of the Parties that Developer's right to build and occupy the Project, as set forth in the Project Approvals (as defined in Section 1.4), shall not be diminished as a result of such other projects and that Developer's cost to develop the Project shall not be increased as a result of such other projects.

G. City is desirous of advancing the socioeconomic interests of City and its residents by promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment opportunities for residents and expanding City's property tax base. City is also desirous of gaining the Public Benefits (as defined in Section 2.1) of the Project, which are in addition to those dedications, conditions and exactions required by laws or regulations and as set forth in this Development Agreement, and which advance the planning objectives of, and provide benefits to, City.

H. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of property and foster orderly growth and quality development in City; (2) development will proceed in accordance with the goals and policies set forth in the City of Richmond General Plan 2030 (the "**General Plan**") and will implement City's stated General Plan policies; (3) City will receive increased property tax and sales tax revenues; (4) City will benefit from increased employment opportunities for residents of City created by the Project; and (5) City will receive Public Benefits (as defined in Section 2.1) provided by the Project for the residents of City.

I. Developer has applied for, and City has granted, the Project Approvals (as defined in Section 1.4) to protect the interests of its citizens in the quality of their community and environment. As part of the Project Approvals, City has undertaken, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*, hereinafter "**CEQA**"), the required analysis of the environmental effects that would be caused by the Project and has prepared a Subsequent Environmental Impact Report (SEIR) (State Clearinghouse No. 2019070447). The SEIR determined those feasible mitigation measures which will eliminate, or reduce to a less than significant level, or decrease the severity of the adverse environmental impacts of the Project. The environmental effects of the proposed development of the Property

were analyzed by the SEIR (as defined in Section 1.4.1) certified by the City in connection with the Project. City also has adopted a mitigation monitoring and reporting program (the "**MMRP**") to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed. Those mitigation measures for which Developer is responsible are incorporated into, and required by, the Project Approvals. City has also adopted findings of fact and statements of overriding considerations for those adverse environmental impacts of the Project that may not or cannot be mitigated to an acceptable level.

J. In addition to the Project Approvals, the Project may require various additional land use and construction approvals, termed Subsequent Approvals (as defined in Section 1.5), in connection with development of the Project.

K. City has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this Development Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in City's General Plan.

L. On August 20, 2020, the City of Richmond Planning Commission ("**Planning Commission**"), the initial hearing body for purposes of development agreement review, recommended approval of this Development Agreement pursuant to Planning Commission Resolution No. 20-12. On September 8, 2020, the City of Richmond City Council ("**City Council**") held a duly noticed public hearing on this Development Agreement pursuant to the requirements of the Development Agreement Legislation and the City Development Agreement Regulations and other relevant portions of the RMC. After due review of and report on Developer's application for this Agreement by City staff, consideration of the Planning Commission's recommendations thereon, all other evidence heard and submitted at such public hearing, all other matters considered by the Planning Commission, and the matters to be considered pursuant to the Development Agreement Legislation and the City Development Agreement Regulations in enacting a development agreement and other relevant provisions of the RMC, the City Council: (1) considered and relied upon the certified SEIR and determined that consideration of this Agreement complies with CEQA based on the SEIR; and (2) introduced Ordinance No. 22-20 approving this Agreement, finding and determining in connection therewith that this Agreement is consistent with the goals, objectives, policies, land uses and programs specified in the General Plan, as amended by the General Plan Amendments (as defined in Section 1.4.2), and on September 15, 2020, adopted Ordinance No. 22-20 approving this Development Agreement and authorizing its execution.

M. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Development Agreement is appropriate. This Development Agreement will eliminate or reduce uncertainty regarding Project Approvals (including the Subsequent Approvals), thereby encouraging planning for, investment in and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial housing, employment, and property and sales tax benefits as well as other public benefits to City, thereby achieving the goals and purposes for which the Development Agreement Legislation was enacted.

N. The City and Developer agree that it may be beneficial to enter into additional agreements or to amend this Development Agreement with respect to the implementation of the individual or separate components of the Project when more information concerning the details of each component is available, and this Agreement should expressly allow for such contemplated additional agreements or amendments.

O. This Development Agreement does not limit the City's obligation to comply with CEQA before taking any discretionary action regarding the Project, or the Developer's obligation to comply with Applicable Rules in connection with the development of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, City and Developer agree as follows:

Article 1
GENERAL PROVISIONS

1.1 Parties.

1.1.1 City. City is a California municipal corporation, with offices located at 450 Civic Center Plaza Richmond, CA 94804. "City," as used in this Development Agreement, shall include City and any assignee of or successor to its rights, powers and responsibilities.

1.1.2 Developer. Developer is a Delaware limited liability company, with offices located at 2392 Morse Avenue, Irvine, CA 92614. "Developer," as used in this Development Agreement, shall include any permitted assignee or successor-in-interest as herein provided.

1.2 Property Subject to this Development Agreement. City is to convey the Property to Developer, which comprises that portion of the Site intended for development of the Project. The Property, as depicted and identified as Parcels 1 through 44 on **Exhibit B**, shall be subject to this Development Agreement, subject to Section 1.2.1 below.

1.2.1 Mapping Adjustment. The Parties acknowledge and agree that **Exhibit B** is provided for reference purposes, and that the Parties intend for **Exhibit B** to be replaced by a metes and bounds and/or recorded final subdivision map legal description of the Property. Upon completion of such metes and bounds and/or recorded final subdivision map legal description of the Property, the Parties shall execute and record an Administrative Amendment of this Agreement in accordance with Section 6.4.2 solely to replace **Exhibit B** to describe the Property by such metes and bounds and/or recorded final subdivision map legal description.

1.3 Term.

1.3.1 Effective Date. This Development Agreement shall become effective upon the effectiveness of the ordinance approving this Agreement (the "**Effective Date**"). Notwithstanding the foregoing or any provision of this Development Agreement to the contrary, (a) Developer's obligations under this Development Agreement shall not take effect

unless and until the Close of Escrow under Section 4.3.2 of the Disposition and Development Agreement occurs and Developer takes title to the Property, and (b) if after all appeals or time to appeal have been exhausted, a court of competent jurisdiction enters a final judgment or issuance of a final order directed to the City to set aside, withdraw, or abrogate the approval of the City Council of this Agreement, then this Agreement shall be deemed to have no force or effect upon either Party.

1.3.2 Term of the Agreement. The term ("**Term**") of this Development Agreement shall commence upon the Effective Date and shall continue in full force and effect for a period of fifteen (15) years unless extended or earlier terminated as provided in this Agreement subject to Force Majeure Delay. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the Public Benefits of the Project. The Term shall automatically be extended for one (1) period of five (5) years provided there is no Developer Event of Default at the time of the extension and conditioned on Developer's Completion of Construction of the First Site Improvement Phase (including the First Phase Master Infrastructure and First Phase Master Developer Amenities) within ten (10) years of the Effective Date subject to Force Majeure Delay. To the extent not eligible for the automatic 5-year extension, Developer may request an extension through the regular amendment process in Section 6.2 of this Agreement. Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect; provided, however, such termination shall not affect any right, duty or expiration date arising from City approvals, including, without limitation, the Project Approvals and any reimbursement agreement(s) entered into pursuant to the terms of this Agreement. This Agreement shall terminate with respect to any for-sale or for-rent residential lot, for-sale or for-rent residential condominium unit, for-sale or for-rent commercial lot, and for-sale or for-rent commercial condominium unit, and such lot or unit shall be released and no longer be subject to this Agreement, without the execution or recordation of any further document, when a Certificate of Occupancy has been issued for the building(s) on the lot or condominiums.

1.4 Project Approvals. Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described below. For purposes of this Development Agreement, the term "**Project Approvals**" shall mean all of the approvals, plans and agreements described in this Section 1.4.

1.4.1 SEIR. The Subsequent Environmental Impact Report (State Clearinghouse No. 2019070447), Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program ("**MMRP**"), which were prepared pursuant to CEQA, were recommended for certification by the Planning Commission on August 20, 2020, by Resolution No. 20-12, and certified with findings by the City Council on September 8, 2020, by Resolution No. 97-20 (certifying SEIR and adopting the findings) (the "**SEIR**").

1.4.2 General Plan Amendments. On September 8, 2020, following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. 97-20, approved amendments to the City General Plan (the "**General Plan Amendments**"), that amend the General Plan land use designations on the Property from Business/Light Industrial, Low-Density Residential, Medium Density Residential, Parks and Recreation, and Open Space to Low-Density Residential, Medium

Density Residential, Medium Intensity Mixed Use (Community Nodes and Gateways), Parks and Recreation, and Open Space; amends the text describing the Medium-Density Residential and Medium Intensity Mixed Use (Community Nodes and Gateways) land use designations; amends the text describing Change Area (CA) 13; and amends the General Plan maps to conform the maps to the text amendments.

1.4.3 Disposition and Development Agreement. On September 8, 2020, after a duly noticed public hearing, the City Council, by Resolution No. 97-20, approved the Disposition and Development Agreement for the Project ("**Disposition and Development Agreement**").

1.4.4 Design Guidelines. On September 8, 2020, following Design Review Board review and recommendation and Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. 97-20, approved the Point Molate Design Guidelines (the "Design Guidelines").

1.4.5 Vesting Tentative Tract Map. On September 8, 2020, following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. 97-20, approved a Vesting Tentative Tract Map (the "**VTTM**") for the Property.

1.4.6 Historic Conservation Plan and -H Overlay. On September 8, 2020, following Historic Preservation Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. 97-20, approved the Point Molate Historic Conservation Plan, which is Chapter 4 of the Design Guidelines, and on September 15, 2020, by Ordinance No. 22-20 approved the -H overlay for the Winehaven Historic District.

1.4.7 Use Permit. On September 8, 2020, following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. 97-20, approved a Use Permit to allow construction of the Shoreline Park.

1.4.8 Planned Area District. On September 15, 2020, following Design Review Board review and recommendation of the Point Molate Planned Area District Plan ("**PAD Plan**"), which is Section 2 of the Design Guidelines, and the Design Guidelines, and following Planning Commission review and recommendation of the Planned Area District ("**PAD**"), which consists of Site-specific zoning (including an -H overlay for the Winehaven Historic District) and the PAD Plan, and after a duly noticed public hearing, the City Council, by Ordinance No. 22-20, approved the PAD, including the Site-specific zoning (collectively, the "**Zoning Ordinance Amendments**").

