DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF ALAMEDA,
a California charter city

and

BC WEST MIDWAY LLC,
a Delaware limited liability company

West Midway

Dated as of _____, 2023

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

DISPOSITION AND DEVELOPMENT AGREEMENT
FOR WEST MIDWAY

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**" or "**DDA**") is entered into as of _____, 2023 ("**Reference Date"**) by and between the City of Alameda, a California charter city (the "**City**"), and BC WEST MIDWAY LLC, a Delaware limited liability company (the "**Developer**"). The City and the Developer are sometimes collectively referred to in this Agreement as the "**Parties**," and individually as a "**Party**." The Parties have entered into this Agreement with reference to the following facts:

RECITALS

A. This Agreement refers to and utilizes certain capitalized terms that are defined in Section 17.1 of this Agreement. The Parties intend to refer to those definitions in connection with their use in this Agreement.

B. The Naval Air Station Alameda and the Fleet and Industrial Supply Center, Alameda Annex and Facility ("**NAS Alameda**"), which encompasses the Naval facilities and grounds comprising the western end of the City of Alameda and consists of approximately 1,546 acres of real property, together with the buildings, improvements and related other tangible personal property located thereon and all rights, easements and appurtenances thereto, was decommissioned by the United States Department of the Navy (the "**Navy**") in 1993 and closed in 1997.

C, In 1996 the Alameda Reuse and Redevelopment Authority (the "**ARRA**"), of which the City is a member, the Local Reuse Authority under federal base closure law, approved the NAS Alameda Community Reuse Plan (the "**Reuse Plan**"), as amended in 1997, to establish a plan for the reuse and redevelopment of the property at the former NAS Alameda, a portion of which (west of Main Street) is commonly referred to as Alameda Point. The Reuse Plan set forth specific policy and planning goals and objectives with regards to the disposition and use of property at the NAS Alameda, which are being implemented under this DDA.

D. In 2003 the City adopted a General Plan Amendment for Alameda Point, which added Chapter 9 (Alameda Point) to the General Plan, in order to implement the community's vision for the reuse of Alameda Point consistent with the goals of the Reuse Plan and other City of Alameda policy documents.

E. The United States, acting by and through the Navy, approved the ARRA's Economic Development Conveyance Application and subsequently executed that certain Memorandum of Agreement between ARRA and the Navy for the No-Cost Economic Development Conveyance of Portions of the Former NAS Alameda, as subsequently amended (the "**EDC Agreement**").

F. The ARRA, by Resolution No 55, dated January 31, 2012, authorized the ARRA Executive Director to assign to the City all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement, and pursuant to City of Alameda Resolution No. 14654, dated February 7, 2012, the City accepted the assignment of all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement.

G. By letter dated April 4, 2012, the Department of Defense and the Department of the Navy designated the City as the local reuse authority for NAS Alameda, and accepted the City as the successor to ARRA.

H. On June 6, 2013, the Navy transferred approximately 1,379 acres, including 509 acres of land and 870 acres of submerged land, of the Alameda Point property pursuant to the EDC Agreement. The Navy effected this transfer through quitclaim deeds for parcels ALA-60-EDC (series number 2013-199826) and parcels ALA-37-EDC, ALA-38-EDC, ALA-55-EDC, ALA-57-EDC, ALA-59-EDC, and ALA-61-EDC (series number 2013-199810). The Navy subsequently transferred ALA-78-EDC (series number 2017-078010), ALA-82-EDC (series number 2017-217077), ALA-83-EDC (series number 2017-217078), and ALA-84-EDC (series number 2017-217079) (collectively, the "**Quitclaim Deeds**").

I. On February 4, 2014, the City Council certified the Environmental Impact Report ("**EIR**") under the California Environmental Quality Act ("**CEQA**"), adopted written findings, a Statement of Overriding Considerations ("**Alameda Point SOC**"), and a Mitigation Monitoring and Reporting Program ("**Alameda Point MMR**"), and approved General Plan amendments, Zoning Ordinance amendments (Alameda Municipal Code 30-4.24), Transportation Demand Management Plan for Alameda Point ("**TDM Plan**"), and a Master Infrastructure Plan (**"MIP"**) (collectively, the **"Planning Documents"**) required to implement the Reuse Plan for Alameda Point. This DDA is intended to implement the goals and policies described in the General Plan, Zoning Ordinance, TDM Plan, and MIP.

J. On March 21, 2017, the City Council adopted the Main Street Neighborhood Specific Plan ("**Main Street Neighborhood Plan**"). This DDA is intended to implement the goals and policies described in the Main Street Neighborhood Plan.

K. On November 30, 2021, the City Council adopted a comprehensive update of the General Plan and Zoning Ordinance which included amendments to the policies, standards and requirements for development at Alameda Point, and certified the environmental impact report for the update of the General Plan ("**General Plan Amendment EIR**") under CEQA and adopted written findings, a Statement of Overriding Considerations ("**General Plan Amendment SOC**"), and a Mitigation Monitoring and Reporting Program ("**General Plan Amendment MMR**").

L. The City is the fee title owner of that certain portion of Alameda Point known as West Midway, which is approximately 26 acres in size and is located within the area bounded by Main Street, West Midway Avenue, Pan Am Way and West Tower Avenue, and is more particularly described in Exhibit A and shown on the map of the Property attached hereto as Exhibit B (the "**Property**").

M. In November 2022, the City of Alameda adopted its Housing Element of the General Plan for the 2023-2031 cycle, which committed the City of Alameda to take all necessary actions to facilitate and support the construction of 1,482 housing units between 2023 and 2031 on 55 acres of land at Alameda Point, which includes the Property.

N. The City is entering into that certain Disposition and Development Agreement ("**RESHAP DDA**"), with MidPen Housing Corporation, Alameda Point Collaborative, Building Futures With Women and Children and Operation Dignity (collectively the "**Collaborating Partners**") concurrently with this Agreement that provides the terms and conditions for the City

to convey certain property more particularly described in the RESHAP DDA (the "**RESHAP Property**") subject to the Main Street Neighborhood Plan and adjacent to the Property to the Collaborating Partners for the development of a minimum of 309 new housing units, consisting of 201 housing units replacing the supportive housing currently operated by the Collaborating Partners and a minimum of 108 new units of which a minimum of 103 will be affordable supportive housing ("**RESHAP Project**"). The RESHAP DDA replaces in its entirety a prior Disposition and Development Agreement entered into by the City and the Collaborating Partners that included portions of the Property for the development of the RESHAP Project.

O. The RESHAP DDA assumes that the infrastructure necessary for the RESHAP Project will be provided by a market rate developer of the property adjacent to the property upon which the RESHAP Project was originally contemplated to be developed.

P. On or about March 9, 2020, the City issued a request for qualifications seeking a developer to develop the Property consistent with the Planning Documents, the Main Street Neighborhood Plan, and the RESHAP Project. The Developer has demonstrated to the City its experience with successfully developing properties similar to the Property, as demonstrated by its statement of qualifications submitted to the City on March 30, 2020. On May 19, 2020, the City Council selected Developer to develop the Property and authorized the City Manager to negotiate an Exclusive Negotiation Agreement with Developer. On October 6, 2020, pursuant to City Council authorization, the City and the Developer entered into the Exclusive Negotiation Agreement, as amended (the "**ENA**") for purposes of negotiating this Agreement.

Q. The City's request for qualifications proposed that in exchange for the selected developer constructing the infrastructure and preparing the development pads for the RESHAP Project, a portion of the selected developer's affordable housing obligations pursuant to the Main Street Neighborhood Plan and the Renewed Hoped Settlement Agreement would be satisfied together with the RESHAP Project which, in combination with the number of market rate units authorized on the Property, would support the cost of such infrastructure.

R. Subsequent to the Developer's statement of qualifications being accepted by the City, the City requested that the Collaborating Partners and the Developer consider moving the RESHAP Project from the east side of the Property to the property immediately west of the Property, at West Midway Avenue and Pan Am Way.

S. On May 22, 2023, the City of Alameda Planning Board approved the West Midway Development Plan (the "**Development Plan**"), a Use Permit for exceeding maximum off-street parking requirements (the "**Use Permit**"), and a Universal Design Waiver ("**Universal Design Waiver**") for the Property, consistent with the Main Street Neighborhood Plan and the Planning Documents. The City of Alameda Planning Board also recommended that the City Council approve the Development Agreement (defined below), made a determination that the EIR and General Plan Amendment EIR adequately analyzes the impacts of the Project (as defined below) and that no further environmental review under CEQA is required based on Public Resources Code Sections 21083 and 21162 and CEQA Guidelines Sections 15162 and 15183 ("**West Midway PB CEQA Approval**"), adopted written findings and a Mitigation and Monitoring Reporting Program for the Project ("**MMR Program**"), specifying mitigation measures applicable to the Project, and readopted the Alameda Point SOC and the General Plan Amendment SOC. The Development Plan generally includes:

- 478 residential units, including no less than 43 affordable by design units and no less than 39 and no more than 44 units affordable to moderate income households (the "**Residential Units**");

- No less than 7,500 square feet of permitted and conditionally permitted non-residential uses including but not limited to, retail, commercial, civic and other commercial space in newly constructed building(s) (the "**Commercial Element**"); and

- New and upgraded public utilities, including water distribution system, wastewater collection system, recycled water storage and distribution system, storm water collection and stormwater management control system and other improvements including the infrastructure necessary for the RESHAP Project, all as more particularly described in Exhibit G, attached hereto (the "**Infrastructure Package**")

The foregoing is referred to herein collectively as the "**Project**".

T. The Developer understands and agrees that any proposed Project must be consistent with the Planning Documents, the TDM Plan, and the Main Street Neighborhood Plan, among other regulatory and policy documents, and that this DDA is entered into in furtherance of and is intended to implement the goals and policies contemplated by previously approved policy documents as well as in furtherance of development of the RESHAP Project.

U. Pursuant to the terms of this Agreement, the City will convey the Property to the Developer and/or the Vertical Developers, and the Developer and such Vertical Developers will develop and construct a high-quality residential mixed-use development that will create a walkable, residential neighborhood with a strong sense of place designed to maximize transit usage and opportunities for walking and biking, in close proximity to transit, thereby providing a model for sustainable development.

V. On _____, 2023, the City Council approved the following additional land use approvals for the Project (collectively with this Agreement, the Development Plan, the Universal Design Waiver, the Use Permit, the West Midway PB CEQA Approval, and the MMR Program, the "**Project Approvals**"):

1. Development Agreement West Midway adopted by Ordinance No. _____ (the "**Development Agreement**");

2. A determination that the EIR and General Plan Amendment EIR adequately analyze the impacts of the Project and that no further environmental review under CEQA is required based on CEQA Sections 21083 and 21166 and CEQA Guidelines Sections 15162 and 15183.

W. This Agreement provides for the City's conveyance of the following rights to the Property to the Developer (or where applicable a Vertical Developer):

1. The conveyance of fee simple ownership to the Property described in Exhibit A attached hereto and depicted in Exhibit B attached hereto; and

2. The conveyance of temporary construction licenses, easements, and/or encroachments permits to portions of the Property or the adjacent property (such adjacent property including the RESHAP Property) necessary for the construction of the Project, including, at Developer's election, a Right of Entry to construct the applicable portion of the Infrastructure Package for a Phase prior to the conveyance of that Phase (collectively, the "**ROE Property**").

X. The Property is affected by certain Hazardous Materials, which are addressed in several Sections of this Agreement and in the MMR Program (defined above), attached hereto as Exhibit D.

Y. Pursuant to Government Code Section 65402, the City's Planning Board has made the findings of General Plan conformance with respect to the Development Plan and the Development Agreement and that the conveyance of the Property is consistent with the General Plan.

Z. Construction of the Project will substantially improve the economic and physical conditions of the Property and the City in accordance with the purposes and goals set forth in the Reuse Plan, the City's General Plan, the Main Street Neighborhood Plan, and the Planning Documents. In addition, construction of the Project will assist the City in meeting its Regional Housing Needs Allocation as set forth in its Housing Element and will provide the necessary infrastructure for the RESHAP Project, facilitating the replacement of 201 existing supportive affordable housing units and the development of additional supportive affordable housing units. This Agreement is declaratory of the policy goals and objectives of the various policy documents previously considered and adopted governing the development and disposition of property at the NAS Alameda. The execution and implementation of this DDA is an administrative action, in that it pursues plans and policies that have previously been adopted by the various public agencies with regards to the development of the NAS Alameda generally, and the Property in particular.

AA. In connection with the approval of this Agreement, the City Council has adopted written findings that the Property is exempt surplus land pursuant to Government Code Sections 37364 and 54221(f)(1)(A).

BB. The Developer has represented that it has the necessary experience, skill, and ability to carry out Developer's commitments contained in this Agreement.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the City and the Developer agree as follows:

ARTICLE 1.
TERM OF THE AGREEMENT

Section 1.1 Effective Date. The "**Effective Date**" of this Agreement is the date which is thirty (30) days after the date the Ordinance approving this Agreement is adopted by the City Council. This Agreement shall be executed by the City within ten (10) days after the Effective Date and a DDA Memorandum substantially in the form attached as Exhibit E (the "**Memorandum**") will be recorded in the public records with the Alameda County Recorder (the "**Official Records**") against the Property.

Section 1.2 Term. This Agreement shall commence on the Effective Date and end on the earliest of: (a) _____, 2033 which is ten (10) years from the Effective Date (as the same may be extended pursuant to Section 1.3 and Section 1.5, the "**Expiration Date**"); (b) the date of any termination of this Agreement in accordance with the provisions hereof; or (c) the date of issuance by the City of the final Certificate of Completion for the last Phase of Vertical Improvements ("**Term**"). Nothing in this Section 1.2 shall be construed to limit the scope or duration of those rights or obligations (or the legal or equitable remedies of any party hereunder with respect thereto) that expressly survive the expiration or termination of this Agreement. Except as provided for in Section 1.3 and Section 1.5, the Expiration Date shall not otherwise be extended unless and until the City Council, in its sole discretion, approves an extension of the Expiration Date.

Section 1.3 Extensions of Expiration Date. The Expiration Date, the Term, and the applicable Milestone Schedule (and all subsequent Milestone Schedule dates) and any other dates or time periods for performance under this Agreement shall be extended for the following reasons: (i) Force Majeure, (ii) if the Developer exercises its option(s) to extend as set forth below, and/or (iii) as set forth in Section 1.5 below.

(a) Options to Extend. The Developer shall have the right, but not the obligation, to extend each of the Milestone Schedule dates for Commencement of Construction and completion of construction of a Market Rate Infrastructure Phase and Commencement of Construction of RESHAP Infrastructure Phase 2 as set forth in this Section by providing written notice to the City of the extension at least thirty (30) days prior to the Milestone Schedule date being extended accompanied by the applicable Extension Payment, provided, however, that the total term of all such extensions pursuant to this Section 1.3(a) shall not exceed thirty-six (36) months. In no event may the Developer extend the Milestone Schedule dates for the submission of the "Demolition Plans", the "Surcharge Plans", or the "Improvement Plans" for the Market Rate Infrastructure Phases and RESHAP Infrastructure Phase 1 pursuant to this Section 1.3(a), provided such Milestone Schedule dates may be extended for Force Majeure and as set forth in Section 1.5.

(1) Developer shall have the right to extend the Milestone Schedule date for the Commencement of Construction of Market Rate Infrastructure Phase 1 by no more than twenty four (24) months (the "**Phase 1 Extension Period**"), provided that the Developer pays to the City at the time the Developer provides the City with the extension notice twenty thousand eight hundred thirty three dollars and thirty four cents ($20,833.34) for each month of any requested extension ("**Extension Payment**"). Developer may give more than one extension notice during the Phase 1 Extension Period. All Extension Payments (paid to extend any Market Rate Infrastructure Phase or RESHAP Infrastructure Phase 2) shall be credited toward the RESHAP Phase 1 Payment which credit shall apply on the date of payment of the Extension Payment; provided, that if the balance of the RESHAP Phase 1 Payment is less than the amount of such credit, then the amount of the applicable Extension Payment which so exceeds such balance shall nonetheless be treated as a Development Cost.

(2) The Developer may extend the Milestone Schedule dates for the Commencement of Construction of Market Rate Infrastructure Phase 2, RESHAP Infrastructure Phase 2 and/or Market Rate Infrastructure Phase 3 or completion of construction of any Market Rate Infrastructure Phase by utilizing any one or any combination of the following two methods:

(A) In the event the Developer does not elect to use the full twenty four (24) months of the Phase 1 Extension Period to extend the Milestone Schedule date for the Commencement of Construction of the Market Rate Infrastructure Phase 1, the Developer may use any unused portion of the Phase 1 Extension Period to extend the Milestone Schedule dates for the Commencement of Construction of Market Rate Infrastructure Phase 2, RESHAP Infrastructure Phase 2, and/or Market Rate Infrastructure Phase 3 and/or completion of construction of any Market Rate Phase as long as the Developer makes the required Extension Payment in connection therewith (which for the avoidance of doubt shall be $20,833.34 per month); and/or

(B) If the Phase 1 Extension Period has been fully used, Developer may elect to extend the Milestone Schedule dates for the Commencement of Construction of Market Rate Infrastructure Phase 2, RESHAP Infrastructure Phase 2, and/or Market Rate Infrastructure Phase 3 and/or the completion of construction of any Market Rate Infrastructure Phase for a twelve (12) month period provided that the Developer shall, as a condition to exercising such extension option, commence demolition of the Waves building, if the Waves building has not previously been demolished, within sixty (60) days of giving the City notice of such extension. If the Waves building has previously been demolished, then Developer shall automatically receive the additional twelve (12) month extension upon giving the City notice of the Developer's election to extend for the additional extension period.

(b) As used in this Agreement, "**Force Majeure**" shall mean delay caused by any of the following occurring after the Effective Date: (1) strikes, lock-outs or other labor disturbances; (2) one or more acts of a public enemy; (3) war; (4) riot; (5) sabotage; (6) blockade; freight embargo; (7) floods; (8) earthquakes; (9) fires; (10) unusually severe weather; (11) quarantine or other public health orders or restrictions; (12) pandemics; (13) lack of transportation; (14) court order; (15) delays resulting from changes in any applicable laws, rules, regulations, ordinances or codes; (16) delays resulting from Hazardous Material Delay; (17) litigation that enjoins construction or other work on the Project or any portion thereof, causes a lender to refuse to fund, disburse or accelerate payment on a loan, or prevents or suspends construction work on the Project except to the extent caused by the Party claiming an extension and provided further that the Party subject to such litigation is actively mounting a defense to such litigation; (18) inability to secure necessary labor, materials or tools (provided that the Party claiming Force Majeure has taken reasonable action to obtain such materials or substitute materials on a timely basis); (19) a development moratorium, as defined in section 66452.6(f) of the California Government Code; (20) the Collaborating Partners and/or their tenants, and/or the City's tenants and/or other occupants failure to timely vacate the applicable Phase of the Property or the RESHAP Project site (and/or the leases or other occupancy agreements affecting the applicable Phase of the Property or the RESHAP Project are not timely terminated); (21) delays related to the City's failure to give notice or exercise its rights under the Site A DDA related to the Site A Improvements, the exercise of Developer's step-in rights to construct and/or complete the Site A Improvements, and the exercise of the Site A Developer's step in rights to construct and/or complete the Site A Improvements; (22) the City's breach of its obligations under this Agreement; (23) administrative appeals of, referenda of, and/or legal challenges to the Project Approvals, Supplemental Approvals, the Additional Approvals-Horizontal, and the Additional Approvals-Vertical, including those instituted prior to the Effective Date (provided that if such appeal, referendum, and/or challenge would cause the Developer to be at risk of loss if the appeal, referenda, and/or challenge is successful, then the Milestone Schedule, Expiration Date, and Term shall be tolled

during the pendency of the appeal, referenda, and/or challenge irrespective of whether actual delay is caused thereby) (collectively, "**Project Approval Challenges**"); (24) failure of Escrow Holder or any other title company to issue or to be irrevocably committed to issuing (upon payment of the applicable premium and the Close of Escrow) a Title Policy to the Developer or any Vertical Developer in the form required by Section 4.6, subject only to Permitted Exceptions, at the applicable Closing, provided such failure is not due to a Developer Event of Default applicable to such Developer or Vertical Developer; (25) the occurrence of a material adverse change in the physical condition of the Property or any portion thereof after the Effective Date, including but not limited with respect to any environmental condition or relating to Hazardous Materials, that would render the Property or any portion thereof unsuitable for the development pursuant to the Project Approvals, which is not caused by Developer or any Vertical Developer; (26) the City's failure to enter into a Right of Entry when required or to convey a Phase or Subphase when required; (27) acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance by the City); (28) disputes between the City and Developer regarding the City's disapproval or delay in approving any matter required to be submitted for the City's review and/or approval under this Agreement (e.g., a Phase Update or Construction Contract), including during any period such matter is being arbitrated as provided herein, and (29) any other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform that prevents the Party claiming an extension of time from performing its obligations under this Agreement.

(c) The Developer's inability or failure to timely satisfy the pre-Commencement of Construction requirements of Section 3.1 (regarding submission and procurement of an approved Phase Update or Public Financing Plan) shall not itself be deemed to be a cause outside the reasonable control of the Developer and shall not by itself be the basis for an excused delay under clause (29) of Section 1.3(b).

(d) If Developer claims a Force Majeure event after Commencement of Construction of any Phase but prior to completion of construction of the Phase, Developer shall be obligated to do all of the following: (i) ensure that all portions of the Property and the adjacent property remain accessible to vehicular and pedestrian traffic at all times; and (ii) secure any construction site to prevent injury or damage as soon as reasonably possible following the occurrence of such Force Majeure.

(e) If a Party claims a Force Majeure extension, such party shall provide written notice to the other Party in accordance with Section 16.1 of the event that gave rise to such period of delay which notice shall specify the Milestone Dates that are being extended. The Force Majeure extension shall commence upon the date the Force Majeure event occurred and shall continue until the date that the cause for the extension no longer exists or is no longer applicable at which time the Expiration Date and the corresponding Term and the applicable Milestone Dates (and all subsequent Milestone Schedule dates affected by the Force Majeure event) will be adjusted to account for the extension period; provided, however, if the claiming Party does not give the other Party written notice of the Force Majeure extension by the later to occur of (1) the date that is thirty (30) days after the date the Force Majeure event occurred, and (2) the date that the next quarterly progress report pursuant to Section 5.12 of this Agreement is delivered to the City following the Force Majeure event, then the Force Majeure extension shall not commence until the date that is thirty (30) days prior to the date that the claiming Party delivers written notice of the Force Majeure extension to the other Party. Without limiting the foregoing or the

commencement of the Force Majeure extension period pursuant to the immediately preceding sentence, each Party shall make reasonable efforts to give the other Party notice of any Force Majeure extension within thirty (30) days of learning of the occurrence of such Force Majeure event.

Section 1.4 Milestone Schedule. During the Term, the Developer and the City will each be required to perform certain tasks and to fulfill certain obligations as set forth in this Agreement, the Exhibits and other implementing documents. A schedule of the deadlines for performance of various conditions and requirements under this Agreement is set forth in the Milestone Schedule attached as Exhibit F. Milestone Dates may be extended pursuant to Section 1.3 above and Section 1.5 below, and as set forth in Section 16.16(a) below. All deadlines set forth in the Milestone Schedule that are not considered Major Milestone Dates are considered "**Progress Milestone Dates**." The Parties shall make commercially reasonable efforts to meet the Progress Milestone Dates but failure to meet a Progress Milestone Date shall not be considered a Developer or City Event of Default pursuant to Sections 15.3 and 15.4. If a Party fails to meet a Progress Milestone Date, either Party can require the other Party to meet and confer regarding the impact to the Milestone Schedule of such failure with the goal of the Parties reaching mutual agreement on adjustments to the Progress Milestone Dates in the Milestone Schedule. Any Party receiving a request to meet and confer shall participate in the meet and confer within thirty (30) days of receipt of notice from the other Party.