1.4.9 Development Agreement. On September 15, 2020, following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. 23-20, approved this Development Agreement and authorized its execution.

1.5 Subsequent Approvals. To develop the Project as contemplated in this Development Agreement, the Project will require land use approvals, entitlements, development

permits, and use and/or construction approvals other than those listed in Sections 1.4.1 through 1.4.9 above, which may include, without limitation: development plans, conditional use permits, tentative and final subdivision maps, street abandonments, design review approvals, certificates of appropriateness, demolition permits, improvement agreements, infrastructure agreements, grading permits, Building Permits, right-of-way permits, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, encroachment permits, certificates of occupancy, and amendments thereto and to the Project Approvals (collectively, "**Subsequent Approvals**"). At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a "Project Approval" under this Development Agreement.

1.6 Other Agency Approvals. In addition to the Project Approvals and the Subsequent Approvals, to develop the Project as contemplated in this Development Agreement, the Project will also require certain discretionary approvals from federal, state, and regional governmental entities (the "**Other Agency Approvals**"). These Other Agency Approvals may include, without limitation, approvals from the San Francisco Bay Conservation and Development Commission ("**BCDC**"), California State Water Resources Control Board, California State Lands Commission, California Toll Bridge Authority, California State Historic Preservation Office, California Department of Fish and Wildlife, California Department of Transportation, California Department of Toxic Substances Control ("**DTSC**"), Regional Water Quality Control Board ("**RWQCB**"), U.S. Army Corps of Engineers, United States Coast Guard, U.S. Fish & Wildlife Service, and U.S. National Marine Fisheries Service (the foregoing and such other federal, state or regional agencies that may require review of or permits for the Project being defined, collectively, as the "**Other Agencies**").

1.7 Mitigation Monitoring and Reporting Program. Developer shall comply with all mitigation measures contained in the MMRP imposed as applicable to each Project component, except for any mitigation measures that are the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of the mitigation measures in the MMRP applicable to the Developer's construction of the Project. The Parties expressly acknowledge that the SEIR and the associated MMRP are intended to be used in connection with each of the Subsequent Approvals to the extent appropriate and permitted under CEQA. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate significant environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with CEQA. As used herein, "**Material Changes**" means the circumstances described in subparts (a), (b), and (c) of Public Resources Code Section 21166.

1.8 Definitions. The capitalized terms used in this Development Agreement shall have the meanings set forth in Appendix I attached hereto.

Article 2
PUBLIC BENEFITS

2.1 Public Benefits. In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, Developer will provide the public benefits ("**Public Benefits**") described herein, which are over and above those dedications, conditions, and exactions required by laws or regulations. The Public Benefits include without limitation:

2.1.1 Disposition and Development Agreement Obligations. The following obligations as set forth in the Disposition and Development Agreement, all within the time periods set forth in the Schedule of Performance attached to the Disposition and Development Agreement:

2.1.1.1 **Master Infrastructure**, as defined in Appendix I, as contemplated in Sections 5.1 and 5.5.6 and elsewhere in the Disposition and Development Agreement, which includes, among other things:

(a) **Police and Fire Station**, as defined in Appendix I, Police and Fire Station is to be completed prior to the issuance of the first Certificate of Occupancy issued in connection with any portion of the Project; provided, however, (a) certificates of occupancy may be issued for model homes prior to the completion of the Police and Fire Station in accordance with Section 4.4 of this Agreement provided that in no event shall a member of the homebuying public be able to occupy a model home until construction of the Police and Fire Station is complete, and (b) Completion of the Police and Fire Station will not be a requirement for the issuance of a temporary (as opposed to final) Certificate of Occupancy ("**TCO**") for the Historic Core if a TCO is needed for the Historic Core to be deemed "placed in service" for purposes of Section 47(b) of the Internal Revenue Code ("**IRC**"), so long as no portion of the Historic Core is occupied or used by persons or businesses until completion of the Police and Fire Station occurs.

(b) **Offsite Improvements**, as defined in Appendix I, as contemplated in Sections 5.1 and 5.5.6 and elsewhere in the Disposition and Development Agreement.

2.1.1.2 **Master Developer Amenities,** as defined in Appendix I, as contemplated in Sections 5.1 and 5.5.6 and 5.5.8 and elsewhere in the Disposition and Development Agreement.

2.1.1.3 **Historic Core Access Work**, as defined in Appendix I and as defined and contemplated in Section 1.1, and elsewhere in the Disposition and Development Agreement.

2.1.1.4 **Affordable Onsite Units**, as defined in Appendix I, which shall total no less than sixty-seven (67) Residential Units (the "**Required Onsite Affordable Units**"). All of the Required Onsite Affordable Units shall be completed as part of the Vertical Phases to be constructed within the First Site Improvement Phase, and at least 25% of the Required Onsite Affordable Units will be for sale units and will be interspersed with

market rate housing (and not in a separate building), as defined and contemplated in Sections 1.1. and 5.5.5 and elsewhere in the Disposition and Development Agreement.

2.1.1.5 **On-Going Remediation**, as defined in Appendix I, as contemplated in Section 4.10.6 and elsewhere in the Disposition and Development Agreement.

2.1.1.6 **Operation and maintenance** of: (a) the Master Infrastructure, including without limitation the Project's internal streets, (b) the Master Developer Amenities, and (c) the Offsite Improvements pursuant to a Project O&M Plan, as contemplated in Section and 5.5.8 of the Disposition and Development Agreement.

2.1.1.7 Formation of a master association for all residential and commercial owners (the "**Master HOA**") to own (as applicable), perform and fund the ongoing management, accounting, operation, insurance, maintenance, repair and replacement of any and all private roadways, landscaping, recreation and open space, and other common areas and facilities within the Project, including common area as defined in the Davis Stirling Act (collectively, "**Project Common Area**"), as contemplated in Sections 6.3.3 and 6.4.1.2 of the Disposition and Development Agreement.

2.1.1.8 **Weatherization of Historic Resources**, as contemplated in Section 2.12 of the Disposition and Development Agreement.

2.1.1.9 Provision of pre-Closing security services, as contemplated in Section 2.13 of the Disposition and Development Agreement.

2.1.1.10 **Payment of Prevailing/Living Wage,** as contemplated in Section 5.5.10.1 of the Disposition and Development Agreement Developer and each of its contractors and subcontractors are required to pay prevailing wages and living wages in the construction of the Project as those wages are determined pursuant to Labor Code Sections 1720 *et seq*. and implementing regulations of the Department of Industrial Relations and the City of Richmond's Living Wage Ordinance (RMC Chapter 2.60), respectively.

2.1.2 Community Facilities District. As contemplated in Section 4.5 of this Agreement and 4.6.2.8 of the Disposition and Development Agreement, the City shall cooperate with the Developer to establish one or more CFDs pursuant to the Mello Roos Act and as permitted by State law to finance construction, development, and operation of the Master Infrastructure, Offsite Improvements and Master Developer Amenities in connection with the Project and the development of the Property, pursuant to the terms of this Agreement and the Disposition and Development Agreement.

2.1.3 Construction of the Bay Trail.

2.1.3.1 On-Site Portion. The on-site portion of the Bay Trail extends approximately 1.5 miles through the Property along the shoreline. As contemplated in Sections 5.1 and 5.5.6 and elsewhere in the Disposition and Development Agreement, the Developer shall be responsible for the construction of the on-site portion of the Bay Trail in substantial conformance with the current configuration and sixty-five (65) percent design

drawings, which construction is currently estimated to cost Three Million and Two Hundred Thousand Dollars ($3,200,000). Developer shall not be obligated to contribute to or incur any marginal increases in costs attributed to later upgrades in the design that may be imposed by the City. The obligation to construct and pay for the on-site portion of the Bay Trail shall remain even if grant funds are ultimately secured by the City and made available to the Developer. Accordingly, to the extent grant funds are secured and made available to the Developer to pay all or a portion of the cost of constructing the on-site portion of the Bay Trail, Developer shall contribute an amount equal to such grant funds to other on-site or immediate off-site improvements as the City may designate in its discretion, so long as the other improvements provide public benefits to the Project or its future occupants. Notwithstanding the foregoing, at any time prior to Developer's Commencement of Construction of the on-site portion of the Bay Trail the City may decide in its sole discretion to construct the on-site portion of the Bay Trail itself, in which case the entire cost of such construction (without offset for any grant funds) will be reimbursed to the City by Developer and/or contributed to other off-site and/or on-site improvements, as the City may designate in its sole discretion. If the City so elects to construct the on-site portion of the Bay Trail, the City shall provide Developer with sixty (60) days' notice of that election and the Developer's financial contribution shall not exceed Three Million Dollars ($3,000,000); payment of the Developer's financial contribution shall be due prior to the City's issuance of certificates of occupancy for the first saleable Residential Units in the initial phase of development.

2.1.3.2 Off-Site Portion. Developer shall construct the off-site portion of the Bay Trail, extending from Interstate 580 to the Property, including staging areas and related access improvements at the Bay Trail/580 interchange. However, Developer's obligation to construct the off-site portion of the Bay Trail shall be limited to the maximum in-kind contribution of up to Seven Hundred and Fifty Thousand Dollars ($750,000) (the "**Bay Trail Funding Contribution**"). The balance of the funding is expected to be provided by the East Bay Regional Park District, grant funding, or other funding sources. The Parties understand and acknowledge that the East Bay Regional Park District has already applied for and received grant funding for a majority of the costs of constructing the off-site portion of the Bay Trail, and any such grant funds actually received are expected to be made available towards the cost of constructing the off-site portion of the Bay Trail. Cost savings in Developer's construction or grant funding received in excess of funds needed to construct the balance of the off-site portion of the Bay Trail may offset or reduce the amount of Developer's Bay Trail Funding Contribution. Notwithstanding the foregoing, at any time prior to the Developer's Commencement of Construction of the off-site portion of the Bay Trail, the City in its sole discretion may elect that either the City or East Bay Regional Park District construct the off-site portion of the Bay Trail, in which case the Bay Trail Funding Contribution will be paid to the City or at City's discretion to East Bay Regional Park District or another third party by Developer as a contribution to the cost of the off-site portion of the Bay Trail. If the City so elects to construct the off-site portion of the Bay Trail, the City shall provide Developer with sixty (60) days' notice of that election. Payment of the Developer's financial contribution under such election shall be due prior to the City's issuance of the one hundredth (100th) Building Permit for Residential Units in the Project.