Section 1.5 Time for Developer Performance. Any date or time period by which any event is scheduled to occur or expire or pursuant to which an act is required to be performed by Developer under this Agreement, shall be automatically extended on a day for day basis during any period of extension provided for pursuant to Section 1.3, irrespective of whether or not this Agreement states that such date or time period is subject to extension pursuant to Section 1.3, (including, but not limited to the Expiration Date (and the corresponding Term), the Outside Phase Commencement Dates, the Outside Phase Completion Dates, the Outside Phase Closing Dates, and all other Milestone Dates set forth in the Milestone Schedule). Without limiting the foregoing and for the avoidance of doubt, the Term, the Milestone Schedule dates and Expiration Date shall cumulatively be extended on a day-for-day basis for all extension options that Developer exercises pursuant to Section 1.3(a) above and all Force Majeure extensions pursuant to Section 1.3(b).

ARTICLE 2.
FINANCIAL TERMS

Section 2.1 Land Payment.

(a) The City shall convey the Property to Developer in Phases. Development of the Project on the Property will require substantial infrastructure improvements both on-site and off-site. As consideration for the City agreeing to convey a Phase of the Property to the Developer in accordance with this Agreement, the Developer agrees to install the Infrastructure Package for that Phase, including but not limited to surcharging, increasing the grade elevation to address sea level rise, in each case, to the extent set forth in the Infrastructure Package (and Developer shall have the right to construct the portion of the Infrastructure Package for a Phase prior to the City's conveyance of that Phase to Developer pursuant to Section 5.1 below). In addition to the installation of the Infrastructure Package for the Project and as additional consideration for the conveyance of the Property, the Developer shall, in accordance with this Agreement, (i) pay to the

City the RESHAP Phase 1 Payment and (ii) install RESHAP Infrastructure Phase 2. Taking into account all of the Developer's obligations pursuant to this Agreement including the obligation to install the Infrastructure Package pursuant to Article 5, the Developer and the City have determined that the fair market value of the Property in its current condition is equal to or less than the cost of the Infrastructure Package which Developer is obligated to install in accordance with this Agreement, including the RESHAP Infrastructure Phase 2 or, in the case of the RESHAP Phase 1 Payment, otherwise pay in accordance with this Agreement (as applicable, the "**Land Payment**") plus the Contingent Profit Participation (defined below), if any.

(b) The Developer shall pay the RESHAP Phase 1 Payment calculated in accordance with Section 5.15 as required pursuant to this Section 2.1(b) minus any Extension Payment(s) made by the Developer pursuant to Section 1.3(a). No payment of the RESHAP Phase 1 Payment shall be owed to the City unless and until the Developer Commences construction of the first Market Rate Infrastructure Phase. Upon Commencement of Construction of the first Market Rate Infrastructure Phase, the actual amount the City advanced to Developer to construct RESHAP Infrastructure Phase 1 pursuant to Section 5.15 below shall commence accruing interest at the Applicable Rate. The Developer shall provide the City with a payment guaranty for the RESHAP Phase 1 Payment in substantially the form attached hereto as Exhibit T in accordance with Section 5.15 prior to disbursement of any advance for RESHAP Infrastructure Phase 1(the "**RESHAP Phase 1 Payment Guaranty**") from creditworthy affiliates of Brookfield Parent and CDC Parent reasonably approved by the City. The RESHAP Phase 1 Payment shall be paid as follows: (i) on the later to occur of the completion of the RESHAP Infrastructure Phase 1 work, and the completion of the Site A Improvements necessary for Market Rate Phases 1 and 2 (such later date the "**RESHAP Phase 1 Payment First Installment Date**"), Developer shall make a payment equal to five million five hundred thousand dollars ($5,500,000) in principal plus interest at the Applicable Rate accrued thereon in accordance with this Agreement to the City toward the payment of the RESHAP Phase 1 Payment (the "**RESHAP Phase 1 Payment First Installment**"); and (ii) any remaining balance on the RESHAP Phase 1 Payment (the "**RESHAP Phase 1 Second Installment**") shall be due when the balance of Site A Improvements (i.e., those necessary for Market Rate Phase 3) are completed (such date the "**RESHAP Phase 1 Payment Second Installment Date**" and collectively with the RESHAP Phase 1 Payment First Installment Date, the "**RESHAP Phase 1 Payment Date**"); provided, however, if the Developer becomes responsible for the construction of the Site A Improvements or any portion thereof pursuant to Section 5.14, the actual Site A Costs (as defined below) incurred by the Developer plus interest thereon in accordance with this Agreement shall be applied to the RESHAP Phase 1 Payment. Accordingly, the only portion of the RESHAP Phase 1 Payment that shall become due to the City shall be the amount by which (i) the difference between RESHAP Phase 1 Payment and any Extensions Payments exceeds (ii) such Site A Costs incurred by the Developer through the applicable payment date plus interest thereon in accordance with this Agreement. To the extent such Site A Costs incurred by the Developer and interest thereon exceed the difference between the total RESHAP Phase 1 Payment and any such Extension Payments (the "**Excess RESHAP Phase 1 Costs**"), Developer shall be solely responsible for such excess costs (and the City shall have no responsibility or liability for the excess costs), provided such excess costs shall be Development Costs. For the avoidance of doubt, any Site A Costs that Developer incurs plus interest thereon that are not applied to the RESHAP Phase 1 Payment First Installment shall be applied to the RESHAP Phase 1 Payment Second Installment. Notwithstanding anything set forth above, if Developer commences the first Market Rate Infrastructure Phase and this Agreement is

subsequently terminated for any reason, the full amount of the RESHAP Phase 1 Payment shall be due in full upon such termination.

Section 2.2 Contingent Profit Participation. In addition to the Land Payment to be paid by the Developer as set forth in Section 2.1 above, the Developer shall pay to the City a contingent profit participation ("**Contingent Profit Participation**") as described below. For purposes of determining Contingent Profit Participation the following terms shall have the following meanings:

(1) "**Development Costs**" means all of the following costs actually paid by the Developer: (A) all third party, out-of-pocket costs related to (i) the acquisition of the Property and/or the Right of Entry with respect to the ROE Property (including, without limitation, the legal fees incurred in the preparation and negotiation of this Agreement and any other agreements or documents referenced herein or related hereto, acquisition of the Project Approvals and all other land use entitlements and permits necessary for the construction of the Infrastructure Package to achieve Final Completion, the Developer's due diligence inspection of the Property, transfer taxes and all title and escrow fees), and any costs, expenses, and/or fees (including, without limitation, legal fees) related to the defense of any Project Approval Challenges; (ii) design and construction of the Infrastructure Package to achieve Final Completion including, without limitation, consultant costs, plan check, building and inspection fees, any unreimbursed Hazardous Materials costs (including but not limited to, remediation, mitigation, monitoring, oversight costs, and compliance with the Site Management Plan and applicable land use restrictions), amounts paid to contractors and subcontractors for materials and labor, any required repairs, restoration and/or replacement costs, and the costs of any in tract improvements constructed or paid for by Developer, (iii) land carry costs related to the Property, including, without limitation, property taxes and assessments, possessory interest tax payments and insurance costs, maintenance and security costs, and any costs to comply with any laws or regulations applicable to the Property, (iv) Project insurance requirements related to the acquisition of the Property and/or construction of the Infrastructure Package including, but not limited to, the premium for any Contractor's Pollution Liability Insurance Policy, the Real Estate Pollution Liability Insurance Policy and any earthwork costs; (v) unreimbursed costs to form any special tax or assessment district; (vi) compliance with the terms and conditions of this Agreement, the Project Approvals and all other land use entitlements and permits necessary for the construction of the Infrastructure Package to achieve Final Completion, and any other agreement or documents referenced herein or therein or related thereto; and (vii) the marketing and sale or transfer of any portion of the Property (including, without limitation, brokers fees, legal fees to negotiate purchase agreements, transfer taxes, all title and escrow fees and the costs incurred by Developer in the Fair Market Value Determination Process set forth in Exhibit P-1 (or, with respect to the Commercial Phase, the Fair Market Value Determination Process set forth in Exhibit P-2)), (B) a development fee paid to the Developer or a Developer Affiliate equal to three percent (3.0%) of Gross Proceeds (as hereinafter defined) ("**Development Sales and Management Fee**"); (C) a construction management fee paid to the Developer or a Developer Affiliate equal to five percent (5%) of all other Development Costs excluding the Development Sales and Management Fee ("**Construction Management Fee**"); (D) actual costs and expenses (including but not limited to legal fees) incurred by Developer as a result of delays, potential delays, or other problems directly caused by (i) the Collaborating Partners and/or their tenants and other occupants and/or the RESHAP Project, (ii) the Site A Developer and/or the Site A Project, and/or (iii) Hazardous Material Delay; (E) the sum of (i) the positive difference between (a) the RESHAP Phase 1 Payment and (b) the sum of the Site A Costs and

interest thereon plus the Extension Payments (applying the accrued interest first and then the Site A Costs and Extension Payments) that are applied toward the RESHAP Phase 1 Payment (the differences between (a) and (b) represents the net amount of the RESHAP Phase 1 Payment to be made to the City), and (ii) the Site A Costs and the Extension Payments; and (F) costs and expenses that Developer incurs collecting revenues that are owed or due from the sale, lease, exchange or other disposition of all or any part of the Property, including, without limitation, enforcement of any note or other negotiable instrument and damage recoveries, insurance payments or condemnation proceeds. Development Costs shall exclude: (a) the repayment of the principal and interest of any loan obtained by the Developer (but for the avoidance of doubt, Development Costs shall include the actual costs and expenses incurred by Developer to satisfy the pre-Commencement of Construction requirements of Section 3.1 (regarding submission and procurement of an approved Phase Update or Public Financing Plan) as well as the cost and expenses of causing the issuance of and/or obtaining the financing contemplated thereby and compliance with the other terms and conditions thereof other than the costs associated with the annexation of the Property to CFD No. 17- pursuant to Section 3.1(b), the formation of the facilities special tax district pursuant to Section 9.3 and any annexations thereto, and the issuance of any bonds by such CFD if such issuance costs are paid from bond proceeds (i.e., other than repayment of principal and interest)); (b) any distributions, preferred return or other capital return to the members of the Developer; (c) any costs incurred by the Developer or its members related to responding to and participating in the RFQ selection process and negotiation of the ENA; (d) any contributions made to political candidates, ballot measures, political actions committees or otherwise related to political causes; (e) any charitable contributions or other contributions to community organizations not specifically required by the City under the terms of or in the implementation of this Agreement; (f) other than the Development Sales and Management Fee and the Construction Management Fee, any fees to the Developer or a Developer Affiliate including, but not limited to management fees, general and administration charges or overhead reimbursements; and (g) the costs (i) to construct Vertical Improvements such as residential units or commercial spaces, and (ii) of site or in tract improvements that, in either case, are constructed by separate Vertical Developers or any other party at such Vertical Developer's cost. There shall be no double counting of Development Costs.

(2) "**Final Completion**" of the Project shall mean the first day of the month following the expiration of the 90th day after the completion of construction of all Phases of the Infrastructure Package (as determined pursuant to the Public Improvement Agreements (defined below)).

(3) "**Gross Proceeds**" means all revenues received by the Developer from (i) any source whatsoever from the sale, lease, exchange or other disposition of all or any part of the Property to Vertical Developers, (ii) any damage recoveries, insurance payments or condemnation proceeds, actually paid to the Developer with respect to the Infrastructure Package or the Property, (iii) reimbursements of any Development Costs incurred by the Developer which are actually paid to Developer, (iv) proceeds from any assessment or special tax districts formed for purposes of providing funds for capital costs associated with the Infrastructure Package actually received by Developer. Gross Proceeds shall exclude the proceeds of any capital contributed to the Developer by its partners or members or the proceeds of any loan made to the Developer. If the Developer receives a promissory note or other negotiable instrument in conjunction with the sale, exchange or disposition of any portion of the Property to Vertical Developer entities other than an Affiliated Purchaser, payments due under such instrument shall be recognized as Gross

Proceeds only upon receipt by Developer provided such payments shall not extend beyond completion and sale of units within the applicable Phase or Phases. Notwithstanding any agreed upon purchase price or other consideration for the conveyance of any portion of the Property between the Developer and a Vertical Developer that is an Affiliated Purchaser, the Gross Proceeds from such transaction shall be (x) determined in accordance with the Fair Market Value Determination Process set forth in Exhibit P-1 (or, with respect to the Commercial Phase, the Fair Market Value Determination Process set forth in Exhibit P-2), (y) the Gross Proceeds from such transaction shall be limited to the fair market value thereof as determined in accordance with such process and (z) deemed received upon the conveyance of such portion of the Property to the Affiliated Purchaser for construction of the Vertical Improvements. Under no circumstances shall Gross Proceeds include (A) any revenues from any source in connection with the sale, lease, exchange or other disposition of all or any part of any Vertical Improvements (including proceeds from the sale or lease of residential units or buildings and non-residential units or buildings) as well as any damage recoveries, insurance payments or condemnation proceeds in connection with the Vertical Improvement, whether received by Developer, any Affiliated Purchaser or any third party Vertical Developer, (B) any item which would otherwise be included in the definition of Gross Proceeds but which is not actually paid to the Developer, except such amounts determined in accordance with the Fair Market Value Determination Process, whether actually paid to the Developer or not; (C) any revenue or consideration received by Developer from an Affiliated Purchaser other than the amount determined by the Fair Market Value Determination Process set forth in Exhibit P-1 (or, with respect to the Commercial Phase, other than the amount determined by the Fair Market Value Determination Process set forth in Exhibit P-2), and (D) reimbursements of any costs incurred by Vertical Developer.

(4) "**IRR**" means the annual percentage return realized through the date of calculation, determined by taking into account all Development Costs incurred and all Gross Proceeds received or deemed received by Developer in accordance with Section 2.2(a)(3) during the period prior to the Final Accounting Determination Date. IRR shall be conclusively determined by using the XIRR function in Microsoft Excel (with monthly compounding) and inputting, as of the month in which it is actually made, the amounts of all Development Costs paid by the Developer and the amounts of all applicable Gross Proceeds received or deemed received by the Developer in accordance with Section 2.2(a)(3). If the XIRR function is no longer available in the version of Microsoft Excel or has been materially altered from the XIRR function contained in Microsoft Excel in use as of the Effective Date, IRR shall be conclusively determined by using the comparable function in the version of Microsoft Excel then broadly in use or another comparable software program, as reasonably determined by the Parties, that solves for the annualized discount rate (with monthly compounding) at which the net present value of all such Gross Proceeds and Development Costs on a monthly basis is equal to zero.

(5) **"Net Distributable Proceeds"** means Gross Proceeds remaining after payment of all Development Costs (and reserves for all current and anticipated Development Costs).

(6) "**Peak Investment"** means the highest aggregate amount of Developer equity (including from third-party equity providers) contributed to the Project to pay Development Costs in the period between Project Commencement and the Final Accounting Determination Date.

(7) "**Project Commencement**" means the Effective Date of this Agreement.

(8) "**Phase Completion**" for each Infrastructure Phase of the Project shall mean the first day of the month following expiration of the 90th day after the completion of the construction of the Infrastructure Package (as determined pursuant to the applicable Public Improvement Agreement) for the applicable Phase.

(9) **"Threshold Return"** means the Developer has received Net Distributable Proceeds sufficient to achieve the greater of (i) a 20% cumulative IRR on all Development Costs; or (ii) Net Distributable Proceeds equal to Seventy-Five Percent (75%) of the Developer's Peak Investment (i.e., Developer has received a return of 100% of Development Costs and Net Distributable Proceeds equal to Seventy-Five Percent (75%) of the Developer's Peak Investment).

(b) Payment of Contingent Profit Participation. Subject to subsections (d) through (e) of this Section 2.2, upon the Final Accounting Determination Date, the Developer shall undertake to finish a complete accounting and computations setting forth on an aggregate basis, the Net Distributable Proceeds received, the Developer's Peak Investment made and the IRR earned, in each case, by Developer from Project Commencement through the Final Accounting Determination Date. All Net Distributable Proceeds shall be paid to Developer until the Final Accounting Determination Date. Upon Final Accounting, if and only if it is determined that the Developer has achieved its Threshold Return, then there shall be Contingent Profit Participation due to the City which shall be equal to the following:

(1) Tier 1 – Twenty-five percent (25%) of the remaining Net Distributable Proceeds (i.e., Net Distributable Proceeds in excess of the amount thereof necessary to achieve Developer's Threshold Return as of the date of the applicable calculation) until the Developer has received Net Distributable Proceeds sufficient to achieve the greater of (i) a twenty-five percent (25%) cumulative IRR on all Development Costs or (ii) Net Distributable Proceeds equal to One Hundred Percent (100%) of the Developer's Peak Investment ("**Tier 1 Profit Participation Return**").

(2) Tier 2- Fifty percent (50%) of the Net Distributable Proceeds remaining after the Developer has achieved the Tier 1 Profit Participation Return (i.e., Net Distributable Proceeds in excess of the amount thereof necessary to achieve Developer's Tier 1 Profit Participation Return as of the date of the applicable calculation).

(c) Accounting of Contingent Profit Participation Payments. Developer shall maintain accurate books and records setting forth all components used for determining the Contingent Profit Participation. At the conveyance of the final Subphase of each Phase to a Vertical Developer, Developer shall provide to the City copies of the periodic reporting respecting Development Costs and Gross Proceeds provided by Developer to each of its members or partners ("**Developer's Interim Statement"**), which reporting shall be in the form and with such detail as required by the Developer's Limited Liability Company Agreement and subject to the provisions of this Section 2.2, in conformance with generally accepted accounting principles consistently applied ("**GAAP**").

(d) Final Accounting. Within ninety (90) days after the date upon which Final Completion has occurred and Developer has received or is deemed to have received all Gross Proceeds from sales of all Phases to Vertical Developers ("**Final Accounting Determination Date**"), Developer shall prepare a complete accounting and computations setting forth (i) in the aggregate the Development Costs incurred and the Gross Proceeds, each from the Project Commencement Date through the Final Accounting Determination Date, (ii) the Developer's Peak Investment from the Project Commencement Date through the Final Accounting Determination Date, (iii) the Net Distributable Proceeds from the Project Commencement through Final Accounting Determination Date, (iv) the IRR and (v) the determination of the Contingent Profit Participation, if any, owed to the City (the "**Final Accounting**"). If the Final Accounting shows that the Project has achieved the Threshold Return, the total amount owed to the City as Contingent Profit Participation shall become due and payable. The City upon receipt of the Final Accounting may determine to exercise its Audit rights pursuant to subsection 2.2(e) below, in which case any payment pursuant to this subsection 2.2(d) shall become due and payable on the later to occur of the date otherwise due and the date that is thirty (30) days after receipt of the City's audit by the Developer, subject to Developer's right to contest the audit as set forth in Section 2.2(e) below.

(e) Audit Rights. The City shall be entitled from time to time to audit the Developer's books, records, and accounts pertaining to the Gross Proceeds, Development Costs, Peak Investment, and the Contingent Profit Participation. Such audit shall be conducted during normal business hours upon thirty (30) days' notice at the principal place of business of the Developer and other places where records are kept provided such places are within a fifty (50) miles radius of the Alameda City Hall. The City shall not be entitled to more than one audit for any particular calendar year unless it shall appear from a subsequent audit that Developer fraud occurred with respect to a previously audited year. The City shall provide the Developer with copies of any audit performed. In the event that the City exercises its audit rights after receipt of the Final Accounting (a "**Final Audit**"), and in the event that such Final Audit determines there is any deficiency in the amount of Contingent Profit Participation due to the City, or any overpayment of Contingent Profit Participation by Developer, the amount of such deficiency or overpayment, as applicable, shall be immediately paid by Developer or reimbursed by the City, as the case may be. The City shall pay the costs and expenses of the Final Audit unless such Final Audit shows a discrepancy of the greater of either $50,000.00 or ten percent (10%) or more in the calculation of Contingent Profit Participation, in which event Developer shall pay the reasonable costs and expenses of the Final Audit. Otherwise, City shall be solely responsible for the costs and expenses of any audit or review conducted hereunder. No such audit shall be conducted by an auditor being compensated on a "contingency fee" basis or based upon the amount of any recovery.

(f) Security For Profit Participation Payment. Developer's obligations with respect to the payment of the Contingent Profit Participation shall be unconditional obligations of Developer.

(g) Notwithstanding anything herein or any Partial Assignment of the DDA to the contrary, the Vertical Developers shall not have any obligation to make the Land Payment or the payment of the Contingent Profit Participation.

ARTICLE 3.
FINANCING PLAN

Section 3.1 Financing Plan. The Developer has submitted to the City a preliminary financing plan for the Project ("**Preliminary Project Financing Plan**") identified as the cash flow analysis dated June 22, 2023). Prior to the earlier of Commencement of Construction of any Infrastructure Phase or conveyance of any Phase of the Property to Developer (if the Infrastructure Phase with respect thereto has not already Commenced) and within the times set forth in the Milestone Schedule, the Developer shall update the Preliminary Project Financing Plan pursuant to this Section 3.1.

(a) Phase Update. Developer shall submit for the City's review an update to the Preliminary Project Financing Plan with respect to each Infrastructure Phase (each "**Phase Update**") pursuant to Section 3.2 prior to the applicable date in the Milestone Schedule that contains the following documents and information, which shall be included as an update to the corresponding information for the applicable Infrastructure Phase that was previously included in the Preliminary Project Financing Plan.

(1) A development budget for developing and constructing the Infrastructure Package allocated to the applicable Infrastructure Phase and if applicable the payment of the RESHAP Phase 1 Payment in a comparable level of detail as to the categories of Development Costs and Gross Proceeds as identified in the Preliminary Project Financing Plan.

(2) Subject to any confidentiality restrictions imposed on Developer by a third party debt financing source, a summary of the amount, source and term of debt financing to be secured by the Infrastructure Phase, such as construction loan financing or other financing from external debt financing sources which Developer's intends to obtain to assist in financing the acquisition of the applicable Phase and the construction of the Infrastructure Package allocated to such Phase that will not be funded by the formation of an assessment or special tax district pursuant to Section 9.3, certified by the Developer to be true and correct in all material respects. Such description shall be made available for the City's review at a meeting between the Developer and the City. The City shall cause such summary to be reviewed under Section 3.2 solely to determine the proposed amount, terms, and timing of funding of the debt financing to be provided for the Infrastructure Phase, and not for review or approval of the financing source or any other terms. The Developer shall retain any such description and summaries.

(3) A description of any joint ventures, partnerships or conveyances that the Developer proposes to enter into in order to provide Infrastructure Phase specific equity funds from third parties (i.e. other than Developer, any Developer Parent, any direct or indirect interest holder in Developer or Developer Parent, or any Affiliate of Developer or any Developer Parent) for acquiring, developing and constructing the Infrastructure Package allocated to the then current Phase of the Project, including a summary of any then executed joint venture, partnership and/or conveyance agreements which description and summary shall be subject to any confidentiality restrictions imposed on Developer by such equity investors. Such description shall be made available for the City's review at a meeting between the Developer and the City and at the City's request will include the City's economic consultant. The City shall cause such description to be reviewed under Section 3.2 solely to determine the validity of the proposed amount and timing of the equity funding to be provided for the Phase of the Project under such agreements, and not for review or approval of any such third party equity source or other terms. The Developer shall retain any such description and summaries.

(4) A financial statement certified by a managing partner or member of the Developer showing that the Developer has sufficient additional capital funds available and is committing such funds to cover the difference, if any, between costs of acquisition of the applicable Infrastructure Phase and the construction of the Infrastructure Package allocated to such Phase that will not be funded by the formation of an assessment or special tax district pursuant to Section 9.3 and the amount available to the Developer from external sources, including any financing obtained by Developer pursuant to Section 3.1(a)(2) and (3) above, to pay such anticipated acquisition, development and construction costs.