2.1.4 Removal of Remnant Piping on Fire Roads. Developer shall remove all above-ground remnant piping on fire roads in hillside areas.

2.1.5 Storm Water Facilities and Maintenance. Developer shall design, construct, and maintain the improvements to the drainage and treatment of storm water in the area with the final design, details, and management to be reviewed and approved by the City Engineer in accordance with City and industry standards. These storm water improvements must treat at the minimum volume of storm water runoff that is acceptable to the City Engineer. Developer's obligation to design and construct storm water facilities pursuant to this Section 2.1.5 shall be fully creditable toward the storm drainage fee that is otherwise payable in connection with the construction of the Project as set forth in Section 3.6.3 and **Exhibit D** of this Agreement.

2.2 Site Improvements. Developer shall be responsible for the design, engineering, and construction of the Site Improvements in accordance with Sections 2.5.1 and 5.2 of the Disposition and Development Agreement (except that Developer shall not be responsible for the design engineering, and construction of the Bay Trail extension, which is being undertaken by other public agencies; provided that Developer shall be responsible for the Bay Trail Funding Obligation, as described in Section 2.1.3 above). All Site Improvements shall be designed and constructed in accordance with City-Wide standards. The Site Phasing Plan will provide for the Site Improvements to be phased proportionately with vertical development phases. Developer shall maintain and be liable for all such Site Improvements until formally accepted by City, or when finally accepted by another authority, if another authority has jurisdiction over the Site Improvements, and/or when finally accepted by a public utility if a public utility has jurisdiction over the Site Improvements.

2.3 Occupancy Contingent on Construction of Police and Fire Station. Developer acknowledges that the City shall not grant a Certificate of Occupancy for any building constructed on the Property prior to the completion of the Police and Fire Station as set forth in definition of "Police and Fire" in Section 1.1 of the Disposition and Development Agreement, provided, however, (a) certificates of occupancy may be issued for model homes prior to the completion of the Police and Fire Station in accordance with Section 4.4 of this Agreement provided that in no event shall a member of the homebuying public be able to occupy a model home until construction of the Police and Fire Station is complete, and (b) completion of the Police and Fire will not be a requirement for the issuance of a temporary (as opposed to final) Certificate of Occupancy ("**TCO**") for the Historic Core if a TCO is needed for the Historic Core to be deemed "placed in service" for purposes of Section 47(b) of the Internal Revenue Code ("**IRC**"), so long as no portion of the Historic Core is occupied or used by persons or businesses until completion of the Police and Fire Station occurs.

2.4 Processing During Third Party Litigation. The filing of any third-party lawsuit(s) against the City or Developer relating to this Agreement, any Project Approval or Subsequent Approval, or to other development issues affecting the Property shall not delay or stop the City from processing, issuing, and/or approving Subsequent Approvals, unless the third party obtains a court order preventing the activity.

Article 3
DEVELOPMENT OF THE PROPERTY

3.1 Project Development. Developer shall have a vested right to develop the Project on the Property, in accordance with the Vested Elements (defined in Section 3.2).

3.2 Vested Elements. The permitted uses of the Property, the maximum density and/or number of Residential Units and commercial development, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for Site Improvements and financing of Site Improvements, and the other terms and conditions of development applicable to the Property are as set forth in:

- The General Plan of City on the Agreement Date, including the General Plan Amendments ("**Applicable General Plan**");

- The Zoning Ordinance of City on the Agreement Date, including the Zoning Ordinance Amendments ("**Applicable Zoning Ordinance**");

- Other rules, regulations, ordinances and policies of City applicable to development of the Property on the Agreement Date (collectively, together with the Applicable General Plan and the Applicable Zoning Ordinance, the "**Applicable Rules**"); and

- The Project Approvals (including the Design Guidelines), as they may be amended from time to time with Developer's consent (such consent to be granted at the sole discretion of Developer) and City's approval of the amendment in accordance with Section 6.4.2 of this Agreement,

are hereby vested in Developer, subject to, and as provided in, the provisions of this Development Agreement (the "**Vested Elements**"). City hereby agrees to be bound with respect to the Vested Elements, including the PAD's development capacity as defined in **Exhibit C** and **Exhibit E** (for example, the PAD's development capacity, which permits 1,260 new Residential Units plus a mix of uses in rehabilitated historic buildings and 250,000 square feet of new construction in the Winehaven Historic District) and subject to Developer's compliance with the terms and conditions of this Development Agreement. The intent of this Section 3.2 is to cause all development rights which may be required to develop the Project in accordance with the Project Approvals to be deemed to be "vested rights" as that term is defined under California law applicable to the development of land or property and the right of a public entity to regulate or control such development of land or property, including, without limitation, vested rights in and to Building Permits and Certificates of Occupancy.

3.3 Development Construction Completion.

3.3.1 Timing of Development; *Pardee* Finding. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties'

agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that, subject to the phasing requirements set forth in Schedule of Performance and Site Phasing Plan of the Disposition and Development Agreement, Developer shall have the right (without the obligation and subject to the provisions of this Development Agreement), to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. As set forth in the Disposition and Development Agreement, the City Manager may at his or her discretion agree on behalf of the City to any modification of the Schedule of Performance or Site Phasing Plan proposed by Developer. No such modifications of the Schedule of Performance shall require any amendment of this Agreement.

3.3.2 Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), Building Permits, Site Improvement Permits, Certificates of Occupancy, or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Agreement; provided, however, the provisions of this Section shall not affect City's compliance with moratoria or other limitations, including but not limited to limitations due to pandemics, mandated by other governmental agencies or court-imposed moratoria or other limitations imposed by State or Federal Law, subject to Section 3.4.3 hereof.

3.4 Effect of Project Approvals and Applicable Rules; Future Rules.

3.4.1 Governing Rules. Except as otherwise explicitly provided in this Development Agreement, development of the Property shall be subject to (a) the Project Approvals, and (b) the Applicable Rules.

3.4.2 Changes in Applicable Rules; Future Rules.

3.4.2.1 To the extent any changes in the Applicable Rules, or any provisions of future General Plans, Specific Plans, Zoning Ordinances or other rules, regulations, ordinances or policies (whether adopted by means of ordinance, initiative, referenda, resolution, policy, order, moratorium, or other means, adopted by the City Council, Planning Commission, or any other board, commission, agency, committee, or department of City, or any officer or employee thereof, or by the electorate) of City (collectively, "**Future Rules**") are not in conflict with the Vested Elements, such Future Rules shall be applicable to the Project. For purposes of this Section 3.4.2.1, the word "conflict" means Future Rules that would (i) alter the Vested Elements, or (ii) frustrate in a more than insignificant way the intent or purpose of the Vested Elements in relation to the Project, or (iii) materially increase the cost of performance of, or preclude compliance with, any provision of the Vested Elements, or (iv) delay in a more than insignificant way development of the Project, or (v) limit or restrict the availability of public utilities, services, infrastructure of facilities (for example, but not by way of limitation, water rights, water

connection or sewage capacity rights, sewer connections, etc.) to the Project, or (vi) impose limits or controls in the rate, timing, phasing or sequencing of development of the Project, or (vii) increase the permitted "Impact Fees" on the Agreement Date as set forth in **Exhibit D** or add new Impact Fees, in each case with respect to any "First Phase Vertical Improvements", or increase the permitted "Impact Fees" on the Agreement Date as set forth in **Exhibit D** or add new Impact Fees, in each case before the "Impact Fee Re-Assessment Date" with respect to any "Later Phase Vertical Improvements" (as such terms are defined in Section 3.6.3), or (viii) limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals; or (ix) apply to the Project any Future Rules otherwise allowed by this Agreement that is not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites; or (x) require the issuance of additional permits or approvals by the City other than those required by Applicable Rules; (xi) establish, enact, increase, or impose against the Project or Property any fees, taxes (including without limitation general, special and excise taxes), assessments, liens or other monetary obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Agreement (including increases to Impact Fees after the Impact Fee Re-Assessment Date that are applicable to Later Phase Vertical Improvements, but not First Phase Vertical Improvements) or other impact fees assessed by entities other than the City or other connection fees imposed by third party utilities; (xii) impose against the Project any condition, dedication or other exaction not specifically authorized by Applicable Rules; or (xiii) limit the processing or procuring of applications and approvals of Subsequent Approvals.

3.4.2.2 To the extent that Future Rules conflict with the Vested Elements, they shall not apply to the Project and the Vested Elements shall apply to the Project, except as provided in this Section 3.4.2.2. A Future Rule that conflicts with the Vested Elements shall nonetheless apply to the Property if, and only if (i) consented to in writing by Developer; (ii) it is determined by City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety as set forth in 3.4.4 below; (iii) required by changes in State or Federal law as set forth in Section 3.4.3 below; (iv) it consists of changes in, or new fees permitted by, Section 3.6; (v) it consists of revisions to, or new Building Regulations (as defined in Section 3.4.2.4 below) to the extent permitted by Section 3.4.2.4 below; or (vi) it is otherwise expressly permitted by this Development Agreement.

3.4.2.3 Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Project Approvals and Applicable Rules, one (1) set for City and one (1) set for Developer, contained in **Exhibit E**, attached hereto. If it becomes necessary in the future to refer to any of the Project Approvals or Applicable Rules, the contents of these sets are presumed for all purposes of this Development Agreement, absent clear clerical error or similar mistake, to constitute the Project Approvals and Applicable Rules.

3.4.2.4 "**Building Regulations**" consist of the International Building Code as modified by the California Building Code and the City Building Code and any ordinances which interpret these codes where such ordinances establish construction

standards that are intended to be applied ministerially to the construction of improvements on private property and public infrastructure. Building Regulations applicable to building and construction throughout the City at the time Developer applies for the applicable permits for construction of any portion of the Project shall be applicable to the building and construction authorized by such permit. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes in Building Regulations which may occur from time to time; provided, however, that the City cannot impose standards or requirement on Developer that the City would not apply to itself if the improvement was to be constructed by the City on its own.