(5) An update to the Preliminary Project Financing Plan for the balance of the Project. The update to the Preliminary Project Financing Plan shall include the level of detail included in the original Preliminary Project Financing Plan.

(6) In connection with the Commencement of construction of RESHAP Infrastructure Phase 1, reasonable evidence of the creditworthiness of the guarantors providing the RESHAP Phase 1 Payment Guaranty, and in connection with the Commencement of construction of Market Rate Infrastructure Phase 2, reasonable evidence of creditworthiness of the guarantors providing the RESHAP Infrastructure Phase 2 Completion Guaranty. Such evidence shall be made available for the City's review at a meeting between the Developer and the City and at the City's request will include the City's economic consultant. The Developer shall retain any such description and summaries.

(b) Public Financing Plan. The annexation of the Property and the Project into the City of Alameda Community Facilities District No. 17-1 (Alameda Point Public Services District) ("**CFD No. 17-1**") is necessary in order for the Project to comply with the City's Policy of Fiscal Neutrality adopted through Resolution No. 13640 of the City Council and the TDM Plan. The Property is identified as "Future Annexation Area" of CFD No. 17-1 and may be annexed by the submission of a unanimous approval of the owner or owners of each parcel or parcels in the future annexation area then to be annexed, without additional hearings. The unanimous approval shall constitute a vote (for purposes of Article XIIIA of the California Constitution) in favor of the annexation. As of the Effective Date, the owner of the Property is the City. The Developer agrees that the City shall execute and deliver the unanimous approval to annex the Property in CFD No. 17-1, or to the extent that the Developer or any Vertical Developer owns any part of the Property at the time of annexation, the Developer or Vertical Developer shall execute and deliver a unanimous approval, in both cases only if all of the Annexation Conditions described below have been satisfied. The conditions for the Developer's or Vertical Developer's agreement to allow the City to annex the Property into CFD No. 17-1 and its agreement to provide a unanimous approval to annex the Property into CFD No. 17-1 (herein, the "**Annexation Conditions**") are as follows:

(1) A separate rate and method of apportionment is approved for the Property (the "**New CFD No. 17-1 RMA**"). The New CFD No. 17-1 RMA shall establish maximum special tax rates for the Property based on the amounts needed to cover the City's costs associated with maintenance and reserves for flood control improvements, park maintenance, funding the TDM Plan, and administrative costs and/or other expenses for the Property. The goal in setting the maximum tax rates in the New CFD No. 17-1 RMA is that the Project is fiscally neutral to the City. The City shall administer all funds collected from CFD No. 17-1 in accordance with applicable City policies and procedures.

(2) The New CFD No. 17-1 RMA shall reflect the following (i) publicly-owned property shall be exempt from taxation; (ii) the RESHAP Project shall be exempt from taxation; (iii) special taxes may only be levied on a lot that has been developed with Vertical Improvements and a Certificate of Occupancy or temporary Certificate of Occupancy has been issued for such lot from the City; and (iv) special taxes may not be levied on property that has not been issued a Certificate of Occupancy or temporary Certificate of Occupancy.

(3) The annual special tax rates in the New CFD No. 17-1 RMA on the Property are calculated to produce not more than $867,000 per year, as annually adjusted by the greater of the CPI Increase or two percent (2%) following the Effective Date.

(4) The City has determined that annexing the Property into CFD No. 17-1 with the New CFD No. 17-1 RMA is consistent with Section 3-70.59(d) of the City's Municipal Code.

The Developer or Vertical Developer shall assure that, if any portion of the Property is sold prior to the completion of the annexation, the Developer or Vertical Developer will provide in the sale documentation a requirement that the purchaser agree that (i) the City may annex such portion of the Property into CFD No. 17-1 by executing and delivering a unanimous approval if the Annexation Conditions are satisfied and/or (ii) the purchaser shall execute and deliver a unanimous approval if the Annexation Conditions are satisfied.

The annexation of the Property into CFD No. 17-1 shall be completed prior to the recordation of any map designating individual parcels within the Project.

The City shall select the consultants necessary to oversee the annexation of the Property into CFD No. 17-1, including formation counsel, special tax consultant and financial advisor. The Developer shall pay all documented costs of annexation into CFD No. 17-1 promptly following receipt of invoices from the City for such costs, including the fees of the aforementioned consultants, reasonable attorneys' fees, and a reasonable amount determined by the City to compensate the City for staff time in connection therewith, which shall all be Development Costs.

Section 3.2 Review of Financing Plan Updates By City. Upon receipt by the City of the proposed Phase Update, the City Manager shall either approve or disapprove in writing the submitted plan or update within thirty (30) days from the date of receipt by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The City Manager shall approve the initial or any revised plan or update if it contains (i) the elements described in the definition of the Phase Update or Financing Plan as applicable, contained in Section 3.1 above, (ii) demonstrates sufficient funding to pay the total development costs of the applicable Infrastructure Phase and with respect to the first Market Rate Infrastructure Phase sufficient funding for the RESHAP Phase 1 Payment and with respect to the Market Rate Infrastructure Phase 2, sufficient funding for completion of RESHAP Infrastructure Phase 2; and (iii) the Financing Plan provides annual funding for transportation demand services and programs, levee maintenance, park maintenance in an amount not less than the amounts determined to be necessary pursuant to the New CFD No. 17-1 RMA prepared for the annexation of the Property into CFD No. 17-1, if available at the time of the submission of the Financing Plan. If the City Manager determines that Developer has not provided the submissions required by clauses (i), (ii) or (iii) of the preceding sentence (the "**Required Section 3.1 Submissions**") or the provided submissions do not demonstrate sufficient funding consistent with the requirements of clauses (ii) and (iii), then the

City Manager shall notify the Developer in writing of the reasons for disapproval and the Required Section 3.1 Submissions which the City Manager reasonably requires in order for the Developer to be in compliance with Section 3.1. The Developer shall thereafter use reasonable efforts to submit a revised plan or update containing the requested missing submissions within thirty (30) days of the notification of disapproval and delivery of such request for additional submissions. The City Manager shall either approve or disapprove in writing the submitted revised Phase Update or Financing Plan within fifteen (15) days of the date such revised plan or update is received by the City, which approval shall not be unreasonably withheld, conditioned or delayed and which approval and disapproval rights shall be limited as described above in this Section. If the City Manager determines that Developer has still not provided the Required Section 3.1 Submissions, Developer shall thereafter use reasonable efforts to submit a further revised plan or update containing the requested missing submissions within thirty (30) days of the notification of disapproval and delivery of such request for further submissions, and the City Manager shall either approve or disapprove in writing the submitted revised Phase Update or Financing Plan within fifteen (15) days of the date such revised plan or update is received by the City, which approval shall not be unreasonably withheld, conditioned or delayed and which approval and disapproval rights shall be limited as described above in this Section.

(a) If the City Manager once again determines that the Developer has not provided the Required Section 3.1 Submissions, the Parties shall meet and confer in good faith for a period not to exceed thirty (30) calendar days after the City Manager gives notice of disapproval in an effort to address the City Manager's reasons for determining that that Developer has not complied with the Required Section 3.1 Submissions. If following the thirty (30) day meet and confer period, the Parties have not reached agreement on whether Developer has satisfied the Required Section 3.1 Submissions or the Developer has not revised its submission to address the City Manager's reasons for disapproval, then either party hereto may thereafter submit the matter to arbitration by a third-party independent arbitrator in accordance with Exhibit U. If following such arbitration proceedings, the arbitrator determines that Developer has failed to provide the Required Section 3.1 Submissions required by this Agreement, Developer shall then have a thirty (30) day period in which to cure such failure and to submit the components of the Required Section 3.1 Submissions that the arbitrator determined to be missing. The period required to resolve the City Manager's disapproval of a Required Section 3.1 Submissions shall be considered a period of Force Majeure.

(b) The Developer shall submit any material revision to an approved Phase Update or Public Financing Plan to the City Manager for his/her review and approval. Any proposed revised Phase Update or Public Financing Plan shall be considered and approved or disapproved by the City Manager in the same manner and according to the same timeframe set forth above for the initial plan or update. Until a revised plan or update is approved by the City Manager, the previously approved Preliminary Project Financing Plan, Phase Update or Public Financing Plan shall govern the financing.

ARTICLE 4.
DISPOSITION OF PROPERTY AND ESCROW

Section 4.1 Conveyance of Property. The Developer, at its election, may defer conveyance of any Phase of the Property until after completion of the Backbone Infrastructure of that Phase, in which event the Developer shall be entitled to construct the applicable Backbone

Infrastructure in accordance with and pursuant to a Right of Entry consistent with Section 9.6. In the event that Developer elects to complete the Backbone Infrastructure prior to conveyance of the Property, prior to Commencement of Construction of any Phase of the Backbone Infrastructure, the Developer shall meet the conditions set forth in Article 5 and the conditions precedent to Closing set forth in Section 4.4 shall be met prior to any conveyance of a Phase, Subphase or any portion thereof. If the Developer elects to accept conveyance of a Phase of the Property prior to Commencement of Construction of the applicable Phase of Backbone Infrastructure, the Developer shall satisfy the conditions precedent to Closing set forth in Section 4.4 and the conditions precedent to Commencement of Construction of a Phase of Backbone Infrastructure set forth in Article 5 with respect to such Phase prior to the conveyance. In no event shall conveyance of any Phase of the Property or portion thereof occur until the conditions precedent to the Commencement of Construction of the Backbone Infrastructure set forth in Article 5 have been satisfied or waived. If the Developer elects to defer conveyance of the Property until such time as the applicable Vertical Developer is ready to Commence construction of the Vertical Improvements to be located on such Phase of the Property, the City shall convey the applicable Vertical Phase or portion thereof directly to the applicable Vertical Developer, provided such Vertical Developer is an approved transferee pursuant to Article 10 and provided further that conditions to Commencement of Construction of the Vertical Improvements for the applicable Phase or portion thereof provided in Article 6 have been satisfied or waived **("Direct Vertical Developer Conveyance**"). In the event of a Direct Vertical Developer Conveyance, the provisions of this Article 4 shall be modified as necessary to accommodate such conveyance to the applicable Vertical Developer rather than Developer. Notwithstanding the above, the City shall not convey the portion of the Property designated for the Commercial Phase to the Developer or a Vertical Developer until building permits for the commercial development have been approved by the City.

Section 4.2 Opening Escrow. The Closing of any Phase or portion thereof shall be completed through Escrow and the Parties shall execute and deliver to the Escrow Holder joint written instructions that are consistent with this Agreement.

Section 4.3 Close of Escrow. Subject to the satisfaction or waiver of the applicable conditions precedent set forth in Sections 4.4(a) and (b) and any extensions pursuant to Section 1.3 above, escrow shall close on the transfer of all the Property included in a Phase to the Developer no later than the applicable Outside Closing Date for such Phase set forth on the Milestone Schedule (each, an "**Outside Phase Closing Date**").

On the date of conveyance of each applicable Phase or Subphase or portion thereof (each such date, a "**Closing Date**"), the City shall convey to the Developer the applicable portions of the Property pursuant to a Quitclaim Deed substantially in the form of Exhibit I.

Section 4.4 Conditions Precedent to Closing.

(a) Conditions Precedent to the City's Obligation. The obligation of the City to convey a Phase (or Vertical Subphase or portion thereof) to Developer shall be subject to the fulfillment on or before the applicable Outside Phase Closing Date (as such date may be extended pursuant to this Agreement) of the following applicable conditions, any or all of which may be waived by the City in its sole discretion:

(1) there are no uncured Developer Events of Default; provided that if Developer has completed the Infrastructure Package for the Phase or Vertical Subphase, then this condition shall not be applicable to any Direct Vertical Developer Conveyance for such completed Phase.

(2) the DDA Memorandum shall have been recorded against the applicable Phase or portion thereof subject to conveyance;

(3) the Developer has timely submitted to the City all of the submittals required under this Agreement for the applicable Phase, including but not limited to the Phase Update; provided this condition shall not be applicable to any Direct Vertical Developer Conveyance.

(4) With respect to any land within Market Rate Infrastructure Phase 2, Developer shall have delivered the RESHAP Phase 2 Completion Guaranty to the City for the completion of RESHAP Infrastructure Phase 2 in accordance with Section 5.15 below.

(5) If the conveyance is a Direct Vertical Development Conveyance, the Developer has provided the City with any required information on the proposed transferee in accordance with Article 10 and has provided the City with a fully executed Partial Assignment of DDA in substantially the form attached hereto as Exhibit V and a fully executed Partial Assignment of Development Agreement in substantially the form attached to the Development Agreement.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by the City prior to the applicable Outside Phase Closing Date and all conditions precedent to Developer's obligations in (b) below have been satisfied or waived in writing by Developer, then, the City shall have the right to terminate this Agreement with respect to the portions of the Property that have not yet been conveyed to, or for which a Right of Entry for the Commencement of Construction of a Phase pursuant to Section 5.2 has not been entered into with, Developer pursuant to 15.2 or 15.4 below as applicable (provided that there is then no City Event of Default). Notwithstanding such termination, this Agreement shall continue with respect to the portions of the Property that have previously been conveyed to, or for which a Right of Entry for the Commencement of Construction of a Phase pursuant to Section 5.2 has previously been entered into with, Developer or any Vertical Developer.

(b) Conditions Precedent to the Developer's Obligation. The obligation of the Developer to consummate the transactions hereunder shall be subject to the fulfillment on or before the applicable Outside Phase Closing Date (as such date may be extended pursuant to this Agreement) of the following applicable conditions, any or all of which may be waived by the Developer in its sole discretion:

(1) the DDA Memorandum shall have been recorded against the applicable Phase;

(2) the Developer shall have received confirmation from the Escrow Holder that the Escrow Holder is irrevocably committed (upon payment of the applicable premium and the Close of Escrow) to issue the applicable Title Policy to the Developer in the form required by Section 4.6, subject only to Permitted Exceptions;

(3) in the time period between the Effective Date and the applicable Closing Date, there has been no material adverse change in the physical condition of the Phase, or material change with respect to any environmental condition or relating to Hazardous Materials, that would render the Phase unsuitable for the development of the Phase pursuant to the Project Approvals or technically, legally, or economically infeasible, unless such material adverse change or material change was caused by the Developer or Vertical Developer;

(4) there shall have been no enacted or proposed building or utility hook-up moratoria, ordinances, laws or regulations, which were not existing as of the Effective Date and that would prohibit or materially delay or hinder the issuance of building permits or certificates of occupancy for units within the Project;

(5) there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the applicable Phase or the development of the applicable Phase pursuant to the Project Approvals, the Supplemental Approvals, the Additional Approvals-Horizontal, and/or the Additional Approvals-Vertical, as applicable, or that adversely affects the Developer's or City's ability to perform its obligations under this Agreement;

(6) all leases, tenancies, third party occupancy agreements, service contracts, utility contracts and other contracts that are not Permitted Exceptions and that affect the applicable Phase shall have been terminated, all tenants and other parties shall have vacated the applicable land on which the Phase is being constructed (including without limitation the Collaborating Partners and their tenants and other occupants and the City and its tenants and occupants, as applicable) and all personal property not to be transferred to the Developer pursuant to the Bill of Sale upon the conveyance of the Phase shall have been removed from the applicable Phase;

(7) all of the representations and warranties of the City contained in this Agreement shall be true and correct in all material respects as of the date of Closing;

(8) there are no uncured City Events of Default; and

(9) the Development Agreement and the Project Approvals and any required Supplemental Approvals, Additional Approvals-Horizontal, and/or Additional Approvals-Vertical shall be in full force and effect and not subject to administrative appeal, legal challenge or referendum, and which shall be subject only to such conditions and mitigation measures as reasonably approved by Developer.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by the Developer prior to the applicable Outside Phase Closing Date, this Agreement may be terminated by Developer with respect to the portions of the Property that have not yet been conveyed to, or for which a Right of Entry for Commencement of Construction of a Phase has not been entered into with, Developer in accordance with the provisions of Section 15.2 or Section 15.3, as applicable. Following such termination, this Agreement shall continue with respect to the portions of the Property that have previously been conveyed to, or for which a Right of Entry for the Commencement of Construction of a Phase pursuant to Section 5.2 has previously been entered into with, Developer.

Section 4.5 Closing Deliverables.

(a) City Deliverables. At least one (1) Business Day prior to the Closing Date for each Phase or Vertical Subphase or portion thereof, the City shall deliver the following to Escrow Holder:

(1) duly executed and notarized original Quitclaim Deed conveying the applicable Phase of the Property to the Developer in the form substantially similar to Exhibit I attached hereto;

(2) if applicable, a duly executed original of all required Off-Site Rights of Entry;

(3) two (2) duly executed original counterparts of the general assignment conveying any interest in the intangible property applicable to such Phase of the Property in the form substantially similar to Exhibit K (the "**General Assignment**");

(4) a duly executed bill of sale for the personal property applicable to the applicable Phase of the Property in the form substantially similar to Exhibit L (the "**Bill of Sale**");

(5) a duly executed and notarized original of the notice of the City's release of environmental claims set forth in Section 4.7(g) below in the form substantially similar to Exhibit O-1 (the "**Notice of City Release of Environmental Claims**");

(6) a duly executed and notarized original of the Affordable Housing Covenant, if applicable, substantially in the form of Exhibit R;

(7) a FIRPTA certificate and a CA Real Estate Withholding Certificate, each duly executed by the City;

(8) such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of the City;

(9) an executed closing statement reasonably acceptable to the City;

(10) such affidavits and other documents that are consistent with this Agreement and which are reasonably required by the Escrow Holder;

(11) if the conveyance is a Direct Vertical Developer Conveyance, an executed and notarized original of the Partial Assignment and Assumption of Disposition and Development Agreement in the form substantially similar to Exhibit V with respect to the applicable Vertical Subphase (the "**Partial Assignment of DDA**"); and

(12) if the conveyance is a Direct Vertical Developer Conveyance, an executed and notarized original of the Partial Assignment and Assumption of Development Agreement with respect to the applicable Vertical Subphase (the "**Partial Assignment of DA**").

(b) Developer Deliverables. At least one (1) business day prior to the Closing Date for each Phase or Vertical Subphase or portion thereof, the Developer shall deliver to Escrow Holder:

(1) a duly executed and notarized original Quitclaim Deed conveying the applicable Phase of the Property to the Developer in the form substantially similar to Exhibit I attached hereto;

(2) Cash or other immediately available funds in an amount equal to (A) any Park Contribution required pursuant to Section 8.13, if applicable; (B) the funds required by the Developer pursuant to Sections 4.8(a) and (b) below; (C) solely with respect to the conveyance of the first Phase or any portion thereof, the amounts necessary to repay the Predevelopment Funding plus interest, in accordance with Section 8.14; and (D) if applicable, any portion of the RESHAP Phase 1 Payment that should have been paid to the City pursuant to the terms of Section 2.1(b) as of the applicable Closing Date but was not previously paid, if any (collectively, the "**Closing Funds**");

(3) two (2) duly executed original counterparts of the General Assignment;

(4) a duly executed and notarized original of the notice of the Developer's release of environmental claims set forth in Section 4.7(e) below in a form substantially similar to Exhibit O-2 (the "**Notice of Developer Release of Environmental Claims**");

(5) a duly executed and notarized original of the Affordable Housing Covenant, if applicable, substantially in the form of Exhibit R;

(6) such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of the Developer;

(7) an executed closing statement reasonably acceptable to the Developer;

(8) such affidavits and other documents that are consistent with this Agreement and which are reasonably required by the Escrow Holder;

(9) if the conveyance is a Direct Vertical Developer Conveyance, an executed and notarized original of the Partial Assignment of DDA; and

(10) if the conveyance is a Direct Vertical Developer Conveyance, an executed and notarized original of the Partial Assignment of DA.

Section 4.6 Condition of Title. The City may convey each Phase of the Property or any portion thereof to the Developer pursuant to a metes and bounds legal description approved by the City and the Developer in accordance with the provisions of Government Code Section 66426.5.

(a) Permitted Exceptions. The Parties have obtained a title commitment for the Property issued by First American Title Insurance Company, Order No. NCS-1178908-CC, dated as of May 10, 2023 and amended as of June 16, 2023, a copy of which is attached to this Agreement as Schedule 1 to Exhibit W (the "**Title Commitment**"), together with copies of all items shown as exceptions to title in Schedule B of the Title Commitment. By entering into this Agreement, Developer approves of all items shown as "permitted" exceptions on Exhibit W (the "**Permitted Exceptions**"). In addition, the following shall be deemed to be "Permitted Exceptions" as they may relate to the Property:

(1) the provisions of this Agreement as evidenced by the DDA Memorandum;

(2) the provisions of the applicable Quitclaim Deed conveying a Phase or Vertical Subphase to Developer or a Vertical Developer, as applicable;

(3) the provisions of the quitclaim deed conveying the applicable portion of the Property from the Navy to the City;

(4) the Site Management Plan related to Hazardous Materials as long as the requirements imposed on the applicable Phase or Subphase in such Site Management Plan are consistent with and not more onerous than the requirements imposed on the applicable Phase or Subphase in the Site Management Plan dated September 30, 2022;

(5) the terms of any Covenant to Restrict Use of Property Environmental Restrictions applicable to the Phase or Subphase (the "**CRUP**") provided that the requirements imposed on the applicable Phase or Subphase by the CRUP are consistent with and not more onerous than the requirements imposed on the applicable Phase or Subphase in the CRUPs listed on Exhibit Q;

(6) The CC&Rs or any Declaration of Annexation; and

(7) any other matters expressly permitted by this Agreement, approved in writing by the Developer or otherwise imposed by Developer.

Notwithstanding the foregoing or any provision of this Agreement to the contrary, City covenants to cause to be released and reconveyed from the Property, and to remove as exceptions to title prior to the Close of Escrow on each Phase or Vertical Subphase of the Property (a) any mortgages, deeds of trust, or other monetary encumbrances, liens, assessments and/or indebtedness, except for the current installment of non-delinquent real property taxes and assessments payable as a part of the real property tax bill unless such encumbrances is caused by the Developer or the result of the Developer's entry on the Property pursuant to any Right of Entry, and (b) any exceptions or encumbrances to title which are created by, under or through the City after the Effective Date of this Agreement that are not Permitted Exceptions. To the extent not Permitted Exceptions and not otherwise required to be removed by the City in accordance with this Agreement, Developer and the City shall cooperate to remove any exceptions that Developer determines are unacceptable to the Developer or may impede the development of the Project, provided however, the City shall not be obligated to incur any out-of-pocket costs related to the removal of any such exceptions unless Developer first agrees to reimburse the City for such costs.

City shall execute and deliver to the Title Company such customary affidavits as Title Company may require to issue the Title Policies to Developer or any Vertical Developer.

Section 4.7 Condition of the Property. Disclosure. In fulfillment of the requirements of Health and Safety Code Section 25359.7(a), the City has provided the Developer with copies of the documents in its possession related to hazardous materials affecting the Property (the "**Hazardous Materials Documents**") as set forth in Exhibit N. To the actual present knowledge of the City, the Hazardous Materials Documents depict the condition of the Property with respect to the matters covered in such documents as of the date of such documents and as of the Effective Date. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person, except for the express representations contained herein.

(a) Developer Investigation. The Developer and its agents have had the right and adequate opportunity to enter onto the Property for the purpose of taking materials samples and performing tests necessary to evaluate the development potential of the Property and to undertake tests related to the existence of Hazardous Materials on the Property.

(b) "As is" Purchase. Except for the representations and warranties and covenants of the City contained in this Agreement, the Developer specifically acknowledges and agrees that the City is selling and the Developer is buying the Property on an "**as is with all faults**" basis, and that the Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from the City as to any matters concerning the Property, including without limitation: (1) the quality, nature, adequacy and physical condition of the Property (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions); (2) the quality, nature, adequacy, and physical condition of soils, geology and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities serving the Property; (4) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (5) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property; (6) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (7) the presence or absence of Hazardous Materials on, under or about the Property or the adjoining or neighboring property; and (8) the condition of title to the Property.

(c) No Warranties by City and No Reliance by Developer. Except for the representations and warranties and covenants of the City contained in this Agreement,

(1) the Developer affirms that the Developer has not relied on the skill or judgment of the City or any of its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents or volunteers to select or furnish the Property for any particular purpose,

(2) that the City makes no warranty that the Property is fit for any particular purpose,

(3) the Developer acknowledges that it shall use its independent judgment and make its own determination as to the scope and breadth of its due diligence investigation which it made relative to the Property and shall rely upon its own investigation of the physical, environmental, economic and legal condition of the Property (including, without limitation, whether the Property is located in any area which is designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local agency);

(4) as of the Closing of each Phase (or Vertical Subphase) and with respect to that Phase (or Vertical Subphase) only, the Developer undertakes and assumes all risks associated with all matters pertaining to the Property's location in any area designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local agency.

Without limiting the generality of the foregoing provisions of this subsection 4.7(c), except for the representations and warranties and covenants of the City contained in this Agreement, the Developer specifically acknowledges and agrees that as between the Developer and the City, the City shall have no responsibility for the suitability of the Property for the development of the Project.

(d) Acknowledgment. The Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section 4.7 are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; (2) the disclaimers and other agreements set forth in this Section 4.7 are an integral part of this Agreement; and (3) the City would not have agreed to sell the Property (or any Phase thereof) to the Developer without the disclaimers and other agreements set forth in this Section 4.7. Nothing set forth in this Section 4.7 is intended to affect Developer's remedies in the event of a default by City in the payment and/or performance of its obligations under this Agreement.

(e) Developer's Release of the City. Effective as of the Closing Date for each Phase (or Vertical Subphase) and solely with respect to the portion of the Property included in such Phase (or Vertical Subphase), the Developer, on behalf of itself and anyone claiming by, through or under the Developer (including, without limitation, any successor owner of the applicable Phase) hereby waives its right to recover from and fully and irrevocably releases the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "**City Released Parties**") from any and all actions, causes of action, claims, costs, damages, demands, judgments, liability, losses, orders, requirements, responsibility and expenses of any type or kind (collectively "**Claims**") that the Developer may have or hereafter acquire against any of the City Released Parties arising from or related to:

(1) Claims Related to the Applicable Phase: (A) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the applicable Phase (or Vertical Subphase), or its suitability for any purpose whatsoever; (B) any presence of Hazardous Materials that were existing at, on, or under the Phase (or Vertical Subphase) as of the applicable Closing Date; and (C) any information furnished by the City Released Parties related to the applicable Phase under or in connection with this Agreement.

(2) Claims for Incidental Migration: the Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date from any portion of the NAS Alameda property acquired by the City to the applicable Phase (or Vertical Subphase), whether such Incidental Migration occurs prior to or after the applicable Closing Date.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the City Released Parties in any way from, or be deemed a waiver of any Claims by the Developer (or anyone claiming by, through or under the Developer, including, without limitation, any successor owner of the applicable Phase) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the City Released Parties; (ii) any premises liability or bodily injury claims accruing prior to the applicable Closing Date to the extent such claims are not based on the acts of the Developer, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives; (iii) any violation of law by any of the City Released Parties prior to the applicable Closing Date; (iv) any breach by the City of any of the City's representations, warranties or covenants expressly set forth in this Agreement; (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by the City Released Parties at, on, under or otherwise affecting the applicable Phase, or any other portion of the NAS Alameda Property acquired by the City (whether previously acquired by the City and previously conveyed to a third party, previously acquired by the City and currently owned by the City, and/or later acquired by the City), which release first occurs after the applicable Infrastructure Phase Commencement Date or applicable Closing Date; or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the City (collectively, the "**Excluded Developer Claims**").

(f) Scope of Release. The release set forth in subsection 4.7(e) includes Claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the City Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City Released Parties from any such unknown Claims. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads 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's Initials: _____

(g) City's Release of the Developer. Effective as of the Closing Date for each Phase (or Vertical Subphase) and solely with respect to the applicable Phase (or Vertical Subphase), the City, on behalf of itself and anyone claiming by, through or under the City (including, without limitation, any successor owner of any portion of NAS Alameda Property acquired by the City, whether prior to or after the applicable Closing Date), hereby waives its right to recover from and fully and irrevocably releases the Developer, its partners and their respective partners, members, shareholders, managers, directors, officers, employees, attorneys, agents, and successors and assigns (the "**Developer Released Parties**") from any and all Claims that the City may have or hereafter acquire against any of the Developer Released Parties arising from or related to the Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date from the applicable Phase (or Vertical Subphase) to any portion of the NAS Alameda Property acquired by the City (whether previously acquired by the City and previously conveyed to a third party, previously acquired by the City and currently owned by the City, and/or later acquired by the City), whether such Incidental Migration occurs prior to or after the applicable Closing Date.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the Developer Released Parties in any way from, or be deemed a waiver of any Claims by the City (or anyone claiming by through or under the City, including, but not limited to, any successor owner of the applicable phase) with respect to: (i) any fraud or intentional concealment or willful misconduct committed by any of the Developer Released Parties, (ii) any premises liability or bodily injury claims accruing after the applicable Closing Date to the extent such claims are not based on the acts of the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns; (iii) any violation of law by any of the Developer Released Parties after the applicable Closing Date; (iv) a breach of the Developer's obligations under this Agreement or any other agreement between the City and the Developer; (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by any of the Developer Released Parties at, on, under or otherwise affecting the applicable Phase or any other portion of the NAS Alameda Property acquired by the City (whether previously acquired by the City and previously conveyed to a third party, previously acquired by the City and currently owned by the City, and/or later acquired by the City), which release first occurs after the after the applicable Infrastructure Phase Commencement Date or applicable Closing Date; or (vi) any claim that is actually accepted as an insured claim under the Pollution Liability Insurance Policy maintained by the Developer.

(h) Scope of Release. The release set forth in subsection 4.7(g) includes claims of which the City is presently unaware or which the City does not presently suspect to exist which, if known by the City, would materially affect the City's release of the Developer Released Parties. The City specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the City agrees, represents and warrants that the City realizes and acknowledges that factual matters now unknown to the City may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and the City further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the City nevertheless hereby intends to release, discharge and acquit the Developer Released Parties from any such unknown Claims. Accordingly, the City, on behalf of itself and anyone claiming by,

through or under the City, hereby assumes the above-mentioned risks and hereby expressly waives any right the City and anyone claiming by, through or under the City, may have under Section 1542 of the California Civil Code, which reads 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."**

City's Initials: _____

(i) Effective as of the Closing Date for each Phase and solely with respect to the portion of the Property included in such Phase, the City specifically acknowledges and agrees that, as between the Developer and the City, in the event of any Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date from the applicable Phase to any portion of the NAS Alameda Property acquired by the City, whether such Incidental Migration occurs prior to or after the applicable Closing Date, the Developer shall not be responsible for any required remediation of any such Hazardous Materials at any portion of the NAS Alameda Property acquired by the City.

(j) Effective as of the Closing Date for each Phase and solely with respect to the portion of the Property included in such Phase, the Developer specifically acknowledges and agrees, that as between the Developer and the City, in the event of any Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date from property owned by the City to the applicable Phase, which such Incidental Migration occurs prior to or after the applicable Closing Date, the City shall not be responsible for any required remediation of any such Hazardous Materials at any portion of the applicable Phase.

(k) The City hereby agrees that nothing in this Section 4.7 shall release the City from its obligations under this Agreement.

Section 4.8 Costs of Escrow and Closing.

(a) All expenses that are required to be prorated including but not limited to non-delinquent ad valorem taxes, if any, for each Phase of the Property being transferred and the lien of any bond or assessment related to each Phase of the Property being transferred shall be prorated as of the applicable Closing Date.

(1) Basis of Proration. If taxes and assessments due and payable have not been paid before Closing, the City shall be charged at Closing an amount equal to that portion of such taxes and assessments which relates to the period before Closing, and the Developer shall pay the taxes and assessments prior to their becoming delinquent from and after the applicable Closing Date. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation fixed as of the most recent date. The Developer shall pay all supplemental taxes resulting from the change in ownership and reassessment occurring as of the applicable Closing Date.

(2) Initial Use of Estimates; True Up Based on Final Amounts. Any expense amount which cannot be ascertained with certainty as of the applicable Closing shall be prorated on the basis of the Parties' reasonable estimates of such amount. With respect to the property tax bills for each Phase, the Parties shall prorate the property taxes for such Phase based on the acreage of each Phase. Once the previously estimated amounts have been finalized, the Parties shall prorate these new amounts pursuant to this Agreement and each party shall pay any amount due to a third party within ten (10) Business Days after receipt of the final amount. If either Party has overpaid an amount based on the prior estimate, the other Party shall reimburse the overpaying party within ten (10) Business Days after receipt of the final amount.

(3) The provisions of this Section shall survive the applicable Closing and shall not merge with the applicable Quitclaim Deed.

(b) Transaction and Closing Costs. The Developer shall pay the premium for an ALTA Owner's Policy (Form 2021) insuring the Developer's interest in the Property subject only to the Permitted Exceptions and such other exceptions as may be caused by Developer (such as the lien of a Security Financing Interest) (collectively the "**Title Policies**") (including title endorsements). All other costs of escrow (including, without limitation, any Escrow Holder's fee, costs of title company document preparation, recording fees, and transfer tax) shall be paid by the Developer. All costs and expenses allocated to Developer under this Section 4.8 shall be considered a Development Cost.

(c) Closing Procedures. When all of the funds, documents and other items required by Section 4.5 for the applicable Phase Closing have been timely deposited into Escrow, Escrow Holder shall Close Escrow as follows:

(1) Record the following documents in the Official Records in the following order (collectively, the "**Recording Documents**"):

(A) the Quitclaim Deed;

(B) the Notice of City Release of Environmental Claims;

(C) the Notice of Developer Release of Environmental Claims;

(D) the Partial Assignment of DDA (if a Direct Vertical Development Conveyance); and

(E) the Partial Assignment of DA (if a Direct Vertical Development Conveyance).

(2) Issue the Title Policy to Developer;

(3) Pro rate taxes, assessments and other charges pursuant to Section 4.8 and pay the applicable charges from the applicable funds deposited by the City or the Developer;

(4) Pay the closing costs from the applicable funds deposited by the Developer;

(5) Deliver the following to the City: conformed copies of the Recording Documents, an original of the General Assignment; and

(6) Deliver the following items to the Developer: conformed copies of the Recording Documents, an original of the General Assignment, the original Bill of Sale, the original Title Policy, and the Off-Site Rights of Entry.

If Escrow Holder is unable to simultaneously perform all of the instructions set forth above, Escrow Holder shall notify the Parties and retain all funds and documents pending receipt of further instructions jointly issued by Parties.

Section 4.9 Real Estate Commissions. Each Party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission or third-party finder's fees in connection with the transaction contemplated by this Agreement. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The Parties' respective obligations to indemnify defend and hold harmless under this Section 4.9 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

Section 4.10 Survival. The terms and conditions in Article 4 shall expressly survive the Closing, shall not merge with the provisions of the Quitclaim Deed or any other closing documents and shall be deemed to be incorporated by reference into the Quitclaim Deed. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

Section 4.11 Public Streets. At Developer's election, Developer shall have the right to cause City to exclude from any conveyance of a Phase or Subphase the portion(s) of such Phase or Subphase that are dedicated public streets or rights-of-way, in which event such dedicated public streets or rights-of-way shall be retained by the City. The City shall dedicate or accept dedication of the public streets that are required for access to the Property.

Section 4.12 Commercial Phase. Until the earlier of (i) issuance of a building permit for Vertical Improvements for the Commercial Phase or (ii) the date in the Milestone Schedule for Commencement of Construction of the Vertical Improvements for the Commercial Phase, as such date may be extended, Developer shall have the right to operate temporary uses (e.g., food trucks and/or shipping container retail stores) on the Commercial Phase to activate the Commercial Phase. When requested by Developer, City shall enter into a Right of Entry with Developer or a Developer Affiliate for such purpose.

ARTICLE 5.
INFRASTRUCTURE CONSTRUCTION

Section 5.1 Infrastructure Phases. The Parties intend for the Infrastructure Package to be constructed in five (5) separate horizontal phases (each an "**Infrastructure Phase**"). The five (5) Infrastructure Phases are comprised of three (3) Market Rate phases (each a "**Market Rate Infrastructure Phase**") and two (2) RESHAP phases (each a "**RESHAP Infrastructure Phase"**). Each Infrastructure Phase is more particularly described in the Phasing Plan attached as Exhibit C.

Developer intends that the Vertical Developers will implement the Vertical Improvements for the Project in three (3) separate major vertical phases (each a "**Vertical Phase**") which shall be further broken down into subphases (each a "**Vertical Subphase**") and a commercial phase ("**Commercial Phase**"). As used herein, "**Phase**" shall apply to either an Infrastructure Phase, Vertical Phase, Vertical Subphase or the Commercial Phase, as appropriate.

Section 5.2 Developer's Right to Construct Infrastructure Phases Prior to Closing. Notwithstanding any provision of this Agreement to the contrary, for each Infrastructure Phase, Developer shall have the right, but not the obligation, to be exercised in Developer's sole and absolute discretion, to elect to construct the applicable Backbone Infrastructure prior to the City's conveyance of the applicable Phase of the Property pursuant to a Right of Entry by providing written notice of such election to the City. The right set forth in this Section 5.2 shall apply to each Infrastructure Phase, and Developer's exercise or non-exercise of the right with respect to any particular Infrastructure Phase shall not limit, waive or otherwise effect the Developer's exercise of the right with respect to any other Infrastructure Phase.

Within thirty (30) days of Developer's election to construct an Infrastructure Phase pursuant to a Right of Entry, the City and Developer shall enter into a Right of Entry with respect to the applicable Infrastructure Phase (and any other portion of the Property or other City property necessary or desirable for the construction of the applicable Infrastructure Phase) in substantially the form attached hereto as Exhibit J ("**Right of Entry**"), provided the conditions precedent to the Commencement of Construction of the Infrastructure Phase set forth in this Article 5 have been satisfied or waived.

Section 5.3 Basic Obligations. Developer shall design and construct each Infrastructure Phase pursuant to the Phasing Plan and the Infrastructure Package; provided that Developer's obligation to Commence an Infrastructure Phase and complete the Infrastructure Package located within such Infrastructure Phase shall be on and subject to the terms and conditions of this Agreement. The Developer shall cause the Commencement of, and if so Commenced the completion of, each Phase of the Infrastructure Package within the times set forth in the Milestone Schedule, as such dates may be extended, and subject to the terms of this Agreement. As between the City and the Developer, the Developer shall be responsible for all costs associated with the Infrastructure Package other than the cost of RESHAP Infrastructure Phase 1, which shall be subject to the terms and conditions of Section 5.15 below.

(a) Developer's Conditions Precedent to Commencement of Infrastructure Phase. Notwithstanding any provision of this Agreement to the contrary, the obligation of the Developer to Commence the Construction of an Infrastructure Phase shall be subject to the fulfillment on or before the applicable Outside Phase Commencement Date (as such date may be extended pursuant to this Agreement, including this Section) of the following applicable conditions, any or all of which may be waived by the Developer in its sole discretion:

(1) in the time period between Effective Date and the applicable date for the Commencement of Construction of the Infrastructure Phase, there has been no material adverse change in the physical condition of the Property for the applicable Infrastructure Phase, or material change with respect to any environmental condition or relating to Hazardous Materials, not caused by the Developer or Vertical Developer that would render the Phase of the Property unsuitable for development of the Backbone Infrastructure and/or Vertical Improvements pursuant

to the Project Approvals, the Supplemental Approvals, the Additional Approvals-Horizontal, and/or the Additional Approvals-Vertical or technically, legally, or economically infeasible;

(2) there shall have been no enacted or proposed building or utility hook-up moratoria, ordinances, laws or regulations, which were not existing as of the Effective Date and that would prohibit or materially delay or hinder the issuance of building permits or certificates of occupancy for units within the Project;

(3) there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the applicable Phase or the development of the applicable Phase pursuant to the Project Approvals, the Supplemental Approvals, the Additional Approvals-Horizontal, and/or the Additional Approvals-Vertical, as applicable, or that adversely affects the City's ability to perform its obligations under this Agreement;

(4) all leases, tenancies, third party occupancy agreements, service contracts, utility contracts and other contracts that are not Permitted Exceptions and that affect the applicable Phase shall have been terminated, all tenants and other parties shall have vacated the applicable Infrastructure Phase (including without limitation the Collaborating Partners and their tenants and other occupants and the City and its tenants and occupants, as applicable) and all personal property not to be transferred to the Developer pursuant to the Bill of Sale upon the conveyance of the Phase shall have been removed from the applicable Phase;

(5) all of the representations and warranties of the City contained in this Agreement shall be true and correct in all material respects as of the date of the Commencement of Construction of the Infrastructure Phase;

(6) there are no uncured City Events of Default;

(7) the City has provided or is unconditionally prepared to provide the Developer prior to the applicable date for the Commencement of Construction of the Phase with both (i) the Right of Entry and (ii) the rights of entry, encroachment permits and/or temporary construction easements reasonably necessary to construct the off-site improvements included in the Backbone Infrastructure allocated to the applicable Phase or for such other improvements offsite of such Phase (i.e. on another Phase which has not been Commenced) contemplated to be constructed in accordance with the Milestone Schedule during the construction of such Phase (the "**Off-Site Rights of Entry**");

(8) the Development Agreement and the Project Approvals shall be in full force and effect and not subject to administrative appeal, legal challenge or referendum; and

(9) the Developer shall have obtained all Supplemental Approvals and/or Additional Approvals-Horizontal related to the applicable Phase, which shall be in full force and effect and not subject to administrative appeal, legal challenge or referendum, and which shall be subject only to such conditions and mitigation measures as reasonably approved by Developer; and

(10) With respect to the Market Rate Infrastructure Phases, the Developer shall have obtained approval of a subdivision map with respect to the applicable Phase.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by the Developer prior to the applicable Outside Phase Commencement Date, this Agreement may be terminated by Developer with respect to the portions of the Property that have not previously been conveyed to, or for which a Right of Entry for the Commencement of Construction of a Phase has not previously been entered into with, Developer in accordance with the provisions of Section 15.2 or Section 15.3, as applicable. Following such termination, this Agreement shall continue with respect to the portions of the Property that have previously been conveyed to, or for which a Right of Entry for the Commencement of Construction of a Phase pursuant to Section 5.2 has previously been entered into with, Developer.

(b) City Condition Precedent to Commencement of Infrastructure: The obligation of the City to grant the Developer the Right of Entry to commence construction of an Infrastructure Phase shall be subject to the fulfillment on or before the applicable Outside Phase Commencement Date (as such date may be extended pursuant to this Agreement) of the following applicable conditions, any or all of which may be waived by the City in its sole discretion (provided that the following conditions precedent shall not apply to RESHAP Infrastructure Phase 1 which shall instead be governed by Section 5.15):

(1) The Developer and the City shall have entered into a Public Improvement Agreement for the Backbone Infrastructure for the applicable Phase in accordance with Section 5.8;

(2) With respect to the Market Rate Infrastructure Phases, the Developer shall have obtained approval of a subdivision map with respect to the applicable Phase;

(3) The Developer has timely submitted to the City, the Phase Update submittals for the applicable Phase and such Phase Update has been approved by the City Manager in accordance with Section 3.1;

(4) The Developer has submitted to the City the Phase Construction Contract, if applicable, and such Construction Contract has been approved by the City in accordance with Section 5.6;

(5) Funds and financing for the applicable Infrastructure Phase are available to the Developer, and any condition to the release and expenditure of funds described in the applicable approved Phase Update (other than customary conditions to funding of progress payments or draws) have been met and will be met in the ordinary course prior to Commencement and during the progress of construction of the applicable Infrastructure Phase ;

(6) The Developer has submitted all certificates of insurance for such Phase in form reasonably satisfactory to the City Risk Manager demonstrating compliance with the insurance requirements in Article 14 and any insurance requirements in the Public Improvement Agreement;

(7) The Developer shall have obtained all Supplemental Approvals and the Additional Approvals-Horizontal for such Phase required under Section 5.4, including the payment of the required grading, demolition and building permit fees;

(8) With respect to Market Rate Infrastructure Phase 1, the Developer shall have provided the City with the RESHAP Phase 1 Payment Guaranty in substantially the form attached hereto as Exhibit T from creditworthy affiliates of Brookfield Parent and CDC Parent;

(9) With respect to Market Rate Infrastructure Phase 2, Developer shall have delivered the RESHAP Phase 2 Completion Guaranty to the City for the completion of RESHAP Infrastructure Phase 2 from creditworthy affiliates of Brookfield Parent and CDC Parent;.

(10) Originals of the completion and payment surety bonds required by the Public Improvement Agreement, the amount of which shall be equal to the cost of the Backbone Infrastructure allocated to such Phase (the "**Bonds**");

(11) All of the representations and warranties of the Developer contained in this Agreement shall be true and correct in all material respects as of the date of the Infrastructure Phase Commences; and

(12) There are no uncured Developer Events of Default.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by the City prior to the applicable Outside Phase Commencement Date, then, (i) if there is a Developer Event of Default, the City shall have the right to terminate this Agreement with respect to the portions of the Property that have not previously been conveyed to, or for which a Right of Entry for the Commencement of Construction of a Phase pursuant to Section 5.2 has not previously been entered into with, Developer pursuant to Section 15.4 below (provided that there is then no City Event of Default), and (ii) if there is not a Developer Event of Default or City does not terminate this Agreement pursuant to the immediately preceding clause (i), then City shall have the option of either (A) extending the Outside Phase Commencement Date and any corresponding Outside Phase Completion Date, or (B) terminating this Agreement with respect to the portions of the Property that have not previously been conveyed to, or for which a Right of Entry for the Commencement of Construction of a Phase pursuant to Section 5.2 has not previously been entered into with, Developer pursuant to the provisions of Section 15.2 below. Notwithstanding such termination, this Agreement shall continue with respect to the portions of the Property that have previously been conveyed to, or for which a Right of Entry for the Commencement of Construction of a Phase pursuant to Section 5.2 has previously been entered into with, Developer or any Vertical Developer, and the Developer or any Vertical Developer shall have the right to carry out and complete such Phases and Subphases within the time periods provided for in the Milestone Schedule after taking into account extensions permitted by this Agreement.

(c) Completion of Infrastructure Phase. Upon Developer's Commencement of Construction an Infrastructure Phase, Developer shall become obligated to cause the completion of construction of the Infrastructure Package within such Infrastructure Phase within the times set forth in the Milestone Schedule, as they may be extended pursuant to this Agreement; provided, however, Developer's obligation to commence and complete RESHAP Infrastructure Phase 1 is conditioned upon the City's timely paying for the RESHAP Infrastructure Phase 1 work as set forth in Section 5.15 below. Except with respect to RESHAP Infrastructure Phase 1, upon Commencement of the portion of the Infrastructure Package for an Infrastructure Phase, as

between Developer and the City, the Developer shall be responsible for all costs to construct the Infrastructure Package for such Infrastructure Phase.

Section 5.4 Construction Pursuant to Approved Construction Documents. Upon Developer's Commencement of an Infrastructure Phase, Developer shall cause construction of the applicable Infrastructure Phase in accordance with (a) the Approved Construction Documents (or modifications thereto processed and approved by the City in accordance with applicable City ordinances, rules and regulations) and (b) the applicable Public Improvement Agreement (or with respect to RESHAP Infrastructure Phase 1 the Disbursement Agreement). Nothing in this Section shall preclude or modify the Developer's obligation to obtain any required City approval of changes in the Approved Construction Documents in accordance with applicable City ordinances, rules and regulations, subject to the limitations set forth in the Development Agreement.