3.4.3 Changes in State or Federal Laws. In accordance with Government Code Section 65869.5, in the event that state or federal laws or regulations enacted after the Effective Date ("**State or Federal Law**") prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet in good faith for a period not exceeding sixty (60) days (unless such period is extended by mutual written consent of the Parties) to determine the feasibility of any modification or suspension of this Agreement that may be necessary to comply with such State or Federal Law, to determine the effect such modification or suspension would have on the purposes and intent of this Agreement and the Vested Elements, and to prepare such modification. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such State or Federal Law. In such an event, this Development Agreement together with any required modifications shall continue in full force and effect. In the event that the State or Federal Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement. In addition, Developer shall have the right to challenge (by any method, including litigation) the State or Federal Law preventing compliance with, or performance of, the terms of this Development Agreement and, in the event that such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree otherwise, except that if the Term of this Development Agreement would otherwise terminate during the period of any such challenge and Developer has not commenced with the development of the Project in accordance with this Development Agreement as a result of such challenge, the Term shall be extended for the period of any such challenge.

3.4.4 Health and Safety Exception. Notwithstanding any provision in this Agreement to the contrary, the City shall at all times retain its authority to take any action that is necessary to protect persons or property from dangerous or hazardous conditions which create a threat to the public health or safety, including the authority to condition or deny an approval or to adopt a new law applicable to the Project so long as such condition or denial or new law (i) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, and (ii) is based on findings by the City Council specifically identifying the dangerous or hazardous conditions requiring such condition or denial or change in law, why there are no feasible alternatives to the imposition of such condition or denial or changes in the law, and how such condition or denial or new law would alleviate the dangerous or hazardous condition.

3.4.5 Conflicts. In the event of an irreconcilable conflict between the provisions of the Project Approvals (on the one hand) and the Applicable Rules (on the other hand), the provisions of the Project Approvals shall apply. In the event of a conflict between the Project Approvals (on the one hand) and this Development Agreement (on the other hand), the provisions of this Development Agreement shall control. In the event of a conflict between this Development Agreement (on the one hand) and the Disposition and Development Agreement (on the other hand), the provisions of the Disposition and Development Agreement shall control.

3.5 Processing Subsequent Approvals.

3.5.1 Processing of Subsequent Approvals. City will accept, make completeness determinations, and process, promptly and diligently, to completion all applications for Subsequent Approvals for the Project, in accordance with the terms of this Development Agreement, the Disposition and Development Agreement, and standard procedures contained in RMC including, but not limited to, the following:

3.5.1.1 the processing of applications for and issuance of all discretionary approvals requiring the exercise of judgment and deliberation by City, including without limitation, the Subsequent Approvals;

3.5.1.2 the holding of any required public hearings; and

3.5.1.3 the processing of applications for and issuing of all ministerial approvals requiring the determination of conformance with the Applicable Rules, including, without limitation, site plans, development plans, land use plans, grading plans, improvement plans, building plans and specifications, and ministerial issuance of one or more final maps, zoning clearances, demolition permits, grading permits, improvement permits, wall permits, Building Permits, lot line adjustments, encroachment permits, sign permits, certificates of use and occupancy and approvals and entitlements and related matters as may be necessary for the completion of the development of the Property ("**Ministerial Approvals**").

3.5.2. Scope of Review of Subsequent Approvals. City will use its reasonable best efforts to anticipate and communicate to Developer issues and concerns that may arise in connection with any application prior to the application submittal if possible and as early as feasible in the permit process. Developer will use its reasonable best efforts to keep City informed of development applications as they mature, and anticipate and communicate issues of mutual concern prior to submittal of permit applications. By approving the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions. Except as otherwise expressly provided herein, City will not impose requirements or conditions upon Project development and construction that are inconsistent with the Project Approvals and the terms and conditions of this Agreement. Further, except as expressly

provided herein, City shall not exercise discretion in determining whether or how to grant Subsequent Approvals in a manner that would prevent development of the Project for the uses and to the maximum intensity of development set forth in the Project Approvals. Notwithstanding the foregoing, this Agreement shall not prevent the City, in acting on Subsequent Approvals, from applying land use regulations which do not conflict with the Vested Elements and the intent of this Agreement.

3.6 Development Fees, Exactions; and Conditions.

3.6.1 General. All fees, exactions, dedications, reservations or other impositions to which the Project would be subject, but for this Development Agreement, are referred to in this Development Agreement either as "Processing Fees," (as defined in Section 3.6.2) or "Impact Fees" (as defined in Section 3.6.3).

3.6.2 Processing Fees. "**Processing Fees**" mean fees charged on a citywide basis to cover the cost of City review of applications for any permit or other review by City departments. Applications for Subsequent Approvals for the Project shall be charged Processing Fees to allow City to recover its actual and reasonable costs of processing Developer's Subsequent Approvals with respect to the Project.

3.6.3 Impact Fees. "**Impact Fees**" means monetary fees, contributions, exactions, dedications, reservations, or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project in connection with any Project Approval for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation and maintenance attributable to the burden created by the Project. Any fee, exaction or imposition imposed by City on the Project which is not a Processing Fee or a Mitigation Measure is an Impact Fee. Impact Fees do not include fees that the City collects on behalf of other entities such as school fees or regional transportation impact fees. No Impact Fees shall be applicable to any Vertical Phase or Vertical Improvement within the First Site Improvement Phase of the Project (the "**First Phase Vertical Improvements**"), except as provided in this Development Agreement. Furthermore, no Impact Fees shall be applicable to any Vertical Phase or Vertical Improvement outside of the First Site Improvement Phase of the Project (the "**Later Phase Vertical Improvements**") except as provided in this Development Agreement until the date that is seven (7) years after the Commencement of Construction of the First Site Improvement Phase (such date, the "**Impact Fee Re-Assessment Date**") subject to any Force Majeure Delay. From and after the Impact Fee Re-Assessment Date, City shall have the ability to re-assess the Impact Fees applicable to the construction of Later Phase Vertical Improvements (but not the First Phase Vertical Improvements) and to apply the then current generally applicable, City-wide fee rates to the construction of Later Phase Vertical Improvements (but not the First Phase Vertical Improvements). City understands that the foregoing long-term assurances by City concerning Impact Fees were a material consideration for Developer agreeing to develop the Project, to pay the Impact Fees set forth in **Exhibit D** of this Development Agreement and to provide the Public Benefits described in this Development Agreement. Impact Fees shall not include Processing Fees, Mitigation Measures, taxes or special assessments, or fees, taxes, assessments impositions imposed by Other Agencies, all of which shall be due and payable by Developer

as and when due in accordance with Applicable Law. Only the specific Impact Fees listed in **Exhibit D** shall apply to the Project, except as otherwise explicitly permitted by this Section 3.6.3. No change to an Impact Fee in **Exhibit D** (other than by the ECI adjustment, if any, permitted in **Exhibit D** using the specific index identified herein) resulting in an increase in dollar amounts charged to the Project that is adopted after the Agreement Date shall apply to the Project, except that after the Impact Fee Re-Assessment Date, City may apply such changes to an Impact Fee to Later Phase Vertical Improvements (but not the First Phase Vertical Improvements). If, after the Agreement Date, City decreases the rate of any of its Impact Fees existing as of the Agreement Date, Developer shall pay the reduced Impact Fee in effect at the time of payment. No Impact Fee other than those listed in **Exhibit D** may be imposed on the First Phase Vertical Improvements during the Term of this Agreement, and no Impact Fee other than those listed in **Exhibit D** may be imposed on the Later Phase Vertical Improvements prior to the Impact Fee Re-Assessment Date. Developer shall receive the benefit of any fee credits that are in effect as of the Effective Date and the amount of Impact Fees that are payable by Developer hereunder shall be reduced by the amount of such credits. Developer shall receive full credit for all existing uses of the Property.

3.6.3.1 City agrees to exclude Developer from any and all collection agreements regarding fees, including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or the Property after the Agreement Date through the Term of this Agreement with respect to the First Phase Vertical Improvements and through the Impact Fee Re-Assessment Date with respect to the Later Phase Vertical Improvements.

3.6.3.2 Unless otherwise provided herein, City and Developer will cooperate to ensure that the phasing of pertinent assessments, fees, special taxes, dedications, or other similar levies coincides with and does not precede the actual construction of each increment of the Project, so that only currently developing properties within the Property are subject to such assessments, fees, special taxes, dedications, or other similar levies. This timing may be accomplished through a number of mechanisms including, among others, the phasing of assessment districts and the use of benefit districts in conjunction with assessment districts, thereby spreading the timing of the imposition of relevant levies.

3.6.4 Impact Fee Credits. Developer shall receive credits against its Impact Fee obligations that would otherwise be payable or apply in connection with the development and construction of the Project ("**Fee Credits**") in accordance with the provisions of the City's Public Facilities Impact Fee Credits Policy ("**Fee Credits Policy**") and this Agreement. In the event of any conflict between the Fee Credits Policy and this Agreement, the terms and provisions of this Agreement shall control. To the extent the Fee Credits Policy requires that the issuance of any Fee Credits be approved in advance by the City Council, this Agreement shall constitute and serve as the City Council's approval of the Fee Credits for the Project. Developer shall have the right to assign and transfer Fee Credits set forth in Sections 3.6.4.1, 3.6.4.2, 3.6.4.3, 3.6.4.4, and 3.6.4.5, below to successor owners of all or any portion of the Property, including any Merchant Builders.

3.6.4.1 Parks and Open Space Credit. Developer shall not be obligated to pay the "Park/Open Space" component of the Public Facilities Impact Fee or

pay fees or dedicate land pursuant to the City's Quimby Act Ordinance that would be otherwise payable and/or applicable in connection with the construction and development of the Project because such obligation has been satisfied by Developer's commitment to construct the Shoreline Park, the trails and trail facilities in the hillside open space areas, and to construct and/or contribute funds toward the Bay Trail extension pursuant to this Agreement and the Disposition and Development Agreement (collectively, the "**Project Parks and Open Space**"). City and Developer agree that the cost of constructing the Project Parks and Open Space significantly exceeds the "Park/Open Space" component of the Public Facilities Impact Fee and the fees/land dedication requirement under the City's Quimby Act Ordinance that would otherwise be payable and/or apply in connection with the construction and development of the Project. Notwithstanding the foregoing, Developer's construction of the Project Parks and Open Space is one of the Public Benefits that Developer is providing pursuant to this Development Agreement, and Developer shall not be entitled to reimbursement for the amount by which the cost of constructing the Project Parks and Open Space exceeds the "Park/Open Space" component of the Public Facilities Impact Fee and the fees/land dedication requirement of the City's Quimby Act Ordinance that would otherwise be payable and/or apply in connection with the construction and development of the Project.

3.6.4.2 Police and Fire Station Credit. Developer shall not be obligated to pay the "Police Facilities" and "Fire Facilities" components of the Public Facilities Impact Fee that would be otherwise payable in connection with the construction and development of the Project because such obligation has been satisfied by Developer's commitment to construct and dedicate the Police and Fire Station for the City. City and Developer agree that the cost of constructing the Police and Fire Station significantly exceeds the "Police Facilities" and "Fire Facilities" component of the Public Facilities Impact Fee that would otherwise be payable in connection with the construction and development of the Project. Notwithstanding the foregoing, the construction of the Police and Fire Station for the City is one of the Public Benefits that Developer is providing pursuant to this Development Agreement, and Developer shall not be entitled to reimbursement for the amount by which the cost of constructing the Police and Fire Station exceeds the "Police Facilities" and "Fire Facilities" component of the Public Facilities Impact Fee that would otherwise be payable in connection with the construction and development of the Project.

3.6.4.3 Sewer Fees, Storm Drain Fee and Traffic Fee Credit. Developer shall be entitled to receive Fee Credits for its obligation to pay the "Sewer", "Storm Drain", and "Traffic" components of the Public Facilities Impact Fee based upon Developer's obligation to construct the sewer, storm drain, and traffic improvements included in the Master Infrastructure and Offsite Improvements (the "**Sewer Improvements**", the "**Storm Drain Improvements**", the "**Traffic Improvements**"). City shall award Developer Fee Credits for the Sewer Improvements, Storm Drain Improvements, and/or Traffic Improvements upon City's receipt of satisfactory documentation of any of the following: (i) the improvement is completed, (ii) land has been conveyed to and accepted by the City, (iii) funds for the improvement are in Escrow, (iv) a construction contract for the improvement has been executed, or (v) a performance bond approved by the City Attorney has been posted to ensure completion. The City shall issue to Developer a written Fee Credit confirmation letter (the "**Credit Confirmation Letter**"), which shall specify the dollar value of the applicable Fee Credits. The dollar value of Fee Credits will increase pursuant to any

ECI Adjustment on a quarterly basis. City shall maintain records of all Fee Credits included in Developer's Credit Confirmation Letter(s). Each time an applicable Impact Fee is due, City shall determine if Developer has applicable Fee Credits available, and if so, City shall apply the Fee Credits against the Impact Fees due. If and to the extent applicable Fee Credits are exhausted, Impact Fees shall be calculated in accordance with Section 3.6.3 and **Exhibit D**.

3.6.4.4 Water and Sewer Capacity Credit. Developer shall receive a credit for wastewater capacity fees and/or charges that are payable to the Richmond Municipal Sewer District in connection with the construction and development of the Project. Nothing herein prevents the Developer from seeking water capacity credit from East Bay Municipal Utility District ("**EBMUD**") to the fullest extent permitted by EBMUD.

3.6.4.5 Inclusionary Housing Requirement Credit. Pursuant to the definition of "Affordable Onsite Units" under Section 1.1 of the Disposition and Development Agreement, Developer is obligated to construct sixty-seven (67) Required Affordable Onsite Units. Developer's obligation to construct the Required Onsite Affordable Units shall be credited against the inclusionary housing obligations that apply to the Project pursuant to the City's Inclusionary Housing Ordinance.

3.6.5 Conditions of Subsequent Approvals.

3.6.5.1 In connection with any Subsequent Approvals, including any "B" subdivision maps of the planning areas of the Project, City shall have the right to impose reasonable conditions including, without limitation, normal and customary dedications for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Project; provided, however, such conditions and dedications shall not be inconsistent with the Applicable Rules or Project Approvals, nor inconsistent with the development of the Project as contemplated by this Agreement. Developer may protest any conditions, dedications or fees while continuing to develop the Property; such a protest by Developer shall not delay or stop the issuance of Building Permits, Site Improvement Permits, or Certificates of Occupancy.

3.6.5.2 No conditions imposed on Subsequent Approvals shall require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those already included in the VTTM and the MMRP. In addition, any and all conditions imposed on Subsequent Approvals for the Project must comply with Sections 3.6.2, 3.6.3, and 3.6.4 herein.

3.6.5.3 Upon Developer's request, City shall cooperate with Developer (a) to locate any new easements required for the Project so as to minimize interference with development of the Project, and (b) in Developer's efforts to relocate or remove easements to facilitate development of the Project.

3.6.6 Infrastructure Capacity. Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals, City shall undertake all reasonable efforts to reserve sufficient capacity in its infrastructure, services and

utility systems, including, without limitation, traffic circulation, storm drainage, flood control, electric service, sewer collection, sewer treatment, sanitation service and, except for reasons beyond City's control, water supply, treatment, distribution and service, as and when necessary to serve the Project as it is developed.

3.7 Life of Project Approvals and Subdivision Maps.

3.7.1 Life of Subdivision Maps. The terms of the VTTM, any later-submitted subdivision or parcel maps for the Property or any portion thereof, any amendment or reconfiguration thereto, or any subsequent tentative map or parcel map, shall be automatically extended such that such tentative or parcel maps remain in effect for a period of time coterminous with the term of this Development Agreement.

3.7.2 Life of Other Project Approvals. The term of all other Project Approvals shall be automatically extended such that these Project Approvals remain in effect for a period of time at least as long as the term of this Development Agreement.

3.7.3 Termination of Agreement. In the event that this Agreement is terminated prior to the expiration of the Term of the Agreement, the term of any subdivision or parcel map or any other Project Approval and the vesting period for any final subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval, which shall commence to run on the date that the termination of this Agreement takes effect (including any extensions).

3.8 Further CEQA Environmental Review.

3.8.1 Reliance on the SEIR. The SEIR, which has been certified by City as being in compliance with CEQA, addresses the potential environmental impacts of the entire Project as it is described in the Project Approvals. Nothing in this Development Agreement shall be construed to require CEQA review of Ministerial Approvals. It is agreed that, in acting on any discretionary Subsequent Approvals for the Project, City will rely on the SEIR to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City will not require a new initial study, negative declaration or subsequent or supplemental SEIR unless required by CEQA and will not impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the MMRP or specifically required by CEQA.

3.8.2 Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City shall conduct such CEQA review as expeditiously as possible at Developer's sole cost and expense, including, without limitation, the payment of the applicable Processing Fee.

3.9 Written Verification of Sufficient Water Supply. Any and all tentative subdivision maps approved for the Project shall comply with Government Code Section 66473.7, if, and to the extent, required by Government Code Section 65867.5(c).

Article 4
ADDITIONAL RIGHTS AND OBLIGATIONS OF THE PARTIES; ALLOCATIONS OF RIGHTS AND OBLIGATIONS OF THE PARTIES

4.1 Conveyance of Public Infrastructure. Upon completion of any and all public infrastructure to be completed by Developer, Developer shall offer for dedication to City from time to time as such public infrastructure is completed, and City shall promptly accept from Developer the completed public infrastructure (and release to Developer any bonds or other security posted in connection with performance thereof in accordance with the terms of such bonds). Developer may offer dedication of public infrastructure in phases and the City shall not refuse to accept such phased dedications or refuse phased releases of bonds or other security so long as all other conditions for acceptance have been satisfied, and the public infrastructure will be maintained following acceptance in accordance with Section 5.5.8 of the Disposition and Development Agreement.

4.2 Assessment Financing. City agrees to cooperate with Developer in the formation of any assessment districts (including without limitation Mello Roos Districts and Landscaping and Lighting Districts), community facilities districts ("**CFD**"), Geologic Hazard Abatement Districts, tax exempt financing mechanisms (a "**Financing Mechanism**") that Developer in its sole discretion may elect to initiate related to the Project as and when so requested by Developer, provided that no such Financing Mechanisms shall obligate the City's general fund or negatively impact the City's General Fund, and subject to the following general considerations:

4.2.1 General Parameters.

4.2.1.1 Upon written request of City, Developer will advance amounts necessary to pay all costs and expenses of City to evaluate and structure any Financing Mechanism, to the end that City will not be obligated to pay any costs related to the formation or implementation of any Financing Mechanism from its own general funds.

4.2.1.2 Any Financing Mechanism will provide for the reimbursement to Developer of any advances by Developer described in Section 4.2.1.1 above, and any other costs incurred by Developer that are related to the Financing Mechanism, such as the costs of legal counsel, special tax consultants, engineers, etc. Developer agrees to promptly submit to City a detailed accounting of all such other costs incurred by Developer at such time as Developer makes application for reimbursement.

4.2.1.3 City shall consult with Developer prior to engaging any consultant (including bond counsel, underwriters, appraisers, market absorption analysts, financial advisors, special tax consultants, assessment engineers and other consultants deemed necessary to accomplish any financing) and Developer shall be allowed an opportunity to provide input on each proposed consultant. City shall consider all of Developer's comments on the proposed consultants in its hiring decisions, provided, however, that the Developer shall be entitled to reject, in its sole discretion, up to three consultants in total. If Developer rejects a consultant, City shall not engage that consultant and shall consult Developer with respect to another consultant.

4.2.2 Financing of Site Improvements.

4.2.2.1 Developer shall submit to City its phasing plan for any public facilities to be financed, including the priority and financing needs relative to the Site Improvements. City will use available proceeds of any public financing in accordance with such priorities, and as otherwise provided in this Agreement.

4.2.2.2 City and Developer will determine, following consultation by City staff with Developer, the means by which such improvements will be acquired by City.