Section 5.5 Supplemental Approvals. As a condition precedent to the Commencement of Construction of any Infrastructure Phase of the Property, the Developer shall apply to the City for, and shall diligently pursue procurement of the Supplemental Approvals for the applicable Infrastructure Phase. The City shall cooperate with the Developer on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals. The City, in its capacity as the property owner and not in its regulatory capacity, (i) will sign any application for a Supplemental Approval, Additional Approvals-Horizontal, and/or Additional Approvals-Vertical (including for any parcel map, tentative map, final map and/or condominium map) if such application or map is filed while the City owns any property subject to the application or map and such application or map is consistent with the Project Approvals; and (ii) sign any parcel map, tentative map, final map, and/or condominium map as the owner of the property subject to the map once such map is approved in accordance with the City's standard process for approval of subdivision maps.

(a) Additional Approvals-Horizontal. As a condition precedent to the Commencement of Construction of any Infrastructure Phase the Developer shall apply for and diligently pursue the procurement of any other permits and approvals from other governmental entities or public utilities (i.e., not the City) necessary for construction of the applicable Infrastructure Phase consistent with this Agreement (collectively, the "**Additional Approvals-Horizontal**"). The Additional Approvals-Horizontal shall include any permits and approvals from other governmental entities necessary for the construction of the Backbone Infrastructure that are not Supplemental Approvals. The City shall cooperate with the Developer on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals. Authorizations required to address any Regulatory Reopeners are not Supplemental Approvals or Additional Approvals-Horizontal.

(b) Evidence of Approvals. Prior to the Commencement of Construction of an Infrastructure Phase, the Developer shall submit to the City evidence that all Supplemental Approvals and Additional Approvals-Horizontal related to the applicable Phase have been obtained or will be obtained by the time reasonably required for the construction of the applicable portion of the Infrastructure Package. Only upon delivery of such evidence in form reasonably satisfactory to the City shall the conditions of this Section 5.5 be deemed met.

Section 5.6 Construction Contract. As a condition precedent to Commencement of Construction of each Infrastructure Phase of the Project, the Developer shall submit to the City the proposed construction contract with the General Contractor for the construction of the Backbone Infrastructure required by the applicable Public Improvement Agreement or with respect to RESHAP Infrastructure Phase 1, the Disbursement Agreement (the "**Phase Construction Contract**"), but only to the extent that the Developer will be hiring a General Contractor and will not act as its own General Contractor (either itself or through a Developer Affiliate). Each proposed Phase Construction Contract shall include the requirements of Section 8.3 regarding the payment of prevailing wages (the "**Required Construction Contract Elements**"), and Developer shall deliver written verification that the executed Phase Construction Contract complies with this Agreement; provided, the requirements of Section 8.3 (and Section 5.9) shall only apply to Contractors that are actually performing Backbone Infrastructure work.

(a) The City Manager shall either approve or disapprove the submitted Phase Construction Contract within fifteen (15) Business Days from the date the City receives the Construction Contract which approval shall not be unreasonably withheld, conditioned or delayed. The City Manager shall approve the Phase Construction Contract if it includes the Required Construction Contract Elements. If the proposed Phase Construction Contract is not approved by the City Manager, then the City Manager shall notify the Developer in writing of the Required Construction Contract Elements which the City Manager reasonably requires in order for the Developer to be in compliance with Section 5.6. The Developer shall thereafter use reasonable efforts to submit a revised Construction Contract containing the Required Construction Contract Elements within thirty (30) days of the notification of disapproval and delivery of such request for revisions. The City Manager shall either approve or disapprove the submitted revised Phase Construction Contract within fifteen (15) Business Days of the date such revised Phase Construction Contract is received by the City, which approval shall not be unreasonably withheld, conditioned or delayed and which approval and disapproval rights shall be limited as described above in this Section.

(b) If the City Manager once again determines that the Phase Construction Contract does not include the Required Construction Contract Elements, the Parties shall meet and confer in good faith for a period not to exceed thirty (30) calendar days after the City Manager notice of disapproval in an effort to address the City Manager's reasons for determining that that the Phase Construction Contract does not include the Required Construction Contract Elements. If following the thirty (30) day meet and confer period, the Parties have not reached agreement on whether the Phase Construction Contract includes the Required Construction Contract Elements or the Developer has not revised the Phase Construction Contract to address the City Manager's reasons for disapproval, then either party hereto may thereafter submit the matter to arbitration by a third-party independent arbitrator in accordance with Exhibit U. If following such arbitration proceedings, the arbitrator determines that the Phase Construction Contract does not include the Required Construction Contract Elements, Developer shall then have a thirty (30) day period in which to cure such failure and to submit a revised Phase Construction Contract that includes the Required Construction Contract Elements that the arbitrator determined to be missing. The period required to resolve the City Manager's disapproval of a Construction Contract's Required Construction Contract Elements shall be considered a period of Force Majeure.

(c) Following the City Manager's approval of a Phase Construction Contract pursuant to this Section 5.6, the Developer may, without City approval, make changes to such

Phase Construction Contract that are consistent with, and do not cause the Phase Construction Contract to be out of compliance with this Agreement. The Developer shall not make any changes to a Phase Construction Contract previously approved by the City Manager pursuant to this Section 5.6 that would cause the Phase Construction Contract to be out of material compliance with this Agreement without the prior written consent of the City.

(d) For the avoidance of doubt, the Construction Contract requirements set forth in this Section 5.6 shall only apply to the Infrastructure Phases and the construction of the Backbone Infrastructure and shall not apply to any Vertical Phases or the construction of any Vertical Improvements.

Section 5.7 Commencement of Construction. For the purposes of determining Developer's obligation to complete an Infrastructure Phase once the same has Commenced under this Agreement and the application of the Milestone Schedule, unless Developer provides written notice to the City to the contrary, Developer shall not be deemed to have "Commenced" a Phase solely by reason of Developer's undertaking of demolition, abatement work, and/or preliminary site preparation work with respect to the applicable Phase.

Section 5.8 Public Improvement Agreement and Subdivision Map. As a condition precedent to the Commencement of Construction of any Infrastructure Phase of the Project, except RESHAP Infrastructure Phase 1 and within the time set forth in the Milestone Schedule, the Developer and the City shall have entered into a Public Improvement Agreement for the Backbone Infrastructure for the applicable Phase in substantially the form attached as Exhibit M. Developer shall provide the Completion Assurances required pursuant to the applicable Public Improvement Agreement as a condition of Commencement of Construction on each Phase. Developer shall also be responsible for preparing and obtaining approvals for any tentative and final maps. The City shall cooperate with the Developer in the preparation of such tentative and final maps. The Developer shall be responsible for any City processing fees related to any tentative and final maps in accordance with the Development Agreement, except to the extent such fees are required in order to carry out the Infrastructure Package for RESHAP Infrastructure Phase 1, which fees shall be paid for by the City.

Section 5.9 Local Workforce Development. In connection with the Project, the Developer will make a reasonable, good faith efforts to achieve the Homeless Hiring Goals for Private Developers, as outlined in the ARRA's Standards of Reasonableness for Homeless Uses At Alameda Naval Air Station ("**Standards**"). Developer will report to the City on its efforts to hire homeless workers once per year at a date agreed to by the City and Developer.

Section 5.10 Compliance with Applicable Law. The Developer shall cause all work with respect to the construction of an Infrastructure Phase performed by Developer or on its behalf to be performed in compliance with: (1) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies, subject to the Development Agreement; and (2) all rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction, subject to the Development Agreement. Such work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in such work on the Property.

Section 5.11 Entry by the City. The Developer shall permit the City, through its officers, agents, or employees, to enter the Property at all reasonable times to inspect the work of construction of an Infrastructure Phase to determine that such work is in conformity with the Approved Construction Documents or to inspect the Property for compliance with this Agreement. The City is under no obligation to: (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection, except that the City shall inform the Developer of any information it obtains or discovers during inspection that could reasonably foreseeably affect rights or obligations of a Party under this Agreement. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this Section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 5.12 Progress Reports. Until such time as the final Infrastructure Phase of the Project is entitled to issuance of a Certificate of Completion, if requested by the City, the Developer shall provide the City with quarterly progress reports regarding the status of the construction of the Infrastructure Phase improvements.

Section 5.13 Necessary Safeguards. The Developer shall or shall cause its Contractors for the Backbone Infrastructure to erect and properly maintain at all times, all reasonable and necessary safeguards for the protection of workers and the public with respect to such work.

Section 5.14 Site A Infrastructure.

(a) Construction of the Market Rate Phases 1, 2 and 3 of the Project are each dependent on the developer of the adjacent Site A (the "**Site A Developer**") completing on a timely basis certain contiguous street improvements, street connections, and "downstream" utilities (collectively the "**Site A Improvements**"). The Site A Improvements are more particularly described in Exhibit G attached and incorporated into this Agreement.

(b) Upon the Effective Date, City shall immediately cause the Site A Developer to assign to Developer the partially completed plans and specifications for the Site A Improvements that the Site A Developer has caused to be prepared for the Site A Improvements necessary for Market Rate Infrastructure Phases 1 and 2 as of the Effective Date (provided that Developer shall have no liability for and no obligation to cure any defaults of Site A Developer with respect thereto), and upon such assignment to Developer, Developer shall cause such plans and specifications to be completed using the same engineering firm used by the Site A Developer and submitted to the City for review and approval. Developer shall maintain records of the costs that Developer incurs in preparing and completing the plans and specifications for the Site A Improvements (the "**Site A Improvements Design Costs**").

(c) The City agrees that it shall not enter into any Public Improvement Agreement with the Site A Developer for any portion of the Site A Improvements (1) for which Developer has given City a Site A Improvements Notice (as defined below), or (2) if Developer has not previously given a Site A Improvements Notice with respect to such Site A Improvements, without first providing Developer with all of the items described in subsection (d)(1)(i)-(iii) below and meeting and conferring with the Developer pursuant to subsection (e) below to discuss any concerns Developer may have regarding the items provided by the Site A Developer or the timing of the construction of the Site A Improvements by the Site A Developer, provided the City shall not be obligated to take any action that would prevent the Site A Developer from performing under

the Site A DDA or that could result in a potential default under the Site A DDA in response to a Developer concern raised pursuant to this Section 5.14(c).

(d) If Developer has not previously delivered to City a Site A Improvements Notice with respect to the portion of the Site A Improvements that the Site A Developer requests to construct, then within thirty (30) days of the City's receipt of the Site A Developer's request to construct such portion of the Site A Improvements, the City will provide Developer all of the following: (i) current copies of the approved improvement plans for the portion of the Site A Improvements required for the Site A Improvements the Site A Developer intends to construct (unless Developer has prepared the improvement plans pursuant to subsection (b) above), (ii) the Site A Developer's "Phase Update" financing plan submission for the Site A Improvements, including funding commitments from debt and equity providers, as applicable, and (iii) unconditional written confirmation from the Site A Developer that the Site A Developer will commence construction of the applicable portion of the Site A Improvements by the Site A Improvements Required Commencement Date to satisfy the milestones for such Site A Improvements (the "**Site A Improvement Milestones**") as set forth in the Site A DDA and complete construction of the applicable portion of Site A Improvements by the date needed by Developer in connection with the applicable Market Rate Infrastructure Phase so that there is no delay in the construction of the applicable Market Rate Infrastructure Phase as a result of the Site A Improvements not being completed (the "**Site A Improvements Required Completion Date**").

(e) If the City provides all of the items described in subsection (d)(i)-(iii) above, then, provided Developer has not previously delivered the Site A Improvements Notice with respect to the applicable Site A Improvements, the City may cause the Site A Developer to proceed with construction of the applicable portion of the Site A Improvements in accordance with the Site A Improvement Milestones and the Site A DDA. In the event the Site A Developer proceeds with construction of the portion of the Site A Improvements required for the first Market Rate Infrastructure Phase, then City shall reimburse (or cause the Site A Developer to reimburse) Developer for all of the Site A Improvements Design Costs that Developer incurred plus interest thereon at the Applicable Rate accruing from the date such costs were incurred within thirty (30) days of the date that Developer provides the City an accounting of such Site A Improvements Design Costs. If the City provides all of the items described in subsection (d)(i)-(iii) Developer may request that the City meet and confer with the Developer regarding the information provided if Developer has any concerns regarding the timing for development of the Site A Improvements by the Site A Developer or the Site Developer's Phase Update financing plan. City shall use reasonable efforts to cause the Site A Developer to participate in any meet and confer and to address the Developer's concerns.

(f) With respect to each Market Rate Infrastructure Phase, Developer shall provide written notice to the City (a "**Site A Improvements Notice**") at least ninety (90) days prior to the date that Developer intends for the construction of the applicable portion of the Site A Improvements to Commence (each such date, a "**Site A Improvements Required Commencement Date**"). If the Site A Developer has not yet entered into a Public Improvement Agreement for the applicable portion of the Site A Improvements at the time Developer delivers a Site A Improvements Notice, then in each such case the following terms and conditions shall apply:

(1) Developer's Site A Improvement Notice shall include a description of the applicable portion of the Site A Improvements that are included in the applicable Market

Rate Phase and Developer's affirmative election to construct such applicable portion of the Site A Improvements. Unless and until Developer delivers the Site A Improvement Notice to the City setting forth Developer's intent to Commence Construction of the applicable portion of the Site A Improvements, Developer shall have no obligations with respect to the Site A Improvements required for such Phase.

(2) Within five (5) days of the City's receipt of the Developer's Site A Improvement Notice informing City of Developer's intention to Commence Construction of the applicable portion of the Site A Improvements, the City will give a "Removal Notice" to the Site A Developer pursuant to the Site A DDA and the applicable portion of the Site A Improvements required for the applicable Market Rate Infrastructure Phase shall be considered "Removed Joint Infrastructure" pursuant to the Site A DDA.

(3) To the extent not previously assigned to Developer, the City shall assign or cause the Site A Developer to assign to the Developer all of the "Joint Infrastructure Work Product" pursuant to the Site A DDA (and if requested by Developer, City shall also assign to Developer any "Joint Infrastructure Contracts" requested by Developer, provided that if Developer elects to take an assignment of any "Joint Infrastructure Contracts", Developer shall have no liability for and no obligation to cure any defaults of Site A Developer under any "Joint Infrastructure Contracts").

(4) Developer shall enter into a Public Improvement Agreement with respect to and complete the applicable portion of the Site A Improvements, and City shall reasonably cooperate with Developer to facilitate Developer's construction and completion of the applicable portion of the Site A Improvements.

(5) Upon completion of the applicable portion of the Site A Improvements by the Developer, the Site A Costs, together with interest on the Site A Costs at the Applicable Rate (accruing from the time the Developer incurs such costs and expenses until credited against the RESHAP Phase 1 Payment) shall be credited to the amounts owed to the City for the RESHAP Phase 1 Payment as and when such payment is due (applying the accrued interest first and then the Site A Costs).

(6) "**Site A Costs**" shall mean the amounts Developer expends on the design, permitting, repair, replacement, construction, or otherwise in connection with the Site A Improvements (including the Site A Improvements Design Costs), including, without limitation, any costs associated with the removal of any portion of the Site A Improvements from the Site A DDA, any other cost associated with Site A Developer's failure to commence and complete any portion of the Site A Improvements, costs incurred by the Developer exercising its rights under this Agreement in connection therewith, and all reasonable attorneys' fees and costs to proceed under the provisions of this Agreement with respect to the Site A Improvements minus any Site A Improvements Design Costs reimbursed to Developer pursuant to subsection (e) above**.**

(7) Notwithstanding any provision of this Agreement to the contrary, Developer's obligation to commence and complete the portion of the Site A Improvements required for an applicable Market Rate Infrastructure Phase is conditioned on both (i) Developer having delivered to City the Site A Improvement Notice, and (ii) RESHAP Infrastructure Phase 1 having commenced and the City being in compliance with its obligation to pay for RESHAP Infrastructure Phase 1 pursuant to Section 5.15. If at any time the City ceases to timely pay for

RESHAP Infrastructure Phase 1 in accordance with this Agreement and the Disbursement Agreement (defined below), Developer shall not be obligated to continue with the construction of any Site A Improvements.

(8) Developer shall use commercially reasonable efforts to (a) complete and submit the improvement plans for the portion of Site A Improvements necessary for Market Rate Phases 1 and 2 within the time period provided for in the Milestone Schedule, (b) if a Site A Improvements Notice is issued for completion of improvement plans for the Site A Improvements needed for Market Rate Phase 3, complete improvement plans for the applicable portion of the Site A Improvements within the time period provided for in the Milestone Schedule, but commencing from the later of the City's issuance of the applicable Removal Notice and the Site A Developer's assignment of the existing plans and specifications for such portion of the Site A Improvements to Developer, and (c) if a Site A Improvements Notice is issued by Developer that includes construction of a portion of the Site A Improvements, complete construction of the applicable portion of the Site A Improvements within the time period provided for in the Milestone Schedule, but commencing from Developer's Commencement of the applicable Market Rate Phase (e.g., if the Milestone Schedule provides for a twelve (12) month period for the construction of the applicable portion of the Site A Improvements, Developer shall use commercially reasonable efforts to complete construction within twelve (12) months commencing from Developer's Commencement of the applicable Market Rate Phase), provided that each such date set forth in the immediately preceding clauses (a), (b), and (c) shall be extended for any Force Majeure delays. Notwithstanding the foregoing, in the event the Site A Developer commences any portion of the Site A Improvements and thereafter fails to complete construction of the Site A Improvements by the Site A Improvements Required Completion Date, Developer shall be entitled to a Force Majeure delay while Developer exercises its step-in rights provided Developer uses good faith efforts and acts diligently in exercising such rights and commencing and completing such work in a commercially reasonable timeframe in light of such circumstances.

(9) Developer shall provide the City with reasonable documentation, including but not limited to, and as applicable, copies of contracts or work orders, invoices, checks and lien releases for the Site A Improvements. All contracts, work orders and invoices related to the Site A Improvements shall include separate costs for the Site A Improvements. As part of the Site A Costs, the Developer shall be entitled to its Construction Management Fee applied to the cost of the Site A Improvements. The Developer shall use commercially reasonable efforts to cooperate with City in meeting the requirements of the Site A DDA related to the documentation of the costs of the "Joint Infrastructure Reimbursement" (as defined in the Site A DDA).

(g) City acknowledges that the failure of the Site A Developer to commence and complete construction of any portion of the Site A Improvements in accordance with the Site A Milestone Schedule could delay the development and construction of the Project and prevent Developer from meeting the milestones set forth in the Milestone Schedule. To mitigate these risks, the City agrees that it shall not amend or modify the provisions of the Site A DDA related to the Site A Improvements (or any Public Improvement Agreement entered into by City and the Site A Developer for any portion of the Site A Improvements work) and/or extend or modify any of the Site A milestone deadlines set forth in the Site A DDA related to the Site A Improvements (or in any Public Improvement Agreement entered into by City and the Site A Developer for any portion of the Site A Improvements work) and/or waive any rights of the City thereunder (through amendment of the Site A DDA, entering into or amending a Public Improvement Agreement,

entering into an "Operating Memorandum" with respect to the Site A Improvements, entering into a side letter, waiver of rights and/or remedies, or otherwise) without first obtaining Developer's prior written consent to such amendment, modification, extension, and/or waiver in each instance, which consent Developer may withhold only if Developer reasonably demonstrates that such amendment modification or extension will impair Developer's ability to meet a Major Milestone. Notwithstanding the above, the Developer shall have no right to approve any amendments to the Site A DDA (or any Public Improvement Agreement previously entered into by City and the Site A Developer for the any portion of the Site A Improvements work) that are entirely unrelated to the Site A Improvements. Developer's right to approve any extensions of the Site A milestone deadlines shall not extend to any Operating Memorandum entered into to memorialize any force majeure extensions to which the Site A Developer is entitled to as of right under the terms of the Site A DDA and over which City has no discretion to prohibit.

(h) Furthermore, and in addition to the other rights and remedies that Developer has under this Agreement, in the event that (1) the Site A Developer fails to satisfy any obligation or deadline under the Site A DDA regarding the Site A Improvements, including but not limited to submission of plans, receipt of permits, entering construction contracts, posting of completion assurances, commencement or completion, or Site A Developer fails to timely perform following the exercise of the Site A Developer's step back in rights set forth in Section 5.15(j) (collectively, "**Site A Delay**"), or (2) the City has reason to believe that the Site A Developer will not be able to satisfy any obligation or deadline under the Site A DDA regarding the Site A Improvements, then in each case City shall immediately (and in no event more than ten (10) Business Days thereafter) notify Developer and meet and confer with Developer regarding such non-performance, the effect on the Project, and the remedies available to City under the Site A DDA.

(i) In the event that upon the occurrence of the Site A Delay the Site A Developer has entered into a public improvement agreement with the City for any portion of the Site A Improvements, the City shall enforce its rights under the public improvement agreement, including but not limited to calling the bonds that the Site A Developer has posted for the Site A Improvements, making the proceeds of the bonds available for use by Developer to construct and/or complete the Site A Improvements, and otherwise taking such actions and cooperating with Developer so that Developer may exercise step-in rights and construct and/or complete the Site A Improvements.

(j) If at any time Developer fails to construct any portion of the Site A Improvements that becomes Removed Joint Infrastructure in accordance with the times set forth in Section 5.14(f)(8) and has not entered into a Public Improvement Agreement for such improvements, and the Site A Developer is prepared to construct such Site A Improvements, as evidenced by delivering to Developer (i) current copies of the approved improvement plans for the applicable portion of the Site A Improvements if such improvement plans are prepared by the Site A Developer rather than the Developer, (ii) the Site A Developer's "Phase Update" financing plan submission for the Site A Improvements, including funding commitments from debt and equity providers, as applicable, and (iii) unconditional written confirmation from the Site A Developer that the Site A Developer will commence construction of the applicable portion of the Site A Improvements by the Site A Improvements Required Commencement Date and complete construction of the applicable portion of Site A Improvements by the Site A Improvements Required Completion Date, then the City may give notice to the Developer that such portion of the Site A Improvements is no longer considered Removed Joint Infrastructure and such portion

of the Site Improvements are restored to the Site A Developer scope of work. If the City provides all of the items described in preceding clauses (j)(i)-(iii) Developer may request that the City meet and confer with the Developer regarding the information provided if Developer has any concerns regarding the timing for development of the Site A Improvements by the Site A Developer or the Site Developer's Phase Update financing plan. City shall use reasonable efforts to cause the Site A Developer to participate in any meet and confer and to address the Developer's concerns. Upon Developer's receipt on notice from the City that the applicable portion of the Site A Improvements is no longer considered Removed Joint Infrastructure and such portion of the Site Improvements are restored to the Site A Developer scope of work, and following any meet and confer requested by Developer, the Developer shall assign to the City or the Site A Developer, at the City's request, any plans and specifications for such portion of the Site A Improvements and Developer shall have no further responsibility for the design and construction of such portion of the Site A Improvements. As a condition of Site A Developer stepping back in to construct the portion of the Site A Improvements required for the first Market Rate Infrastructure Phase, the City shall reimburse (or cause the Site A Developer to reimburse) Developer for all of the Site A Improvements Design Costs that Developer incurred plus interest thereon at the Applicable Rate accruing from the date such costs were incurred within thirty (30) days of the date that Developer provides the City an accounting of such Site A Improvement Costs.

Section 5.15 RESHAP Project Infrastructure.