4.2.2.3 In addition, any financing may include amounts necessary to discharge any assessment, special tax or other liens on the Property.

4.2.3 Financing Parameters.

4.2.3.1 Any public financing shall be secured solely by assessments or special taxes levied within the respective district, proceeds of the bonds issued that are placed in a bond fund, reserve fund or other such fund for the financing and investment earnings thereon. City's general fund shall not be pledged to the repayment of any public financing.

4.2.3.2 The payment of actual initial and annual administrative costs of City to be incurred in connection with any Financing Mechanism shall be adequately assured, through the inclusion in any assessment or special tax methodology of appropriate provision for such costs as estimated by City, to the end that City's general fund shall not be called upon to provide for initial or any annual administrative costs related to any Financing Mechanism.

4.3 Reimbursement. Nothing in this Agreement precludes City and Developer from entering into any reimbursement agreements for the portion (if any) of the cost of any dedications, public facilities and/or infrastructure that City may require as conditions of the Project Approvals to the extent that they are in excess of those reasonably necessary to mitigate the impacts of the Project.

4.4 Model Homes. Prior to recordation of any final map for a planning area and prior to the Completion of the Site Improvements (including but not limited to the Police and Fire Station), City agrees to issue building permits and occupancy certificates for the construction of model homes (and related model home complex structures) that will be used by Developer or any transferee of all or any portion of the Property (including any Merchant Builder) for the purpose of promoting sales of single family Residential Units within that planning area of the Project; provided, however, in no event shall Developer be permitted to sell or transfer any model home to a member of the homebuying public until a final map has been recorded creating a separate lot on which the model home sits, and in no event shall a member of the homebuying public be able to occupy a model home until construction of the Police and Fire Station is complete.

4.5 Communities Facilities District(s). The Parties agree that the City shall cooperate with the Developer to establish one or more CFDs pursuant to the Mello-Roos Act and as permitted

by State law to finance construction, development, and operation of the Master Infrastructure, Offsite Improvements, and Master Developer Amenities required in connection with the development and operation of the Project. At a minimum, each CFD shall be subject to the following terms:

4.5.1 The CFD will be structured in two improvement areas corresponding to the phasing of the Project.

4.5.2 The total effective tax rate for assessor's parcels within the CFD will not exceed two percent (2.0%) of the reasonably expected value of the parcel with planned vertical improvements determined at the time of approval of the CFD.

4.5.3 The CFD will include a component to fund certain maintenance requirements (the "**Services Tax**") and a component to fund certain infrastructure (the "**Improvements Tax**"). The Services Tax will have priority and be collected in perpetuity.

4.5.4 The Project infrastructure costs and impact fees for which Developer may be reimbursed from CFD proceeds include those set forth on **Exhibit F** attached hereto.

4.5.5 Bond issuances will include a 10.0% reserve fund to cover potential shortfalls, as well as 110% debt service assessment to provide an additional security for repayment of the bonds. At Developer's election, the bonds may be issued under a "private placement" with a firm specializing in tax exempt bonds.

4.5.6 The Parties shall have the ability to create a construction or acquisition district for funding improvements. The construction district would allow the CFD to build the Police and Fire Station and other Project improvements directly out of bond proceeds.

4.5.7 If requested by Developer, the Bond Term shall be 40 years.

4.5.8 Bond Term allowing for additional bond proceeds to fund additional infrastructure and/or agreed upon City needs shall not exceed 40 years.

4.5.9 Assessments will escalate at 2.0% annually.

4.5.10 If requested by Developer, City agrees to use best faith efforts to assist in obtaining a Joint Community Financing Agreement with EBMUD to allow for water improvements to be included in the CFD.

4.5.11 The CFD will include a provision allowing full and/or partial prepayment of the Improvement Tax at any time.

4.5.12 The CFD may fund infrastructure with surplus special taxes, if available, on a pay-as-you-go basis.

Promptly following the Effective Date, City shall conduct proceedings to form the CFD consistent with State law. The Parties shall cooperate so that, to the extent possible, the associated public

process and the resolution of intention to form the infrastructure component and services component shall be adopted by the City Council within six (6) months of the Effective Date.

Article 5
ANNUAL REVIEW

5.1 Procedure. The annual review required by Government Code Section 65865.1 and Section 15.04.811.080 of the RMC shall be conducted for the purposes and in the manner stated in those laws as further provided herein. As part of that review, Developer must demonstrate good faith compliance with the provisions of the Development Agreement. If the City's Community Development Director ("**Director**"), on the basis of substantial evidence, finds good faith compliance by the Developer with the provisions of the Development Agreement, the Director will issue a finding of compliance, which will be in recordable form and may be recorded with the Contra Costa County Clerk-Recorder's Office, County Recorder Division, after the conclusion of the review. If the Director finds the applicant has not complied with the provisions of the Development Agreement, the Director may issue a finding of noncompliance that may be recorded by the City with the Contra Costa County Clerk-Recorder's Office, County Recorder Division, after it becomes final. The City must specify in writing to the Developer the respects in which the Developer has failed to comply, and must set forth terms of compliance and specify a reasonable time for the Developer to meet the terms of compliance. If Developer does not comply with any terms of compliance within the prescribed time limits, the Development Agreement will be subject to termination or modification pursuant to this article. The City and Developer agree that the annual review process shall review compliance by Developer and City with the obligations under this Development Agreement but shall not review compliance with other Project Approvals. Administrative costs for the annual review shall be borne by Developer.

5.2 Cure Period. If the Director finds that Developer is not in compliance pursuant to Section 15.04.811.080.B of the RMC, the Director shall grant a reasonable period of time for Developer to cure the alleged noncompliance. Unless alleged noncompliance is threatening immediate and irreparable injury to the City or concerns an immediate threat to public health and safety, the Director shall grant a cure period of at least sixty (60) days and shall extend the sixty (60) day period if Developer is proceeding in good faith to cure the noncompliance and additional time is reasonably needed.

5.3 Relationship to Default Provisions. The above procedures shall supplement and shall not replace that provision of Section 7.4 of this Development Agreement whereby either City or Developer may, at any time, assert matters which either Party believes have not been undertaken in accordance with this Development Agreement by delivering a written Notice of Default and following the procedures set forth in said Section 7.4.

Article 6
AMENDMENTS

6.1 Amendments to Development Agreement Legislation. This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation as those provisions existed at the Agreement Date. No amendment or addition to those provisions or any other federal or state law and regulation that would materially adversely affect

the interpretation or enforceability of this Development Agreement or would prevent or preclude compliance with one or more provisions of this Development Agreement shall be applicable to this Development Agreement unless such amendment or addition is specifically required by the change in law, or is mandated by a court of competent jurisdiction. In the event of the application of such a change in law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. If such amendment or change is permissive (as opposed to mandatory), this Development Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Development Agreement to permit such applicability. Developer and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The Term of this Agreement may be extended for the duration of the period during which such new law or regulation precludes compliance with the provisions of this Agreement.

6.2 Amendments to or Cancellation of Development Agreement. This Development Agreement may be amended from time to time or canceled in whole or in part by mutual consent of both Parties in writing in accordance with the provisions of the Development Agreement Legislation and the City Development Agreement Regulations. Review and approval of an amendment to this Development Agreement shall be strictly limited to consideration of only those provisions to be added or modified. No amendment, modification, waiver or change to this Development Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that expressly refers to this Development Agreement and signed by the duly authorized representatives of both Parties. All amendments to this Development Agreement shall automatically become part of the Project Approvals.

6.3 Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation between City and Developer and development of the Property and Project hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Development Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved in writing by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The City Manager shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 6.3 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 6.2 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

6.4 Amendments to Project Approvals. Notwithstanding any other provision of this Development Agreement, Developer may seek and City may review and grant amendments or

modifications to the Project Approvals (including the Subsequent Approvals) subject to the following (except that the procedures for amendment of this Development Agreement are set forth in Section 6.2 herein).

6.4.1 Amendments to Project Approvals. Project Approvals (except for this Development Agreement, the amendment process for which is set forth in Section 6.2) may be amended or modified from time to time, but only at the written request of Developer (at the City's discretion, subject to the terms of this Agreement) or with the written consent of Developer (at its sole discretion) and in accordance with Section 3.4, Section 1.040 of PAD Zoning, and RMC section 15.04.803.120(A). All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property, the maximum density and/or number of Residential Units and commercial development, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for Site Improvements and financing of Site Improvements, and the other terms and conditions of development as set forth in all such amendments shall be automatically vested pursuant to this Development Agreement, without requiring an amendment to this Development Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Rules, subject to Section 3.4. The City shall not request, process or consent to any amendment to the Project Approvals that would affect the Property or the Project without Developer's prior written consent.

6.4.2 Administrative Amendments. Upon the request of Developer for an amendment or modification of any Project Approval, the Director or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole in accordance with RMC section 15.04.803.120(A); and (b) whether the requested amendment or modification substantially conforms with the material terms of this Development Agreement and the Applicable Rules. If the Director or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Development Agreement and the Applicable Rules, the amendment or modification shall be determined to be an "**Administrative Amendment**," and the Director or his/her designee may approve the Administrative Amendment, without public notice or a public hearing. Any request of Developer for an amendment or modification to a Project Approval that is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Rules and this Agreement.

Article 7
DEFAULT, REMEDIES AND TERMINATION

7.1 Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 11.2 hereof regarding permitted delays and a Mortgagee's right to cure pursuant to Section 10.3 hereof, any failure by either Party to perform any material term or provision of this Development Agreement (not including any failure by Developer to perform any term or provision of any other Project Approvals) shall constitute an "**Event of Default**," (i) if such defaulting Party does not cure such failure within sixty (60) days

(such sixty (60) day period is not in addition to any sixty (60) day cure period under Section 5.2, if Section 5.2 is applicable) following written notice of default from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion such failure. Any notice of default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Development Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

7.2 Meet and Confer. During the time periods specified in Section 7.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the sixty (60)-day cure period referred to in Section 7.1 (even if the sixty (60)-day cure period itself is extended pursuant to Section 7.1(ii)) unless the Parties agree otherwise in writing.

7.3 Remedies and Termination. If, after notice and expiration of the cure periods and procedures set forth in Sections 7.1 and 7.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 7.4 of this Development Agreement and/or terminate this Development Agreement pursuant to Section 7.6 herein. In the event that this Development Agreement is terminated pursuant to Section 7.6 herein and litigation is instituted that results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

7.4 Legal Action by Parties.

7.4.1 Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Development Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Without limiting the foregoing, Developer reserves the right to challenge in court any Future Rules that would conflict with the Vested Elements or the Subsequent Approvals for the Project or reduce the development rights provided by the Project Approvals.

7.4.2 No Damages. In no event shall either Party, or its boards, commissions, officers, agents or employees, be liable in damages for any default under this Development Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Development Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Development Agreement by the other Party, or to terminate this Development Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Development Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Development Agreement by the other Party.

7.5 Effects of Litigation. In the event that litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Development Agreement, then Developer shall have no obligations whatsoever under this Development Agreement. In the event that any payment(s) have been made by or on behalf of Developer to City pursuant to the obligations contained in Section 3.6, City shall give to Developer a refund of the monies remaining in any segregated City account into which such payment(s) were deposited, if any, along with interest which has accrued, if any. To the extent the payment(s) made by or on behalf of Developer were not deposited, or no longer are, in the segregated City account, City shall give Developer a credit for the amount of said payment(s) as determined pursuant to this Section 7.5, along with interest, if any, that has accrued, which credit may be applied by Developer to any costs or fees imposed by City on Developer in connection with construction or development within or outside the Property. Developer shall be entitled to use all or any portion of the credit at its own discretion until such time as the credit has been depleted. Any credits due to Developer pursuant to this Section 7.5 may, at Developer's own discretion, be transferred by Developer to a third party for application by said third party to any costs or fees imposed by City on the third party in connection with construction or the development of property within City, whether or not related to the Project. In the event that Developer has already developed or is developing a portion of the Project at the time of any invalidation of the Development Agreement, then any such refund or credit shall be limited to the amount paid by Developer that exceeds, on a pro rata basis, the proportion and uses of the Property retained by Developer to the entire Property. This Section 7.5 shall survive the termination or expiration of this Development Agreement.

7.6 Termination.

7.6.1 Expiration of Term. Except as otherwise provided in this Development Agreement, this Development Agreement shall be deemed terminated and of no

further effect upon the expiration of the Term of this Development Agreement as set forth in Section 1.3.

7.6.2 Survival of Obligations. Upon the termination or expiration of this Development Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Development Agreement except with respect to any obligation that is specifically set forth as surviving the termination or expiration of this Development Agreement. The termination or expiration of this Development Agreement shall not affect the validity of the Project Approvals (other than this Development Agreement) for the Project.

7.6.3 Termination by City. Notwithstanding any other provision of this Development Agreement, City shall not have the right to terminate this Development Agreement with respect to all or any portion of the Property before the expiration of its Term unless City complies with all termination procedures set forth in the Development Agreement Legislation and there is an alleged Event of Default by Developer and such Event of Default is not cured pursuant to Article 5 herein or this Article 7 and Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council and this Development Agreement is terminated only with respect to that portion of the Property to which the default applies.

7.7 Actions During Cure Period. City will continue to process in good faith development applications during any cure period following delivery of a notice of breach of this Agreement to Developer; provided, City need not approve any such application or issue any permit for the Project if the City Manager determines that it relates to an alleged breach by Developer regarding failure to timely make any payment owed by Developer under this Agreement. If there is a dispute regarding the existence of a breach of this Agreement, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or termination of this Agreement as provided herein.

Article 8
COOPERATION AND IMPLEMENTATION

8.1 Further Assurances. Each of the Parties agrees to execute and deliver all further documents and to take all further actions reasonably necessary or appropriate to effectuate the purposes and intent of this Agreement.

8.2 Regulation by Other Public Agencies. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Development Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Development Agreement in all respects when dealing with any such agency regarding the Property. In the event any state or federal resources agency (e.g., California Department of Fish and Game, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Regional Water Quality Control Board/State Water Resources Control Board, Bay Conservation and Development Commission, Bay Area Air Quality Management District), in connection with its final issuance of a permit or certification for all or a portion of the Project, imposes requirements

that require modifications to the Project, then the Parties will work together in good faith to incorporate such changes into the Project; provided, however, that if Developer appeals or challenges any such permit requirements, then the Parties may defer such changes until the completion of such appeal or challenge.

8.3 Other Governmental Permits and Approvals; Grants. Developer shall apply in a timely manner in accordance with Developer's construction schedule for the permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Developer shall comply with all such permits, requirements and approvals. Subject to Developer's compliance with this Agreement, the City shall help facilitate and cooperate with Developer, within the City's reasonable authority and at Developer's cost, in seeking any Other Agency Approvals and any grants for the Project for which Developer applies.

8.4 Defense and Cooperation in the Event of Legal Challenge.

8.4.1 The filing of any third-party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

8.4.2 In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any provision of this Development Agreement, the procedures leading to its adoption, or the Project Approvals for the Project, Developer and City each shall have the right, in its sole discretion, to elect whether or not to defend such action, to select its own counsel (and pay for such counsel at its own expense), and to control its participation and conduct in the litigation in all respects permitted by law. If both Parties elect to defend, the Parties hereby agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under Applicable Law. As part of the cooperation in defending an action, City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Developer and City shall each have sole discretion to terminate its defense at any time. The City shall not settle any third-party litigation of Project Approvals without Developer's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

8.5 Indemnification. Developer shall indemnify, defend and hold harmless the City, and any community facilities districts organized by the City, and their elected officials, officers, serving as City officials, agents, and employees ("**Indemnified Parties**") from any Claims brought against the Indemnified Parties to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to CEQA, and/or any mitigation monitoring program, or brought against the Indemnified Parties due to acts or omissions in any way connected to the processing of entitlements for the Project and this Agreement, but excluding any approvals governed by Government Code Section 66474.9 or any

action filed by Developer pursuant to Government Code Section 66020 or otherwise brought by the Developer. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorneys' fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by Developer or the City. If Developer is required to defend the City as set forth above, the City shall be entitled to select legal counsel to defend the City that is reasonably acceptable to the Developer. In the event of a court order issued as a result of a successful legal challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements.

Article 9
TRANSFERS AND ASSIGNMENTS

9.1 Right to Assign. Developer shall have the right to sell, assign or transfer ("**Transfer**") in whole or in part its rights, duties and obligations under this Development Agreement, to any person or entity at any time during the Term of this Development Agreement without the consent of City; provided, however, in no event shall the rights, duties and obligations conferred upon Developer pursuant to this Development Agreement be at any time so Transferred except through a transfer of all or a portion of the Property. In the event of a transfer of a portion of the Property, Developer shall have the right to Transfer its rights, duties and obligations under this Development Agreement that are applicable to the transferred portion, and to retain all rights, duties and obligations applicable to the retained portions of the Property.

9.2 Release upon Transfer. Upon the Transfer of Developer's rights and interests under this Development Agreement pursuant to Section 9.1, Developer shall automatically be released from its obligations and liabilities under this Development Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the Transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Development Agreement, provided that (i) Developer has provided to City written notice of such Transfer, and (ii) the transferee executes and delivers to City a written agreement in which (a) the name and address of the transferee is set forth and (b) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Development Agreement with respect to that portion of the Property transferred. Upon any transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section

9.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

9.3 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the Parties and their respective successors (by merger, reorganization, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to Applicable Law, 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 (i) is for the benefit of such Property and is a burden upon such Property, (ii) runs with such Property, (iii) is binding upon each Party and each successive owner during its ownership of such Property or any portion thereof, and (iv) each person or entity having any interest therein derived in any manner through any owner of such Property, or any portion thereof, and shall benefit the Property hereunder, and each other person or entity succeeding to an interest in such Property.

Article 10
MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

10.1 Mortgagee Protection. This Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property ("**Mortgage**"). This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Development Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against and inure to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

10.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 10.1 above, no Mortgagee (including a Mortgagee who obtains title to Developer's interest in the Property or the Project or any portion thereof as a result of foreclosure proceedings or transfer in lieu of foreclosure) shall in any way be obligated by the provisions of this Agreement to construct or complete the Project, unless the Mortgagee expressly assumes such obligation by written notice to the City or by written agreement with the City. Nothing in this Agreement shall be deemed to construe, permit or authorize any such Mortgagee to devote the Property or the Project or any portion thereof to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement, or by the Project Approvals and Applicable Rules, and only to the extent Mortgagee complies with the terms of this

Agreement and executes and delivers to the City, in a form and with terms reasonably acceptable to the City, an assumption agreement of Developer's obligations hereunder.

10.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed a default, and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. If Developer does not cure or remedy the Default within the applicable cure period set forth in this Agreement, then City shall provide notice of such ("**Developer Non Cure Notice**") to each Mortgagee who has previously made a written request to the City therefore. Each such Mortgagee shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy or commence to cure or remedy any such default within (a) fifteen (15) days with respect to monetary defaults only, after receipt of the Developer Non Cure Notice, (b) sixty (60) days with respect to non-monetary defaults, after receipt of the Developer Non Cure Notice or such reasonable period of time beyond sixty (60) days, if such non-monetary default is not susceptible to being cured within such sixty (60) days, and to add the cost thereof to the debt and lien of its Mortgage. In case of a default which is not susceptible of being cured by such Mortgagee (such as a bankruptcy of Developer), such Event of Default does not have to be cured. If a Mortgagee is required to obtain possession of the Property (or a portion thereof) in order to cure or remedy any claimed Event of Default, the time to cure shall be tolled so long as the Mortgagee is attempting in good faith to obtain possession, including by appointment of a receiver or foreclosure, and the Mortgagee shall be deemed to have timely cured or remedied the claimed Event of Default, provided the Mortgagee commences the proceedings necessary to obtain possession within sixty (60) days after receipt of Developer Non Cure Notice, diligently pursues such proceedings to completion, and after obtaining possession diligently completes such cure or remedy.

Article 11
MISCELLANEOUS PROVISIONS

11.1 Limitation on Liability. Notwithstanding anything to the contrary contained in this Development Agreement, in no event shall: (a) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Development Agreement by Developer, or for any amount which may become due to City under the terms of this Development Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Development Agreement by City or for any amount which may become due to Developer under the terms of this Development Agreement.