(a) RESHAP Infrastructure Phase 1. The City shall be responsible for paying for the construction of the RESHAP Infrastructure Phase 1. Developer and the City have agreed upon the scope of work to be performed with respect to the RESHAP Infrastructure Phase 1 which scope is set forth in the Infrastructure Package applicable thereto and attached hereto as Exhibit G and which scope includes demolition of existing improvements on the site as well as grading of the pads all as described in Exhibit G. The City and the Developer have determined that the cost of the RESHAP Infrastructure Phase 1 is Nine Million Five Hundred Thousand Dollars ($9,500,000). At such time as the City elects to commence work on RESHAP Infrastructure Phase 1, it shall provide written notice thereof (the "**City RESHAP Commencement Notice**") to Developer; provided, however, the City shall commence RESHAP Infrastructure Phase 1 and deliver the City RESHAP Commencement Notice to Developer no later than thirty (30) days following Developer's submittal of the "Demolition Plan" for RESHAP Infrastructure Phase 1, unless otherwise consented to by Developer in writing in Developer's sole and absolute discretion. If the City has not delivered the RESHAP Commencement Notice within thirty (30) days following Developer's submittal of the "Demolition Plan", then the Developer may at any time thereafter unilaterally elect to deliver notice to the City of the commencement of the RESHAP Infrastructure Phase 1 (the "**Developer RESHAP Commencement Notice**") and cause the commencement of RESHAP Infrastructure Phase 1. Within no more than thirty (30) days after delivery of either the City RESHAP Commencement Notice or the Developer RESHAP Commencement Notice, as applicable, (i) Developer and the City shall enter into a disbursement agreement in a form to be mutually agreed upon by the Parties that includes the terms set forth on Exhibit AA attached hereto setting forth the Developer's obligations with regard to construction of the RESHAP Infrastructure Phase 1, including commencement and completion dates as well as the process and timing for the Developer to submit invoices for work performed and to receive payment by the City (the "**Disbursement Agreement**"), (ii) Developer and the City shall enter into a Right of Entry to Commence Construction in substantially the form attached hereto as Exhibit J for the RESHAP Phase 1 property, (iii) Developer shall obtain payment and performance bonds for the RESHAP

Infrastructure Phase 1 work; and (iv) Developer shall provide the City with the RESHAP Phase 1 Payment Guaranty in substantially the form attached hereto as Exhibit T, from creditworthy affiliates of Brookfield Parent and CDC Parent, provided that the City shall have no right to enforce the RESHAP Phase 1 Payment Guaranty and the RESHAP Phase 1 Payment Guaranty shall be of no force or effect or otherwise binding on the guarantors thereto unless and until Developer has Commenced construction of the first Market Rate Infrastructure Phase, after which Developer shall Commence the work on RESHAP Infrastructure Phase 1 in accordance with the scope of work for RESHAP Infrastructure Phase 1 set forth in Exhibit G and the approved improvement plans for RESHAP Infrastructure Phase 1. Upon the City's receipt of the RESHAP Phase 1 Payment Guaranty, City shall immediately sign and return an original of the RESHAP Phase 1 Payment Guaranty to Developer evidencing the City's agreement to the terms and conditions of the RESHAP Phase 1 Payment Guaranty. The City shall pay Developer and/or its Contractors for such work in accordance with the payment terms provided in the Disbursement Agreement. The City has allocated funds to pay for the RESHAP Infrastructure Phase 1 pursuant to City Council Resolution [___] (the "**RESHAP Phase 1 Funds**").

(b) RESHAP Phase 1 Payment. Upon the date that Developer Commences construction of first Market Rate Infrastructure Phase (such date, the "**First Market Rate Infrastructure Phase Commencement Date**"), City shall become entitled to reimbursement of the actual amount the City disbursed to Developer to construct RESHAP Infrastructure Phase 1, which amount shall not exceed Nine Million Five Hundred Thousand Dollars ($9,500,000), together with interest thereon at the Applicable Rate accruing from the Market Rate Infrastructure Phase 1 Commencement Date through the applicable RESHAP Phase 1 Payment Date (the amount of such reimbursement including such interest thereon, the "**RESHAP Phase 1 Payment**"). If Developer does not elect to Commence Market Rate Infrastructure Phase 1, then Developer shall not be obligated to pay the RESHAP Phase 1 Payment. If such payment is required to be paid pursuant to this Section 5.15(b), Developer shall pay the RESHAP Phase 1 Payment in accordance with Section 2.1(b).

(c) RESHAP Infrastructure Phase 2. Subject to the terms and conditions of this Agreement, Developer shall be responsible for constructing RESHAP Infrastructure Phase 2 as part of the Backbone Infrastructure in accordance with the Milestone Schedule (subject to extensions as set forth in this Agreement) on and subject to the terms of this Section 5.15(c).

(1) As a condition to Developer's Commencement of Market Rate Infrastructure Phase 2, Developer shall provide to City a completion guaranty for the RESHAP Infrastructure Phase 2 work in substantially the form attached hereto as Exhibit Z (the "**RESHAP Phase 2 Completion Guaranty**") from credit worthy affiliates of Brookfield Parent and CDC Parent reasonably approved by the City (such entities, the "**RESHAP Phase 2 Guarantors**"). Upon receipt, City shall immediately sign and return an original of the RESHAP Phase 2 Completion Guaranty evidencing its agreement to the terms and conditions thereof. Although delivered as a condition to the Commencement of Market Rate Infrastructure Phase 2, as more fully set forth therein, the City shall have no right to enforce the RESHAP Phase 2 Completion Guaranty and the RESHAP Phase 2 Completion Guaranty shall be of no force or effect or otherwise binding on the RESHAP Phase 2 Guarantors unless and until either (1) Developer Commences Market Rate Infrastructure Phase 3, or (2) the City exercises its right in accordance with Section 5.15(c)(2)(B) below to require Developer to construct the RESHAP Phase 2

Infrastructure Package described in Section 5.15(c)(2)(B) below (such right, the "**RESHAP Phase 2 Commencement Right**").

(2) If by the Outside Phase Commencement Date for Market Rate Infrastructure Phase 3, all conditions to Developer's obligation to Commence Market Rate Phase 3 as set forth in Section 5.3(a) have been satisfied or waived in writing by Developer (provided however, if the failure of the satisfaction of either of conditions provided in Section 5.3(a)(9) (but only as such condition applies to Supplemental Approvals and Additional Approvals-Horizontal) or Section 5.3(a)(10) is caused solely by Developer's failure to use commercially reasonable effort to apply for and process the Supplemental Approvals, Additional Approvals-Horizontal, and/or subdivision map required to Commence Market Rate Phase 3, then the conditions identified in 5.3(a) (9) (with respect to the Supplemental Approvals and Additional Approvals-Horizontal only) or Section 5.3(a)(10), as applicable, shall be deemed to be waived, as shall the condition in Section 5.3(a)(7) to the extent City is otherwise prepared to unconditionally grant Developer a Right of Entry but for such failure)), but Developer has not Commenced Market Rate Infrastructure Phase 3, then the City may do either of the following:

(A) Declare a Developer Event of Default under this Agreement with respect to Market Rate Infrastructure Phase 3 and, following the expiration of the applicable notice and cure period provided for in Section 15.4 below without Developer having cured such default (which cure may include the City exercising its RESHAP Phase 2 Commencement Right), terminate this Agreement with respect to Market Rate Infrastructure Phase 3, in which event:

(i) Developer shall be relieved of any obligation to Commence or complete RESHAP Infrastructure Phase 2;

(ii) The "RESHAP Phase 2 Completion Guaranty Cancellation" (as defined in the RESHAP Phase 2 Completion Guaranty) shall have occurred and the City shall comply with its obligations with respect thereto; and

(iii) The City may seek a successor developer for Market Rate Infrastructure Phase 3 and RESHAP Infrastructure Phase 2; or

(B) Deliver written notice to Developer within two hundred seventy (270) days following the Outside Commencement Date for Market Rate Phase 3, that City is electing to exercise its RESHAP Phase 2 Commencement Right, in which case, the conditions provided in Section 5.5(b) for the Commencement of Market Rate Phase 3 shall be deemed satisfied or waived and the City shall concurrently with giving of such notice to Developer deliver to Developer a Right of Entry for the Commencement of Market Rate Phase 3 signed by the City for the entire Infrastructure Package for each of Market Rate Infrastructure Phase 3 and RESHAP Infrastructure Phase 2 (the "**MRP 3/RP 2 Right of Entry**"). If City exercises its RESHAP Phase 2 Commencement Right, then (x) the Outside Commencement Date for Market Rate Infrastructure Phase 3 shall be automatically extended to the date (the "**New MRP 3 Outside Commencement Date**") which is four (4) years from the date the City has delivered the MRP 3/RP 2 Right of Entry to Developer, (y) the RESHAP Phase 2 Completion Guaranty shall become effective and binding on the RESHAP Phase 2 Guarantors, and (z) the following shall apply:

(i) Developer shall be obligated to construct a sufficient portion of the RESHAP 2 Infrastructure Package so that, once the Collaborating Partners give

written notice to the City and Developer that they have secured the initial funding (i.e., grants, loans, etc.) that is required in order to apply for low income housing tax credit financing for their development of RESHAP Phase 2 or any portion thereof (the "**Minimum RESHAP Phase 2 Infrastructure**") Developer shall be able to finish the balance of the RESHAP Phase 2 Infrastructure Package within six (6) months or less of receipt of such notice; provided that Developer shall have not less than nine (9) months from the delivery of the MRP 3/RP 2 Right of Entry to complete the Minimum RESHAP Phase 2 Infrastructure and an additional six (6) months to complete the balance of the RESHAP Phase 2 Infrastructure Package.

(ii) The timing of the construction of Market Rate Phase 3 and all Milestone Dates for Market Rate Phase 3 shall be extended and adjusted in accordance with Section 5.15(c)(2)(B); provided, however, if Developer does not Commence Market Rate Infrastructure Phase 3 by the New MRP 3 Outside Commencement Date (subject to extensions in accordance with this Agreement), then City shall have the right to repurchase and reenter Market Rate Infrastructure Phase 3 pursuant to Section 15.6 below; provided, however, that the Development Costs incurred by Developer for the RESHAP Phase 2 Infrastructure Package shall be excluded for the purposes of calculation of the payment due to Developer under Section 15.6 in connection with the exercise of the City's repurchase and reentry right. Except as described in the preceding sentence, the rights of the City under Sections 15.5 and 15.6 shall not otherwise apply to Market Rate Phase 3.

(d) RESHAP PLL Policy. The City shall require the Collaborating Partners to obtain a Real Estate Pollution Liability Insurance Policy for the RESHAP Property covering pre-existing conditions with a term of at least ten (10) years and new conditions with at least a five (5) year term and with at least a Ten Million Dollar ($10,000,000) limit (the "**RESHAP PLL Policy**"), which policy shall be in place prior to commencement of work on the RESHAP Property. Developer shall have no obligation to enter upon the RESHAP Property or construct the Infrastructure Package for the RESHAP Project until the Collaborating Partners have obtained the RESHAP PLL Policy. Any delays to the Project (or any delays to the RESHAP Infrastructure Phase 1 and Phase 2 milestones in the Milestone Schedule) caused by the failure of the Collaborating Partners to obtain the RESHAP PLL Policy for the RESHAP Property shall be considered Force Majeure delay under this Agreement.

ARTICLE 6.
VERTICAL CONSTRUCTION

Section 6.1 Basic Obligations. From and after the Closing on each Phase, and following the completion of the Infrastructure Package for a Phase, an assignee of Developer shall cause construction of the Vertical Improvements (and in tract improvements associated with those Vertical Improvements) in each Vertical Subphase which such party has commenced (such party, the "**Vertical Developer**") in accordance with the terms of this Agreement, the Development Plan, the Planning Documents, the TDM Plan, the Main Street Neighborhood Plan, the Project Approvals, the Supplemental Approvals and any additional applicable approvals, including compliance with the MMR Program related to or required in connection with such construction. Developer will not itself act as the Vertical Developer with respect to any of the Vertical Improvements and Developer intends to assign Vertical Improvement construction obligations under this Agreement to one or more separate Vertical Developers who will construct the Vertical Improvements. The Vertical Developer shall cause completion of construction of the Vertical

Improvements within each such Vertical Subphase which the Vertical Developer has Commenced within the times set forth in the Milestone Schedule and consistent with the terms of the approved Phasing Plan (as such times for completion may be extended by the terms of this Agreement, including, without limitation, Force Majeure). The Vertical Developer shall be responsible for all costs associated with the Vertical Improvements. There will be three (3) major Vertical Phases for the Vertical Improvements, and the Vertical Developer shall have the right to construct the Vertical Improvements in Vertical Subphases as identified in the Phasing Plan. Construction of any in tract improvements associated with the Vertical Improvements may commence prior to the time the applicable portion of the Property has been conveyed to the Vertical Developer, and City agrees to provide Rights of Entry to the Vertical Developer for such purpose; provided, however, if the Vertical Developer plans to install in tract improvements for more than seventy-five (75) residential units pursuant to the Right of Entry, then as a condition to the City's issuance of such Right of Entry, the Vertical Developer shall provide the City with a deposit of funds to be held in escrow for the costs to remove the in tract improvements for each residential unit in excess of seventy-five (75) units if for any reason the applicable portion of the Property is not conveyed to the Vertical Developer upon completion of the in tract improvements. Any such funds deposited with the City shall be released to the Vertical Developer upon conveyance of the applicable portion of the Property to the Vertical Developer. In no event shall construction of the Residential Units commence prior to the conveyance of the applicable portion of the Property to the Vertical Developer.

Section 6.2 Construction Pursuant to Approved Construction Documents. Following the commencement of construction of the Vertical Improvements in a Phase or Vertical Subphase, the Vertical Developer shall cause construction of the Vertical Improvements in such Phase or Vertical Subphase in accordance with the applicable Approved Construction Documents (or modifications thereto processed and approved by the City in accordance with applicable City ordinances, rules and regulations, subject to the Development Agreement and applicable law (including the Subdivision Map Act)), and the terms and conditions of all City and other governmental approvals. Nothing in this Section shall preclude or modify the Vertical Developer's obligation to obtain any required City approval of changes in the Approved Construction Documents in accordance with applicable City ordinances, rules and regulations. For the avoidance of doubt, if a Vertical Developer commences the construction of Vertical Improvements in a Vertical Subphase, the Vertical Developer shall only be required to cause the completion of the Vertical Improvements in such Vertical Subphase, and not all of the Vertical Improvements in the applicable Phase.

Section 6.3 Construction Permits and Approvals. As a condition precedent to the commencement of construction of the Vertical Improvements for any Phase or Vertical Subphase of the Property the Vertical Developer shall apply for, diligently pursue the procurement of and have obtained any permits and approvals from the City or other appropriate governmental entities or public utilities necessary for commencement of construction of the applicable Phase or Vertical Subphase of the Vertical Improvements consistent with this Agreement, including any permits and approvals necessary for the construction of the in-tract infrastructure not already included in the Infrastructure Phase, including any improvement plans and Public Improvement Agreement required by the City for such in-tract infrastructure (collectively, the "**Additional Approvals-Vertical**"), subject to the Development Agreement and applicable law. The Developer shall apply for and obtain Additional Approvals Vertical for each Phase or Vertical Subphase of the Vertical Improvements no later than the date necessary for the completion of the Vertical Improvements in

such Phase or Vertical Subphase by the date for such completion set forth in the Milestone Schedule. The Additional Approvals-Vertical shall include design review for the applicable Phase or Subphase of Vertical Improvements, tentative maps for the Residential Units in the applicable Phase or Subphase, and foundation, parking or building permits for the Phase or Subphase. The City shall cooperate with the Vertical Developer on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals. For the avoidance of doubt, the Vertical Improvements shall not include any improvements in the Infrastructure Package and the Vertical Developer shall only be responsible for the Vertical Improvements on its Phase or Vertical Subphase.

Section 6.4 Compliance with DDA Construction Requirements. The Vertical Developer shall comply with the requirements of Sections 5.9, 5.10, 5.11, 5.12 and 5.13 in the construction of the Vertical Improvements and for purposes of this Section 6.4 such Sections shall be modified to so apply to the Vertical Improvements as opposed to the Infrastructure Package.

ARTICLE 7.
AFFORDABLE HOUSING REQUIREMENTS

Section 7.1 Affordable Housing Obligations. The Project is subject to the affordable housing requirements set forth in the Main Street Neighborhood Plan and the Renewed Hope Settlement Agreement ("**Affordable Housing Obligations**"). Developer acknowledges that compliance with the Affordable Housing Obligations is being achieved through the combination of the Project and the RESHAP Project. The RESHAP Project is obligated under the RESHAP DDA to construct a minimum of three hundred nine (309) units replacing the existing two hundred one (201) affordable units and adding a minimum of one hundred eight (108) net new units affordable to Very Low and Low Income Households (inclusive of managers units) in partial satisfaction of the Project's Affordable Housing Obligations. If for any reason other than a failure of the Developer to meet its obligations under this Agreement for delivery of the RESHAP Infrastructure Phases, the RESHAP Project fails to deliver the number of Very Low and Low Income Units required by the RESHAP DDA (1) Developer shall have no responsibility or liability therefor, and (2) the failure of the Collaborating Partners' to deliver the Very Low and Low Income Units required by the RESHAP DDA shall not reduce, limit, or restrict the number of Market Rate Residential Units that the Developer has rights to construct under this Agreement or Developer's right to obtain certificates of occupancy with respect to such Residential Units upon their completion.

Section 7.2 Moderate Income Units.

(a) As part of the Project, provided the Project consists of 478 residential units in the market rate portion of the Project, the Developer shall require that the Vertical Developers construct no fewer than thirty nine (39) and no more than forty-four (44) Moderate Income Units. In the event that the Collaborating Partners entitle more than one hundred eight (108) net new units and/or one hundred three (103) net new Very Low and Low Income Units, or the number of units in the Project is reduced to fewer than 478 units, then the number of Moderate Income Units required to be constructed by the Vertical Developers will be reduced to the extent permitted so that the combined RESHAP and West Midway projects meet the Affordable Housing Obligations, however, in no event shall the number of Moderate Income Units be reduced below 39 units. If

the Collaborating Partners seek to entitle more than one hundred eight (108) net new units and/or one hundred three (103) net new Very Low and Low Income Units as part of the RESHAP Project, the City shall cooperate and assist the Collaborating Partners in such efforts. Any reduction in the Moderate Income Units shall be applied to the Moderate Income Units in Phase 3. Assuming that the Project consists of 478 Residential Units, the Developer will require Vertical Developers to construct no fewer than two (2) Moderate Income Units as part of Vertical Phase 1. All remaining Moderate Income Units (no fewer than thirty-seven (37) Moderate Income Units) shall be constructed as part of Vertical Phase 3. The Moderate Income Units shall be located and constructed in the following Subphases described in Exhibit C: two (2) in Subphase 1E, fifteen (15) in Subphase 3B, and twenty seven (27) in Subphase 3C. If the number of Moderate Income Units required to be constructed by Vertical Developers is reduced pursuant to this Section, Developer shall have the right to allocate such reduction between Subphase 3B and Subphase 3C in Developer's discretion.

(b) The Moderate Income Units shall be comparable and not distinguished in infrastructure, construction quality, exterior design, or materials in comparison to the Market Rate Residential Units.

(c) Notwithstanding Section 7.2(b), Moderate Income Units may be smaller in size and have different interior finishes and features than Market Rate Residential Units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing as reasonably determined by the City Manager or his or her designee.

(d) To ensure that the Moderate Income Units are permanently available to and occupied by income eligible households at an Affordable Housing Cost in compliance with the Affordable Housing Obligations for Moderate Income Units, the parties hereby agree to execute and record in the public records with the Alameda County Recorder (the "**Official Records**") an Affordable Housing Covenant in substantially the form attached as Exhibit R restricting the sale of Moderate Income Units at the time that the City transfers to the Developer any portion of the Property that will contain a Moderate Income Unit. The Affordable Housing Covenant shall be recorded against title to the applicable property subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City. The parties agree to meet and confer if the priority lien position of the Affordable Housing Covenant interferes with the Developer's ability to obtain market rate debt financing. The Developer must demonstrate to the City's reasonable satisfaction that subordination of the Affordable Housing Covenant is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Project. To satisfy this requirement, the Developer must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the senior debt is necessary to provide adequate construction and/or permanent financing to ensure the viability of the Project and adequate financing for the Project would not be available without the proposed subordination.

(e) Prior to marketing a Moderate Income Unit, the Developer shall submit to the City: (a) a marketing plan for the Moderate Income Units; (b) the proposed purchase prices for the Moderate Income Units that are consistent with the requirements of the Affordable Housing Obligations for Moderate Income Units; and (c) proposed eligibility and income-qualifications of purchasers. The City shall review and approve or disapprove the marketing plan and all other information required to be submitted by the Developer pursuant to this Section within thirty (30)

days of receipt, such City approval shall not to be unreasonably withheld, conditioned or delayed. If the City disapproves the marketing plan or any other information provided by the Developer, it shall state its reasons for such disapproval in writing and with specificity. The Developer shall resubmit a revised marketing plan or other information addressing the City's reasons for disapproval prior to marketing the Moderate Income Units. The City shall review and approve or disapprove the marketing plan within thirty (30) days of receipt of a revised market plan, such City approval shall not to be unreasonably withheld, conditioned or delayed.

(f) If the City once again disapproves the marketing plan or any other information provided by the Developer, the Parties shall meet and confer in good faith for a period not to exceed (30) calendar days after the City's notice of disapproval in an effort to address the City's reasons for disapproval. If following the thirty (30) day meet and confer period, the Parties have not reached agreement on the marketing plan, then either party hereto may thereafter submit the matter to arbitration by a third-party independent arbitrator in accordance with Exhibit U. If following such arbitration proceedings, the arbitrator determines that Developer has failed to submit a marketing plan that satisfies the requirements of this Agreement, Developer shall then have a thirty (30) day period in which to cure such failure and to submit a revised marketing plan that includes the elements the arbitrator determined to be missing. The period required to resolve the City's disapproval of a marketing plan for the Moderate Income Units shall be considered a period of Force Majeure.

(g) The Developer further agrees that upon sale of any Moderate Income Units the Developer will require that purchaser enter into, execute and record the Affordable Resale Restriction in substantially the form attached as Attachment E of the Affordable Housing Covenant attached hereto as Exhibit R against title to the applicable property subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City.

Section 7.3 Affordable By Design.

(a) In addition to the Moderate Income Units, the Developer shall require that the Vertical Developers construct as part of the Project no fewer than forty-three (43) units designed to be sold at purchase prices attainable by households with incomes in the range of one hundred twenty percent (120%) and one hundred eighty percent (180%) of the Area Median Income ("**Affordable by Design Units**"). The Affordable by Design Units shall be constructed as part of Phase 3 in Subphases 3B and 3C as shown in Exhibit C.

(b) The Affordable by Design Units will generally be smaller than the Market Rate Units and shall be comparable and not distinguished in infrastructure, construction quality, exterior design, or materials in relation to the Market Rate Residential Units. The Affordable by Design Units may have different interior finishes and features than Market Rate Residential Units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing.

(c) The Affordable by Design Units shall be sold by the Vertical Developers to households with incomes between one hundred twenty percent (120%) and one hundred eighty percent (180%) of Area Median Income; provided, however, that for the avoidance of doubt, such income restrictions shall only apply to the first homebuyer of such units from the Vertical Developer and such homebuyer and their successors and assigns and the Affordable by Design Units shall not thereafter be burdened with any requirement concerning the income of any buyer

of an Affordable by Design Unit. The first homebuyer's income verification is the only qualifying factor for the sale of an Affordable by Design Unit.

(d) Prior to marketing an Affordable by Design Unit, the applicable Vertical Developer shall submit to the City: (1) a marketing plan for the Affordable by Design Units; and (2) the proposed income ranges for the Affordable by Design Units. The City shall review and approve or disapprove the marketing plan and all other information required to be provided by the Developer pursuant to this Section within thirty (30) days of receipt, such City approval shall not to be unreasonably withheld,. If the City disapproves the marketing plan or any other information submitted by the Developer, it shall state its reasons for such disapproval in writing and with specificity. The Developer shall resubmit a revised marketing plan or other information addressing the City's reasons for disapproval prior to marketing the Affordable by Design Units. The City shall review and approve or disapprove the marketing plan within ten (10) days of receipt of a revised market plan, such City approval shall not to be unreasonably withheld,.