11.2 Force Majeure. Subject to the limitations set forth below, performance by any Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; pandemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; development or building moratorium; litigation (including suits filed by third parties concerning or arising out of this Agreement or challenging any of the Project Approvals); weather

or soils conditions which, in the reasonable written opinion of the Prime Contractor (or, if there is no Prime Contractor, in the written opinion of a general contractor proposed by Developer and acceptable to City, both parties acting reasonably), have caused or will necessitate delays; inability to secure necessary labor, materials or tools; acts of the other Party; acts or failure to act of any public or governmental agency or entity (other than any acts or failure to act of the City that do not constitute a City Event of Default, except as hereafter provided) despite the diligent and good faith efforts of the Party claiming the delay; or any other causes (other than Developer's inability to obtain financing for the Project, unless caused solely by extraordinary, generally applicable market conditions that result from some other event of force majeure listed above) beyond the control or without the fault of the Party claiming an extension of time to perform and that (other than in connection with epidemics and pandemics) first arise after the Effective Date (each a "**Force Majeure Delay**"). An extension of time hereunder for any Force Majeure Delay shall be for the period of the Force Majeure Delay and will be deemed granted if notice by the Party claiming such extension is sent to the other Party within ninety (90) days from the date the Party seeking the extension first discovers or receives notice of the delay or default which is reasonably likely to result from the occurrence of the cause of such Force Majeure Delay and such extension of time is not rejected in writing by the other Party, as not complying with the provisions of this Section 11.2, within fifteen (15) days of receipt of the notice claiming a Force Majeure Delay. All dates and timeframes for performance under this Agreement shall be subject to Force Majeure Delay.

11.3 Notices, Demands and Communications Between the Parties. Any notice, demand or other communication required to be given by Developer or the City under or pursuant to this Agreement shall be in writing and shall be sufficiently given if (a) addressed as set forth below and (b) delivered in one of the following ways, and shall be deemed to have been delivered or received (i) three (3) days after the date when deposited in the United States registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), (ii) when personally delivered, (iii) when sent by facsimile or electronic (email) transmission, provided receipt was promptly confirmed in writing by another means of notice allowed in this Section 11.3 within one (1) business day, or (iv) one business day after the date deposited with a nationally recognized courier service (e.g., Federal Express) for next day delivery. The current principal office addresses, email addresses and facsimile numbers of the City and Developer are as follows:

the City: City of Richmond
450 Civic Plaza
Richmond, CA 94804
Attention: City Manager
Telephone: (510) 620-6512
Facsimile: (510) 620-6542
Email: City_Manager@ci.richmond.ca.us

AND

City Attorney's Office
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804
Attention: City Attorney
Telephone: (510) 620-6509
Facsimile: (510) 620-6518
Email: City_Attorney@ci.richmond.ca.us

Developer: Winehaven Legacy LLC
c/o Argent Management LLC
2392 Morse Avenue
Irvine, CA 92614
Attention: Marc Magstadt
Telephone: (949) 777-4002
Facsimile: (949) 777-4050
Email: mmagstadt@argentmanagementllc.com

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by notice as provided in this Section 11.3.

If failure to respond to a specified notice, request, demand or other communication within a specified period would result in a deemed approval, a conclusive presumption, a prohibition against further action or protest, or other adverse result specifically provided under this Agreement, the notice, request, demand or other communication shall state clearly and unambiguously on the first page, with reference to the applicable provisions of this Agreement, that failure to respond in a timely manner could have a specified adverse result.

11.4 Project as a Private Undertaking; No Joint Venture or Partnership. Nothing in this Agreement, in any actions or negotiations leading to this Agreement, in any acts or omissions under this Agreement, or otherwise is intended to or does establish the City and Developer as partners, co-venturers, or principal and agent with one another. Accordingly, except as expressly set forth herein, the City shall have no rights, powers, duties or obligations with respect to the construction, development, operation, maintenance, management, marketing or sales of the Project. Developer shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City from and against any Claims made against the City arising from a claimed relationship of partnership or joint venture between the City and Developer with respect to the construction, development, operation, maintenance or management of the Project.

11.5 Severability. If any terms, provision, condition or covenant of this Development Agreement or its application to any party or circumstance shall be held, to any extent, invalid or unenforceable, the remainder of this Development Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which

it is invalid or enforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

11.6 Section Headings. Article and Section headings in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Agreement. As used herein: (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) locative adverbs such as "herein," "hereto," "hereof," and "hereunder" shall refer to this Agreement in its entirety and not to any specific section or paragraph; (c) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to;" (d) "shall" and "must" are mandatory and "may" is permissive; and (e) "or" is not necessarily exclusive. The Parties have jointly participated in the negotiation and drafting of this Agreement, and this Agreement shall be construed fairly and equally as to the Parties, without regard to any rules of construction relating to the Party who drafted a particular provision of this Agreement.

11.7 Construction of Agreement. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

11.8 Entire Agreement. Except as expressly set forth herein, this Agreement, including all recitals and exhibits hereto, constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The Parties shall be entitled to rely upon facsimile copies or electronic copies of the Parties' signatures to this Agreement and any instrument executed in connection herewith. Notwithstanding the foregoing, promptly after sending a facsimile or electronic copy of its signature hereon, each Party shall promptly provide the others with an executed original counterpart, although the failure to provide such counterpart shall not limit the effectiveness of this Agreement.

11.9 Exhibits and Appendices. The exhibits and appendices are as follows:

Exhibit A	Legal Description of the Point Molate Site
Exhibit B	Vesting Tentative Tract Map of the Property
Exhibit C	Project Description
Exhibit D	Impact Fees
Exhibit E	Project Approvals and Applicable Rules

Exhibit F Eligible Reimbursable Infrastructure Costs and Fees

Appendix 1 Definitions

11.10 Estoppel Certificates. Either Party may, at any time during the Term of this Development Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, (iii) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) any other information reasonably requested. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. Either the City Manager or the Director shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

11.11 Recordation. Pursuant to Government Code Section 65868.5, within ten (10) days after the later of execution of the Parties of this Development Agreement or the Effective Date, the City Clerk shall record this Development Agreement with the Contra Costa County Recorder. Thereafter, if this Development Agreement is terminated, modified or amended, the City Clerk shall record notice of such action with the Contra Costa County Recorder.

11.12 No Waiver. No waiver of any provision of this Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver unless the written waiver so specifies.

11.13 Time Is of the Essence. Time is of the essence for each provision of this Development Agreement for which time is an element.

11.14 Governing Law. This Agreement is entered into in and shall be governed by and construed in accordance with the laws of the State of California, without reference to any of its conflict of laws principles. The exclusive venue for any disputes or legal actions hereunder shall be the Superior Court of California in and for the County of Contra Costa and all parties waive their respective rights to change venue pursuant to Section 394 of the Code of Civil Procedure.

11.15 Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees (including in-house attorneys' fees) and costs incurred in such action. For purposes of this provision, the fees of in-house attorneys shall be based on the fees then regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which such services were rendered who practice in San Francisco Bay Area law firms.

In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Agreement and/or the power of the City to enter into this Agreement or perform its obligations hereunder, and/or to attack or set aside any Project Approvals, Developer shall defend such action (with counsel reasonably acceptable to the City), and shall indemnify and hold the City harmless against all Claims arising from or in connection with such action in accordance with Section 8.5, above. Upon commencement of any such action, the City and Developer shall meet in good faith and seek to establish a mutually acceptable method of defending such action.

11.16 No Third Party Beneficiary. No person or entity other than the City, the Developer, and their permitted successors and assigns shall be third party beneficiaries of this Agreement or have any right of enforcement or action under or with respect to this Agreement.

11.17 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Development Agreement is contained in the instrument by which such person acquired an interest in the Property.

11.18 Counterparts. This Development Agreement may be executed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

11.19 Authority. The persons signing below represent and warrant that they have the authority to bind their respective Party and that all necessary approvals by board of directors', shareholders, partners, city councils, redevelopment agencies or other people, entities, or decision-making bodies have been obtained.

11.20 City Approvals and Actions. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, waiver or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager on behalf of the City, or by any person who shall have been designated in writing to Developer by the City Manager, without further approval or authorization required by the City Council, and any such action shall be in writing; provided, however, that the City Manager may seek such authorization when he or she deems it appropriate in his or her sole and absolute discretion. The City Manager may also, at his or her discretion, agree in writing to modification of the dates by which actions are to be completed or to waive non-substantive terms and conditions of this Agreement, to make non-substantive amendments to this Agreement in furtherance of the goals and objectives of this Agreement, or to make reasonable modifications to this Agreement requested by Mortgagees. The City Manager or his or her designee is authorized to execute and deliver, on behalf of the City, any ancillary documents and to take any action necessary or desirable to effectuate the provisions and intent of this Agreement.

[*Remainder of Page Intentionally Blank; Signatures*]

IN WITNESS WHEREOF, City and Developer have executed this Development Agreement as of the date first set forth above.

DEVELOPER:

WINEHAVEN LEGACY LLC,
a Delaware limited liability company

By: _____
Name: Marc Magstadt
Title: Authorized Signatory

SEE ATTACHED FOR NOTARY

CITY:

CITY OF RICHMOND,
a California municipal corporation and charter city

By: _____
Name: Lina Velasco
Title: Community Development Director

ATTESTATION:

By: _____, City Clerk

APPROVED AS TO FORM:

By: _____, City Attorney

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 Contra Costa

On October 21, 2020, before me, Pamela R. Christian a Notary Public, personally appeared Lina Velasco, 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.

Pamela R. Christian
Signature of the Notary Public

PAMELA R. CHRISTIAN
Notary Public - California
Contra Costa County
Commission # 2172574
My Comm. Expires Dec 8, 2020

Signature _____ (Seal)

[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 Orange

On October 21st, 2020, before me, Truong Dat Thanh Pham, a Notary Public, personally appeared MARC MAGSTADT, 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 of the Notary Public

Signature _____ (Seal)

TRUONG DAT THANH PHAM
COMM. 2296857
NOTARY PUBLIC-CALIFORNIA
ORANGE COUNTY
My Comm Exp. July 13, 2023