(e) If the City once again disapproves the marketing plan or any other information provided by the Developer, the Parties shall meet and confer in good faith for a period not to exceed (30) calendar days after the City's notice of disapproval in an effort to address the City's reasons for disapproval. If following the thirty (30) day meet and confer period, the Parties have not reached agreement on the marketing plan, then either Party hereto may thereafter submit the matter to arbitration by a third-party independent arbitrator in accordance with Exhibit U. If following such arbitration proceedings, the arbitrator determines that Developer has failed to submit a marketing plan that satisfies the requirements of this Agreement, Developer shall then have a thirty (30) day period in which to cure such failure and to submit a revised marketing plan that includes the elements the arbitrator determined to be missing. The period required to resolve the City's disapproval of a marketing plan for the Affordable by Design Units shall be considered a period of Force Majeure.

ARTICLE 8.
ADDITIONAL DEVELOPER OBLIGATIONS

Section 8.1 Use and Occupancy. The Developer shall construct, use, operate, and maintain, the Property and the Project in accordance with all requirements and standards of this Agreement, the Development Agreement, the approved Development Plan, Main Street Neighborhood Plan, the Supplemental Approvals, the Additional Approvals-Horizontal, and all applicable federal, state and local laws and regulations.

Section 8.2 Project CC&R's. Prior to the recording of a final map for a Vertical Subphase, Developer shall obtain the Community Development Director's approval of the Covenants, Conditions & Restrictions for the Project (the "**CC&R's**") which (a) require each owner or owner's association of any portion of the Property to maintain its applicable private improvements adjacent to and visible from the public right of way (building facades, signs, sound walls, fences, parking lots drive aisles and open space areas) as well as all common facilities including but not limited to streets and utilities not accepted for maintenance by the City in a first-class condition consistent with other mixed-use residential developments in Alameda or the Oakland metropolitan area; (b) require the homeowners association to maintain those streets, parks and other common areas designated in Exhibit X in a first class condition consistent with other

mixed-use residential developments in Alameda or the Oakland metropolitan area; (c) provide the City with the right to (i) enforce such provisions pursuant to the CC&R's and (ii) after applicable notice and right to cure, the right to perform such maintenance and receive a reimbursement of third party expenses from the homeowners association; and (d) such other reasonable provisions as required by the City. Such maintenance shall include, but not be limited to cleaning, painting, removal of graffiti, repair of vandalism, grounds care, prevention of the accumulation of abandoned property, inoperable vehicles, and waste material, and prevention of unenclosed storage areas.

Section 8.3 Prevailing Wages and Related Requirements. Although the Project is not subject to the City's Project Stabilization Policy, Developer agrees to use good faith efforts to negotiate a Project Labor Agreement with the building and constructions trades with respect to the Infrastructure Package and, if such a Project Labor Agreement is entered into, to comply with such agreement during the course of construction of the Infrastructure Package. This Agreement has been prepared with the intention that only the construction of the Infrastructure Package shall be subject to the requirement of payment of prevailing wages or related obligations set forth in Labor Code Section 1720 et seq., and Section 2-67 of the Alameda Municipal Code, and that Vertical Developers and the construction of the Vertical Improvements (including the in tract improvements associated with the Vertical Improvements that are not part of the Infrastructure Package) shall not be subject to the requirement of payment of prevailing wages or related obligations set forth in Labor Code Section 1720 et seq., and Section 2-67 of the Alameda Municipal Code.

(a) Notwithstanding the foregoing, nothing in this Agreement constitutes a representation or warranty by the City regarding the applicability of the provision of Labor Code Section 1720 et seq., and/or Section 2-67 of the Alameda Municipal Code and the Developer shall comply with any applicable laws, rules and regulations related to construction wages and other construction matters, if and to the extent applicable to any portion of the development of the Project.

(b) The Developer shall indemnify, defend (with counsel reasonably acceptable to the City), and hold harmless the Indemnified Parties against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer and the Contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code, and the implementing regulations of the DIR in connection with the construction of the Project and to comply with any other requirements related to public contracting. The Developer's obligation to indemnify, defend and hold harmless under this Section 8.3(b) shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

Section 8.4 Expansion, Reconstruction or Demolition. Prior to issuance of a Vertical Phase Certificate of Completion with respect to a Phase of the Project, the Developer shall not cause or permit any expansion, reconstruction, or demolition of such Phase without the prior written approval of the City in accordance with all applicable ordinances, rules and regulations,

except as is necessary to develop and construct the Project in accordance with the Development Plan.

Section 8.5 Damage or Destruction. The Developer shall promptly notify the City of any Casualty occurring on any portion of the Property that has been conveyed to Developer and is then owned by Developer or is subject to a Right of Entry, and Developer shall diligently seek to procure all insurance proceeds that may be available to compensate for such Casualty. To the extent economically feasible as a result of the availability of insurance proceeds to Developer, plus the Developer's deductible or self-insured retention (together with any additional funds the Developer elects to provide for such purpose), the Developer shall promptly commence and diligently pursue restoration or replacement of the portion of the Property and/or the Project then owned by Developer that was damaged by such Casualty during the Term, subject to obtaining all required permits and approvals. To the extent economically feasible as a result of the availability of insurance proceeds plus the Developer's deductible or self-insured retention (together with any additional funds the Developer elects to provide for such purpose), the restored or replaced property shall be at least equal in value, quality and use to the value, quality, and use of such damaged property immediately before the Casualty.

Section 8.6 Mitigation Monitoring and Reporting Program. The Developer shall comply with the MMR Program adopted by the City, attached hereto as Exhibit D, as the MMR Program may be amended from time to time with Developer's written consent, and expressly incorporated with this Agreement by this reference.

Section 8.7 Developer's Obligations Regarding Hazardous Materials. Developer shall comply with its obligations regarding the management and disposal of Hazardous Materials as set forth in more detail in Article 12 of this Agreement.

Section 8.8 Developer's Indemnification Obligations. Developer shall comply with its indemnity obligations as set forth in more detail in Article 13 of this Agreement.

Section 8.9 Developer's Insurance Obligations. Developer shall comply with its insurance obligations as set forth in more detail in Article 14 of this Agreement.

Section 8.10 Taxes. Subject to the Development Agreement, from and after each Phase Closing, the Developer shall pay when due all real property taxes and assessments assessed and levied on the portions of the Property conveyed to the Developer and the Project that are attributable to the period following the Closing and shall remove any levy or attachment made on such portion of the Property.

Section 8.11 Non-Discrimination. The Developer covenants that the Developer shall not discriminate against or segregate any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property and the Project, nor shall the Developer or any person claiming under or through the Developer 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, vendees or employees in the Property and the Project. The foregoing covenant shall run with the land and shall remain in effect in perpetuity.

Section 8.12 Applicability. The Developer shall comply with the provisions of this Article 8 for the applicable time period specified in the various Sections of this Article 8; or if no specified time period is set forth in a particular section, throughout the Term of this Agreement.

Section 8.13 Park Contribution. The Developer shall, in addition to any other fees paid to the City, contribute Two Million Five Hundred Thousand Dollars ($2,500,000) toward the costs of construction of the new Central Gardens Park or to such other park improvements at Alameda Point as determined by the City ("**Park Contribution**"). The Developer shall pay One Million One Hundred Twenty-Five Thousand Dollars ($1,125,000) toward the Park Contribution upon the earlier of the conveyance of Phase 1 or the first conveyance of a Subphase to a Vertical Developer within Infrastructure Phase 1, Nine Hundred Thousand Dollars ($900,000) upon the earlier of the conveyance of Phase 2 or the first conveyance of a Subphase to a Vertical Developer within Infrastructure Phase 2 and Four Hundred Seventy-Five Thousand Dollars ($475,000) upon the earlier of the conveyance of Phase 3 of the first conveyance of a Subphase to a Vertical Developer within Infrastructure Phase 3.

Section 8.14 Repayment of Pre-Development Funding. The City provided funding in the amount of Three Hundred Five Thousand Dollars ($305,000) ("**Predevelopment Funding**") to cover Developer's design, planning, site investigation and testing related to the infrastructure requirements for the Project, in accordance with the terms of a Service Management Agreement executed by the Developer in October 2021. As a condition of conveyance of the first Phase or Subphase of the Property, the Developer shall repay the Predevelopment Funding to the City with interest at the rate of three percent (3%) per annum, compounded monthly from the Effective Date.

Section 8.15 Cooperation with Collaborating Partners. Developer shall reasonably cooperate, at no additional cost or expense to Developer, with requests from the Collaborating Partners regarding the portions of the Backbone Infrastructure that encompass the Collaborating Partners' building sites including reasonably consulting and coordinating with the Collaborating Partners in the preparation of the geotechnical specifications for the building sites; provided, Developer shall not be required to make any changes to the Development Plan, the Milestone Schedule, or the Project in connection with such cooperation if Developer determines, in Developer's sole discretion, that such changes would have an adverse impact on the Project. Developer shall also require that all "third party" contracts Developer enters into with respect to the portion of the Backbone Infrastructure to be performed on the RESHAP Property allow the Developer to assign to the Collaborating Partners the Developer's interest in those third party contracts including, but not limited to, any warranties, representations, and indemnifications by such third party contractors and Developer shall assign such contracts to the Collaborating Partners at such time as the Collaborating Partners take title to the portions of the RESHAP Property subject to such contracts. Furthermore, with respect to such third party contractors, Developer shall request that each third party contractor name MidPen Housing Corporation as an additional insured on the liability insurance policies that such third party contractor is required to maintain under the contracts for the work that it performs on the RESHAP Property and Developer shall use good faith efforts to update MidPen Housing Corporation regarding its negotiations with such contractors concerning the foregoing. Developer shall agree to meet with the City and the Collaborating Partners at least annually to review each Milestone Schedule and other matters related to the two projects. As used in this Section 8.15, "**third party**" shall mean an entity or party in which neither Developer nor any of its members, partners, parents, or subsidiaries or any direct or indirect member, partner, parent or shareholder at any level of ownership of Developer,

or its parents or its member, partner or shareholder at any level of ownership of Developer, holds any financial interest or rights to direct or make decisions with respect to the management thereof. For the avoidance of doubt, no Developer Affiliate is or shall be considered a "third party" under this Section 8.15.

ARTICLE 9.
CITY OBLIGATIONS

Section 9.1 Entitlements. Subject to and consistent with the Development Agreement, the City shall, upon payment of all applicable fees by the Developer required by the Municipal Code and City Ordinances and permitted by the Development Agreement, process the applications for the Supplemental Approvals, Additional Approvals-Horizontal and Additional Approvals-Vertical for the Project in a timely fashion, and shall cooperate with the Developer in obtaining any approvals necessary from other governmental entities or public utilities provided, however, the City shall not be required to incur any additional costs other than those costs associated with processing of applications and permits within the City's standard processing procedures unless Developer agrees to reimburse the City of any costs associated with expedited processing.

Section 9.2 Permits and Approvals. City Assistance. The City shall provide reasonable cooperation to the Developer in processing the Developer's applications for City permits and approvals, and all other permits, approvals, and "will serve" letters necessary for construction of the Project.

Section 9.3 Public Financing. Upon the written request of the Developer, the City shall diligently and in good faith cooperate with Developer to form one or more special tax districts the purpose of which shall be to fund costs of public infrastructure facilities and fees. All primary financial aspects of such proposed special tax district shall be included in the Public Financing Plan and relevant Phase Updates. The formation of the special tax district shall be governed by Exhibit Y attached hereto.

Section 9.4 Certificate of Completion. Upon the City's acceptance of the portion of the Infrastructure Package for a particular Infrastructure Phase pursuant to the Public Improvement Agreement for that Infrastructure Phase ("**City's Infrastructure Phase Acceptance**"), the Developer shall be entitled to a Certificate of Completion for such Infrastructure Phase with respect to the Developer's construction obligations pursuant to Article 5 of this Agreement (an "**Infrastructure Phase Certificate of Completion**") in a form recordable in the Official Records of the County, which may be relied upon by each Permitted Mortgagee. The City shall issue the Infrastructure Phase Certificate of Completion to Developer as soon as possible after the applicable City's Infrastructure Phase Acceptance, but no later than sixty (60) days following such acceptance. Upon the City's issuance of certificates of occupancy evidencing that building occupancy has been granted to the Residential Units and/or Commercial Units within a particular Vertical Phase or Vertical Subphase (a "**Vertical CofO**"), Developer shall be entitled to a Certificate of Completion for such Vertical Phase or Vertical Subphase with respect to the Developer's construction obligations pursuant to Article 6 of this Agreement (a "**Vertical Phase Certificate of Completion**") in a form recordable in the Official Records of the County, which may be relied upon by each Permitted Mortgagee. As soon as possible (but in no event more than thirty (30) days) after a Vertical CofO, the City shall issue to Developer a Vertical Phase Certificate

of Completion for the applicable Vertical Phase or Vertical Subphase. City and Developer shall cooperate together to establish a system whereby Vertical Phase Certificates of Completion for any Vertical Subphase are provided in advance and then automatically released for recordation in accordance with the foregoing concurrently with the issuance of a Vertical CofO for such Vertical Subphase so as not to delay the marketing and sale and conveyances of such Vertical Subphases free and clear of this Agreement. Each of the Infrastructure Phase Certificate of Completion and the Vertical Phase Certificate of Completion is sometimes referred to herein, as context requires, as a "**Certificate of Completion**". Without limiting the provisions of Section 9.8, each Vertical Phase Certificate of Completion shall also evidence the release of the applicable portion of the Property from the terms of this Agreement.

(a) Except as set forth in the following paragraph, a Certificate of Completion shall constitute a conclusive determination that the covenants in this Agreement with respect to the obligations of Developer to construct the applicable Infrastructure Phase or Vertical Phase or Vertical Subphase have been met with regards to the applicable Phase or Subphase of the Project for which such certificate is being issued. Such certification shall not be deemed a notice of completion under the California Civil Code, nor shall it constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of deed of trust securing money loaned to finance the Project or any portion thereof.

(b) A Certificate of Completion shall not constitute a conclusive determination of the satisfaction of the requirements of Section 8.3 with respect to payment of prevailing wages (if applicable) and related matters (since such determination is within the jurisdiction of the DIR and the California judicial system and not the City), and the obligations of the Developer or the City to indemnify, defend and hold harmless the other Party set forth in this Agreement shall expressly survive issuance of a Certificate of Completion.

Section 9.5 City Representations. The City acknowledges that the execution of this Agreement by the Developer is made in material reliance by the Developer on each and every one of the representations and warranties made by the City in this Section 9.5.

(a) Authority. The City has all requisite right, power and authority to enter into this Agreement and the documents and transactions contemplated herein and to carry out the obligations of this Agreement and the documents and transactions contemplated herein. The City has taken all necessary or appropriate actions, steps and any other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms. The representations and warranties of the City in the preceding sentence of this Section 9.5 are subject to and qualified by the effect of: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) the fact that equitable remedies, including rights of specific performance and injunction, may only be granted in the discretion of a court.

(b) No Actions. As of the Effective Date only, there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the Property or the Project, or that adversely affects the City's ability to perform its obligations under this Agreement.

(c) Commitments to Third Parties. Except as (i) disclosed in the Title Commitment and (ii) set forth in EDC Agreement and Renewed Hope Settlement Agreement, the City has not made any commitment, agreement or representation to any government authority, or any adjoining or surrounding property owner or any other third party, that would in any way be binding on the Developer or would interfere with the Developer's ability to develop and improve the Property into the Project.

(d) Hazardous Materials. As of the Effective Date, to the actual present knowledge of the City and except as disclosed herein, the City has received no written notice from any government authority regarding any, and, to the actual present knowledge of the City, there are no, violations with respect to any law, statute, ordinance, rule, regulation, or administrative or judicial order or holding (each, a "**Law**"), whether or not appearing in any public records, with respect to the Property, which violations remain uncured as of the date hereof, or releases of Hazardous Materials that have occurred during the City's possession of the Property, excluding Incidental Migration. The City has not assumed by contract or law any liability, including any obligation for corrective action or to conduct remedial actions, of any other Person relating to Hazardous Materials.

Section 9.6 Preliminary Work by the Developer; Right of Entry for Infrastructure. Prior to the conveyance of any portion of the Property by the City to the Developer, representatives of the Developer shall have the right of access to the Property at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement and, in the event Developer elects to construct or perform pre-construction work for an Infrastructure Phase prior to the Close of Escrow pursuant to Section 4.1, to construct the Infrastructure Package. Any such access shall be in accordance with the terms of a Right of Entry attached hereto as Exhibit J. Prior to accessing the Property, the Developer shall provide the City with evidence of insurance consistent with the requirements of Article 14. The Developer shall hold the City, its officers, employees, board members and its agents harmless including the payment of any defense costs for any claims, losses, liabilities, injury or damages arising out of any activity pursuant to this Section, except to the extent caused by the City's sole negligence or willful misconduct. The Developer shall defend, hold harmless and indemnify the City against any claims resulting from such preliminary work, construction work, access or use of the Property by the Developer or its contractors, representatives or agents, except to the extent caused by the City's sole negligence or willful misconduct; provided, however, the foregoing indemnity shall not apply to the building pads that Developer delivers for the RESHAP Project as part of RESHAP Infrastructure Phase 1 and RESHAP Infrastructure Phase 2, including but not limited to the design, development, grading, surcharging, improvement, and/or construction of such building pads. Copies of data, surveys and tests obtained or made by the Developer on the Property shall be filed with the City. Any work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies and shall be in accordance with this Agreement.

Section 9.7 Covenants Regarding Operations of the Property. Following the execution of this Agreement and through the Close of Escrow of the last Phase or Vertical Subphase of the Property to Developer or any Vertical Developer, City covenants to own, operate and maintain the Property in substantially the same manner as owned, operated and maintained on the Effective Date. In addition, from and after the Effective Date, the City shall not (a) bring or dispose of, or permit to be brought or disposed of, any Hazardous Materials on the Property without the prior written consent of Developer, which consent shall not be unreasonably withheld, except for small

quantities of household chemicals (such as adhesives, lubricants and cleaning fluids) and vehicle fuels; (b) except for Incidental Migration, cure any new disposal or release of Hazardous Materials on the Property; (c) violate any Law (including with respect to Hazardous Materials) with respect to the Property, which violations remain uncured as of the Closing Date of each applicable Phase; (d) assume by contract or law any liability, including any obligation for corrective action or to conduct remedial actions, of any other Person relating to Hazardous Materials; (e) impose or permit the imposition of any lien, encumbrance or restriction on the Property (other than Permitted Exceptions), or record or allow the recording of the same, that would survive the conveyance thereof to Developer; (f) enter into any agreement affecting the Property which would survive the conveyance thereof to Developer; or (g) enter into any lease, license or other form of occupancy agreement with respect to any portion of the Property without the prior written consent of Developer, which consent shall not be unreasonably withheld so long as the other requirements of this Section 9.7 are satisfied, provided that, in any event, any such agreement entered into after the Effective Date shall provide the City with a right to terminate the applicable agreement upon not more than thirty (30) days prior written notice to the tenant thereunder without fee or charge for such termination. In addition, City shall provide reasonable notice to Developer in the event that City becomes aware or is notified of any material adverse change in the physical condition of the Property or material adverse change with respect to any environmental condition or relating to Hazardous Materials.

Section 9.8 Release of Units, Release of Dedicated Property. Notwithstanding any provision of this Agreement to the contrary, (i) this Agreement shall terminate with respect to each Residential Unit and residential lot and commercial unit and commercial lot, and such Residential Unit and residential lot and commercial unit and commercial lot shall be released and no longer be subject to this Agreement and all obligations and liabilities hereunder, and the transferees of such units and lots and their successors and assigns shall have no obligations or liabilities under this Agreement (including with respect to any obligations that survive the termination of this Agreement), without any further action by City or Developer and without the execution or recordation of any further document, when a Vertical CofO has been issued for such unit or lot, as applicable, (ii) this Agreement shall also terminate with respect to any portion of the Property that is dedicated to the City pursuant to the terms of an applicable Public Improvement Agreement, and such portion of the Property shall be released and no longer be subject to this Agreement and all obligations and liabilities hereunder (including with respect to any obligations that survive the termination of this Agreement), without any further action by City or Developer and without the execution and recordation of any further document, at the time of the City's Infrastructure Phase Acceptance, and (iii) this Agreement shall also terminate with respect to any portion of the Property that is conveyed or dedicated to any home owners association or property owners association (each an "**HOA**"), and such portion of the Property shall be released and no longer be subject to this Agreement and all obligations and liabilities hereunder (including with respect to any obligations that survive the termination of this Agreement), without any further action by City or Developer and without the execution and recordation of any further document, at the time of such dedication or conveyance. If requested by Developer, the City shall execute such documentation as may be required to remove this Agreement and the Memorandum of Agreement as exceptions to title in any title policy issued to the purchaser of a Residential Unit, residential lot, commercial unit, or commercial lot.

Section 9.9 Disbursement Agreement. City covenants to make all payments to Developer under the Disbursement Agreement within the time periods for payment set forth in the Disbursement Agreement.

ARTICLE 10.
ASSIGNMENT AND TRANSFERS

Section 10.1 Definition of Transfer. As used in this Article 10, the term "**Transfer**" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of this Agreement or of the Property and/or the Project or any part thereof or any interest therein (including, without limitation, any Phase) or of the improvements constructed thereon, or any contract or agreement to do any of the same which has not been released from the terms of this Agreement pursuant to Section 9.8 (unless the consummation of the Transfer contemplated by such contract is contingent upon compliance with this Article 10); or

(b) 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 Controlling Interest (defined below) in the Developer, or any contract or agreement to do any of the same (unless the consummation of the Transfer contemplated by such contract is contingent upon compliance with this Article 10). As used herein, the term "**Controlling Interest**" means (1) the ownership (direct or indirect) by one Person of more than fifty (50%) of the profits, capital, or equity interest of another Person; or (2) the power to direct the affairs or management of another person directly or indirectly, whether by contract, other governing documents or operation of Law or otherwise, and "Controlled" and "Controlling" have correlative meanings. "**Common Control**" means that two persons are both Controlled by the same person.

Section 10.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Project on the Property and subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment, use, operation and maintenance of the Project to the general welfare of the community.

(b) The fact that a change in ownership or control of the owner of the Property, or any other act resulting in a change in ownership of the parties in control of the Developer, is for practical purposes a transfer or disposition of the Property and the Project.

(c) Restrictions on transfer are necessary in order to assure the achievement of the goals, objectives and public benefits of this Agreement. Developer agrees to and accepts the restrictions set forth in this Article 10 as reasonable and as a material inducement to City to enter into this Agreement. It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 10.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 10 shall apply with respect to any portion of the Property until such portion of the Property is released pursuant to Section 9.8. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City pursuant to Section 10.5. Any Transfer made in contravention of this Section 10.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 10.4 Permitted Transfers. Notwithstanding the provisions of Section 10.3, the following Transfers shall be permitted:

(a) Any Transfer creating a Security Financing Interest consistent with the Preliminary Project Financing Plan or Phase Update, as applicable, approved by the City pursuant to Section 3.2, or otherwise consistent with the provisions of Section 11.1.

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest and if the Permitted Mortgagee or its affiliate or other designee is the immediate transferee pursuant to such foreclosure or deed in lieu, the initial Transfer of any portion of the Property to a subsequent transferee.

(c) Any Transfer consisting of the sale, rental or subletting of a Residential Unit or of a commercial unit or commercial space in the Commercial Element of the Project in the normal course of the Developer's business operations.

(d) Any Transfer due solely to the death or incapacity of an individual.

(e) Any Transfer to a Developer Affiliate, provided however, any subsequent Transfer by the Developer Affiliate to any other entity that is not a Developer Affiliate and is not otherwise subject to the Permitted Transfer provisions in this Section 10.4 shall be subject to the restrictions on Transfer set forth in this Article 10.

(f) Any Transfer of a utility, public right of way, maintenance, access or other dedication, easement or license reasonably necessary for the development of the Project or otherwise required by the Project Approvals (each a "**Development Easement**").

(g) Any Transfer to an HOA of any portion of the Property that is common area or that is otherwise to be owned and maintained by the HOA.

(h) Any Transfer to an Affiliated Purchaser.

(i) Any Transfer of a Phase or Vertical Phase or Subphase to a Qualified Developer after the Developer has executed a Public Improvement Agreement for the Backbone Infrastructure serving such Phase and provided to the City any bonds or other form of completion assurances required by the Public Improvement Agreement for such Backbone Infrastructure Phase.

Notwithstanding any provision of this Agreement to the contrary, no Transfer of a direct or indirect interest in Developer, any Affiliated Purchaser or any Qualified Developer shall be prohibited or restricted by this Article 10 or otherwise subject to any of the requirements imposed on Developer, any Affiliated Purchaser or any Qualified Developer under this Article 10 provided that (i) with respect to Developer or any Affiliate Purchaser thereof, such entity continues to qualify as a Developer Affiliate, (ii) with respect to any Qualified Developer that is not a Developer Affiliate, the entities or individuals, or their Successors, as applicable, that held a direct or indirect Controlling Interest therein as of the initial Transfer to such Qualified Developer continue to hold, directly or indirectly, (A) ten percent (10%) or more of the profits, capital, or equity interest of such entity; and (B) the power to direct the day to day affairs or management of such entity subject to customary major decision approval rights and the exercise of customary rights and remedies including management removal rights, and (iii) any pledge of a direct or indirect interest in Developer, any Affiliate Purchaser or Qualified Developer is to secure any financing obtained by any direct or indirect interest holder of Developer, any Affiliate Purchaser or Qualified Developer and any subsequent transfer of such pledged interest to the holder thereof in connection with the exercise of its remedies pursuant to such pledge.

The provisions limiting Transfers contained in this Article 10 shall terminate with respect to each Phase or Subphase (i) with respect to Developer upon the conveyance of such Phase or Subphase to a Vertical Developer and (ii) with respect to a Vertical Developer, upon the release of such Phase or Subphase pursuant to Section 9.8.

Section 10.5 Other Transfers In City's Sole Discretion. Any Transfer not permitted pursuant to an express provision of Section 10.4 shall be subject to prior written consent by the City in accordance with this Section 10.5, which the City may grant or deny in its sole discretion. In connection with such a proposed Transfer, the Developer shall first submit to the City information regarding such proposed Transfer, including the proposed documents to effectuate the Transfer, a description of the type of the Transfer, and such other information as would assist the City in considering the proposed Transfer, including where applicable, the proposed transferee's financial strength and the proposed transferee's experience, capacity and expertise with respect to the development, operation and management of residential or mixed-use developments similar to the Project (or applicable portion thereof). The City shall approve or disapprove the proposed Transfer, in its sole discretion, within thirty (30) days of the receipt from the Developer all of the information specified above including backup documentation and supplemental information reasonably requested by the City. The City shall specify in writing the basis for any disapproval. If the City should fail to act within such thirty (30) day period Developer shall provide the City with written notice of such failure to act which notice shall state in 14-point bold type on the cover page of the notice and on the envelope containing the notice the following:

FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS OF THE DATE OF THE NOTICE WILL RESULT IN THE CITY WAIVING ITS RIGHTS TO OBJECT TO THE TRANSFER PROPOSED IN THIS NOTICE.

If the City fails to respond to the Developer's notice containing the above language within ten (10) Business Days of the date of the notice and such notice is delivered to the address and in the manner set forth in Section 16.1 below, the proposed Transfer shall be deemed approved.

Section 10.6 Effectuation of Permitted or Otherwise Approved Transfers. Other than with respect to Transfers under Sections 10.4(a), (b), (c), (d), (f), or (g) not less than thirty (30) days prior to the intended effectiveness of a Transfer described in this Article 10, the Developer shall deliver to the City a notice of the date of effectiveness of the intended Transfer, a description of the intended Transfer, and such information about the intended Transfer and the transferee as is necessary to enable the City to determine that the intended Transfer meets the standards for a Transfer under this Article 10.

(a) Within thirty (30) days after the completion of any Transfer permitted pursuant to this Article 10, the Developer shall provide the City with notice of such Transfer, other than with respect to Transfers under Sections 10.4(a), (b), (c), (d), (f), or (g).

(b) No Transfer by Developer of its direct interest in the Property or Project (as opposed to a direct or indirect Transfer of an interest in Developer to which this Section shall not apply), whether permitted pursuant to Section 10.4 or 10.5, shall be permitted unless, at the time of such Transfer, the person or entity to which such Transfer is made, by an agreement in substantially the form of the Partial Assignment of the DDA attached as Exhibit V, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of the Developer under this Agreement and any ancillary agreements entered into by the Developer pursuant to this Agreement with respect to the portion(s) of the Property and the Project being transferred; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation prior to the Transfer. Anything to the contrary notwithstanding, transferees whose interest in the Property is acquired under Sections 10.4(a), (b), (c), (d), (f), or (g), including without limitation, the holder of a Security Financing Interest whose interest in the Property is acquired by, through or under a Security Financing Interest or is derived immediately from any holder thereof, in each case, shall not be required to give to the City such written agreement.

(c) With the regard to all permitted or otherwise approved Transfers in accordance with this Article 10, the City shall provide, within fifteen (15) days of request, a written estoppel to the Developer or any Vertical Developer stating either that Developer or the Vertical Developer has performed any and all obligations required through the date of such Transfer, or, if such is not the case, stating with specificity the obligation(s) which the Developer or Vertical Developer has failed to perform through the date of such Transfer. Any permitted or otherwise approved Transfer in accordance with this Article 10 of Vertical Improvement obligations with respect to a Phase or Subphase to a Vertical Developer shall release Developer from such transferred Vertical Improvement obligations, provided that Developer uses the form of Partial Assignment and Assumption of DDA attached to this Agreement to effectuate such Transfer. No other Transfers permitted by this Agreement or approved by the City shall be deemed to relieve the Developer or any other transferor from any obligations under this Agreement in the absence of specific written agreement by the City.

(1) Developer shall not be liable for nor shall Developer's rights under this Agreement, including, without limitation, its right to acquire a Phase or Phases or develop the Project as contemplated herein (including with respect to the conditions precedent in Sections 4.4(a) and 5.3(b)), be effected in any manner by any Developer Event of Default caused by any transferee permitted pursuant to Section 10.4 or approved pursuant to Section 10.5 and accordingly

any reference to Developer Event of Default so caused by such transferee and the rights and remedies of the City with respect thereto shall be limited to such transferee;

(2) No transferee permitted pursuant to Section 10.4 or approved pursuant to Section 10.5 shall be liable for any Developer Event of Default caused by Developer or any other transferee under this Agreement nor shall a transferee be responsible for nor shall such transferee's rights under this Agreement, including, without limitation, its right to acquire a Vertical Phase or Subphases or to develop such Vertical Phase or Vertical Subphases as contemplated herein (including with respect to the conditions precedent in Section 4.4(a) and 5.3(b)), be effected in any manner by any such Event of Default caused by Developer or any other transferee and accordingly any reference to Developer Event of Default so caused by such Developer or such other transferee and the rights and remedies of the City with respect thereto shall be limited to Developer or such other transferee.

(3) Without limiting the foregoing, the Parties acknowledge and agree that this provision shall be interpreted such that Developer shall hold its right, title and interest in this Agreement and Project free and clear of any rights that the City may have against a transferee or its Phase or Phases (or Vertical Subphase or Vertical Subphases) and each such transferee shall hold its right, title and interest in this Agreement and its Phase or Phases (or Vertical Subphase or Vertical Subphases) free and clear of any rights that the City may have against Developer, any other transferee or any other portion of the Project as if the Developer and the City entered into a separate agreement on the terms described herein for its portion of the Project and each transferee and the City entered into a separate agreement on the terms described herein for its Phase or Phases (or Vertical Subphase or Vertical Subphases) without any such agreements being cross-defaulted or the obligations thereunder (including but not limited to indemnification obligations) being cross-collateralized in any way.

ARTICLE 11.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 11.1 Security Financing Interests; Permitted and Prohibited Encumbrances. Mortgages, deeds of trust, and other real property security instruments are permitted to be placed upon the Property (or portions thereof or improvements thereon) only as authorized by this Section 11.1. Any security instrument and related interest approved pursuant to Section 11.1 (b) is referred to as a "**Security Financing Interest**." Until the Developer is entitled to issuance of a Vertical Phase Certificate of Completion for a particular portion of the Property, the Developer may place mortgages, deeds of trust, or other reasonable methods of security on such portion of the Property only for the purpose of securing any approved Security Financing Interest financing the construction of the Infrastructure Package or Vertical Improvements on the applicable portion of the Property.

(a) Following the time the Developer is entitled to issuance of a Vertical Phase Certificate of Completion for a particular portion of the Property, the Developer may place any mortgages, deeds of trust, and other real property security interest it desires on that portion of the Property or any improvements on such portion of the Property.

(b) Any mortgage, deed of trust or other real property security interest securing financing with respect to the Property or any portion thereof (or any improvement thereon) shall

be deemed an approved Security Financing Interest pursuant to this Article 11. The holder of a Security Financing Interest is referred to herein as a "**Permitted Mortgagee**."

Section 11.2 Permitted Mortgagee Not Obligated to Construct. No Permitted Mortgagee is obligated by, or to perform, any of the Developer's obligations under this Agreement, including, without limitation, to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in conveyances from the City to the Developer evidencing the realty comprising the Property or any part thereof be construed so to obligate such Permitted Mortgagee. However, nothing in this Agreement shall be deemed to permit or authorize any Permitted Mortgagee to devote the Property 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 Agreement.

Section 11.3 Notice of Default and Right to Cure. Whenever the City, pursuant to its rights set forth in Article 15, delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Project (or any portion thereof), a Developer Event of Default, the termination of this Agreement, exercise of the City's repurchase Option or any other material notice or demand to the Developer with respect to this Agreement, the City shall at the same time deliver to each Permitted Mortgagee a copy of such notice or demand. With respect to any such notices or demands relating to breaches or defaults or alleged breaches or defaults by Developer under this Agreement, such notice or demand must specifically identify the applicable breach or default and describe the action that must be taken to cure it. Each such Permitted Mortgagee shall have the right, but not the obligation, at its option, within thirty (30) days (or such longer period of time as reasonably needed if such default or breach is not susceptible to cure or commencement of cure within such thirty (30) day period) following the later of: (i) expiration of the notice and/or cure period that Developer is given to cure such default or breach under this Agreement; and (ii) the date upon which such notice is actually received by Permitted Mortgagee; to cure or remedy or commence to cure or remedy any such default or breach affecting the applicable portion of the Project and, at its option, to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize any Permitted Mortgagee to undertake or continue the construction or completion of the applicable portion of the Project (beyond the extent necessary to conserve or protect such improvements or construction already made, as determined by such Permitted Mortgagee) without first having taken possession of such portion of the Project (whether through foreclosure or deed in lieu of foreclosure or the appointment of a receiver). The Permitted Mortgagee in that event must agree to complete the applicable portion of the Project, in the manner provided in this Agreement. Any Permitted Mortgagee properly completing the applicable portion of the Project pursuant to this Section 11.3 shall be entitled, upon written request made to the City, to a Certificate of Completion for the Project or the applicable Phase from the City.

Section 11.4 Failure of a Permitted Mortgagee to Complete a Project. In any case where six (6) months after Permitted Mortgagee or its successor in interest have taken possession of a Phase or portion thereof (by foreclosure or deed in lieu of foreclosure) following a default by the Developer in completion of construction of such Phase or portion thereof under this Agreement and assumed all applicable rights and obligations of Developer under this Agreement, the applicable Permitted Mortgagee, having first exercised its option to construct, has not proceeded diligently with construction (subject to Force Majeure), the City shall be afforded those rights

against such Permitted Mortgagee or successor in interest it would otherwise have against the Developer under this Agreement; provided, however, such Permitted Mortgagee's or such successor in interests' liability hereunder shall be limited to such period as such Permitted Mortgagee or successor-in-interest is in possession and/or control of such Project which such Permitted Mortgagee or successor-in-interest has acquired and only to the extent of its interest in such Project and the improvements thereon.

Section 11.5 Reserved.

Section 11.6 Right of City to Satisfy Other Liens. After the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on any portion of the Property conveyed to the Developer thereof, and has failed to do so, in whole or in part, the City may in its sole discretion (but with no obligation to do so), upon fifteen (15) Business Days' prior written notice to each Permitted Mortgagee and the Developer, satisfy any such lien or encumbrances. Nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 11.7 Modifications. If any actual or potential Permitted Mortgagee should, as a condition of providing financing for development of all or a portion of the Project, request any modification of this Agreement in order to protect its interests in the Project or this Agreement, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement.

Section 11.8 Miscellaneous Provisions.

(a) Limitation on Liability. In the event that any Permitted Mortgagee assumes the obligations of the Developer under this Agreement, such Permitted Mortgagee shall only be liable or bound by the Developer's obligations hereunder for such period as the Permitted Mortgagee is in possession and/or control of the portion of the Property in which the Permitted Mortgagee has acquired its interest and, furthermore, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest (whether fee or leasehold) in the portion of the Property and the improvements thereon.

(b) Termination. Notwithstanding any other provision of this Agreement to the contrary, if any Developer Event of Default shall occur which, pursuant to any provision of this Agreement, entitles the City to terminate this Agreement and/or to exercise its rights under Section 15.5, the City shall not be entitled to terminate this Agreement or to revest title to any portion of the Property in the City unless (i) the City has provided the Permitted Mortgagee with notice of default pursuant to Section 11.3 and (ii) within the applicable cure period set forth in Section 11.3, such Permitted Mortgagee shall fail to either:

(1) Cure (Monetary). Cure the Developer Event of Default if the same consists of the nonperformance by the Developer of any covenant or condition of this Agreement requiring the payment of money by Developer to the City; and

(2) Cure (Non-Monetary). If the Developer Event of Default is not of the type described in clause (1) above, either, in such Permitted Mortgagee's sole discretion,

(x) cure such Developer Event of Default, if the same is capable of being cured within the applicable cure period, or (y) commence, or cause any trustee under the Security Financing Interest to commence, and thereafter diligently pursue to completion, steps and proceedings to foreclose on the applicable portion of the Property pursuant to judicial foreclosure, non-judicial foreclosure or deed-in-lieu process ("**Foreclosure**"); provided that except as extended by clause (3) below, such Foreclosure shall be completed within a maximum of eighteen (18) months following the commencement of such proceeding. Any Developer Event of Default which does not involve a covenant or condition of this Agreement requiring the payment of money by the Developer to the City shall be deemed cured if any Permitted Mortgagee shall diligently pursue to completion Foreclosure and shall, upon acquiring title to all or any portion of the Property, thereafter undertake its obligations (if any) with respect such portion of the Property pursuant to Section 11.3.

(3) Inability to Foreclose. If a Permitted Mortgagee is prohibited from commencing or prosecuting a Foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Developer (other than any such process, injunction or court action occurring in response to any negligence or misfeasance of Permitted Mortgagee), the times specified in Section 11.8(b)(2) above, for commencing or prosecuting a Foreclosure or other proceedings shall be extended for the period of the prohibition; provided that the Permitted Mortgagee shall have fully cured any Developer Event of Default required by Section 11.8(b)(1) above and shall continue to perform and/or cure all such obligations as and when the same fall due.

(c) Failure of Permitted Mortgagee to Complete Improvements**.** Upon the date upon which all cure periods of the Developer have expired following a Developer Event of Default related to the completion of construction of any improvements on the Property under this Agreement, and the notice required by Section 11.3 to a Permitted Mortgagee was properly given, and such Permitted Mortgagee has not cured or commenced to cure as required by Section 11.8(b), the City may, at its option, upon thirty (30) calendar days' written notice to the Developer and such Permitted Mortgagee either: (a) with the consent of the Permitted Mortgagee and Developer, in their respective sole and absolute discretion, purchase the Security Financing Interest by payment to the Permitted Mortgagee of all amounts secured thereby, including all unpaid principal, interest, late fees and all other advances and amounts secured by the Security Financing Interest, and on such other terms and conditions as such Permitted Mortgagee shall require in its sole but good faith discretion; or (b) exercise its rights under Section 15.5 with respect to the applicable portions of the Property.

(d) Amendment; Termination. No amendment or modification to Article 11 of this Agreement may be entered into without the prior written consent of each Permitted Mortgagee, such consent not to be unreasonably withheld, and no amendment or modification to any other term or provision of this Agreement may be entered into without the prior written consent of each Permitted Mortgagee; provided, however, the consent of each Permitted Mortgagee shall not be required to the extent that such amendment or modification (excluding an amendment or modification to Article 11, for which each Permitted Mortgagee's consent shall always be required) is not reasonably likely to impair or alter, other than to a de minimis extent, such Permitted Mortgagee's rights hereunder, or increase a Permitted Mortgagee's obligations hereunder (whether ongoing or contingent obligations). The Developer shall not terminate this Agreement as to any portion of the Property which is subject to any Security Financing Interest

without Developer first obtaining the prior written consent of all Permitted Mortgagees whose Security Financing Interests encumber that portion of the Property.

(e) Condemnation or Insurance Proceeds**.** The rights of any Permitted Mortgagee, pursuant to its Security Financing Interest, to receive condemnation or insurance proceeds which are otherwise payable to such Permitted Mortgagee or to a Party which is its mortgagor shall not be impaired by any term or provision of this Agreement.

(f) Loss Payable Endorsement to Insurance Policy**.** The City agrees that the name of the senior-most Permitted Mortgagee may be added as the primary loss payee to the "loss payable endorsement" attached to any and all insurance policies required to be carried by Developer under this Agreement.

(g) Constructive Notice and Acceptance**.** Except as otherwise expressly set forth in this Agreement, until such time as a Vertical Phase Certificate of Completion is recorded with respect to any portion of the Property, all of the provisions contained in this Agreement shall be binding upon and benefit any Person who acquires fee title to or a ground leasehold interest in such portion of the Property.

(h) Bankruptcy Affecting the Developer**.** The Developer and City hereby agree that the terms and provisions of this Agreement (including the rights under Section 15.5 and 15.6 contained herein) and each Quitclaim Deed shall be covenants running with the land and that neither this Agreement nor any Quitclaim Deed shall be subject to rejection in bankruptcy and each of Developer and City hereby waives, to the extent permitted by applicable law, its rights to reject this Agreement and any Quitclaim Deed in bankruptcy. If, notwithstanding the foregoing, the Developer, as debtor in possession, or a trustee in bankruptcy for the Developer seeks to and does reject this Agreement or any Quitclaim Deed in connection with any proceeding involving the Developer under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors (a "**Bankruptcy Proceeding**"), then without waiver of any right of the City to challenge such rejection, the Developer and the City hereby agree for the benefit of the City and each and every Permitted Mortgagee that such rejection shall, subject to such Permitted Mortgagee's acceptance, be deemed the Developer's assignment of the Agreement, or Quitclaim Deed, as applicable, and the portions of the Property corresponding thereto, to the Developer's Permitted Mortgagee(s) in the nature of an assignment in lieu of foreclosure. Upon such deemed assignment, this Agreement shall not terminate and each Permitted Mortgagee shall become the Developer hereunder as if the Bankruptcy Proceeding had not occurred (subject to the limitations on liability set forth in Section 11.8(a) hereof), unless such Permitted Mortgagee(s) shall reject such deemed assignment by written notice to the City within forty-five (45) calendar days after receiving notice of the Developer's rejection of this Agreement in a Bankruptcy Proceeding.

(i) New Agreement with Permitted Mortgagee.

(1) Request by Senior Permitted Mortgagee. In the event of termination of this Agreement for any reason (including by reason of any Developer Event of Default or by reason of the disaffirmance thereof by the Developer, as a debtor-in-possession, or by a receiver, liquidator or trustee for Developer or its property) or cancellation or other extinguishment of this Agreement in connection with a Bankruptcy Proceeding, the City, if requested by the then-most senior Permitted Mortgagee (or by the next most senior Permitted Mortgagee if Permitted Mortgagees with more senior priority do not so request) will enter into a new disposition and

development agreement for the applicable portion of the Property with the Permitted Mortgagee or its designee, provided that such party is the then-owner of the Property, upon the same terms, provisions, covenants and agreements set forth in this Agreement and commencing as of the date of termination of this Agreement, as the case may be (collectively, the "**New Agreement**"), subject to the following:

(A) Request for New Agreement. Such Permitted Mortgagee or requesting party shall have provided written notice to the City requesting the New Agreement within forty-five (45) calendar days after the date of termination or cancellation or other extinguishment of this Agreement;

(B) Payment of Due and Unpaid Sums. Such Permitted Mortgagee or requesting party shall pay to the City at the time of the execution and delivery of the New Agreement those sums specified in Section 11.8(b) which would, at the time of the execution and delivery thereof be due and unpaid pursuant to this Agreement but for its termination, and in addition thereto any reasonable attorneys' fees and experts' fees and court costs and court expenses (including reasonable attorney's and expert's fees) which the City shall have actually incurred by reason of the Developer Event of Default; and

(C) Perform and Observe All Covenants. Such Permitted Mortgagee or requesting party shall, subject to the provisions of this Article, be subject to and shall perform and observe all covenants in this Agreement to be performed and observed by a Permitted Mortgagee, and failure to do so shall, after notice and opportunity to cure as provided by this Agreement, be a Developer Event of Default under this Agreement; provided, however, such Permitted Mortgagee's or its designee's liability hereunder shall be limited to such period as such Permitted Mortgagee or designee is in possession and/or control of the portion of the Property which such Permitted Mortgagee or designee has acquired and only to the extent of its interest in the applicable portion of the Property and the improvements thereon.

(2) Priority of New Agreement**.** Any New Agreement shall be prior to any Security Financing Interest or other lien, charge, or encumbrance on the Property in favor of such Permitted Mortgagee and each Security Financing Interest shall execute such additional consents and/or subordination agreements as may reasonably requested by the City or the new Developer to evidence the priority of the New Agreement to all Security Financing Interests, whether recorded prior or subsequent to execution of the New Agreement.

Section 11.9 Estoppel Certificate. Upon written request by any Permitted Mortgagee, the City shall execute an estoppel certificate in connection with any Security Financing Instrument, that certifies: (i) that this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) that there are no current uncured defaults under this Agreement or specifying the dates and nature of any such defaults, (iii) that such Permitted Mortgagee is a "Permitted Mortgagee" of a "Security Financing Interest", under and as each such term is defined in this Agreement, and is entitled to all of the rights and benefits afforded a Permitted Mortgagee under this Agreement, including, without limitation, Article 11, (iv) if the City's rights under Section 15.5 or 15.6 of this Agreement have terminated with respect to a Phase, that the City's rights under Section 15.5 and 15.6 have terminated and are of no further force and

effect with respect to the applicable Phase, and (v) to such additional matters as such Permitted Mortgagee shall reasonably require.

ARTICLE 12.
HAZARDOUS MATERIALS

Section 12.1 Developer's Obligations Regarding Hazardous Materials.

(a) Existing Property Environmental Conditions. Effective as of the applicable Closing Date or the date a Right of Entry for Commencement of construction is issued and (i) solely with respect to such Phase and (ii) with respect to Hazardous Materials that existed on the applicable Phase of the Property prior to the Closing Date or the date that a Right of Entry for Commencement of construction is issued ("**Existing Phase Environmental Conditions**") affecting such Phase: as between the Developer and the City, the Developer shall comply with any recorded covenants related to the Existing Phase Environmental Conditions and the Site Management Plan (to the extent that they are Permitted Exceptions under Section 4.6) and, as between the City and the Developer, the Developer shall be responsible for addressing any additional remediation required at a formerly closed site by any regulatory agency (other than the City) due to reevaluation in accordance with applicable law by any regulatory agency (other than the City) of the applied remediation strategy or any change in law or regulation related to the remediation standards, including any a change in remediation standards or risk screening levels ("**Regulatory Reopener**"). Except to the extent necessary to respond to an imminent and substantial endangerment to human health, safety, or the environment, prior to addressing remediation required by a Regulatory Reopener, Developer may pursue any available remedy against the Navy or the insurer that has issued the Contractors Pollution Liability Policy or Real Estate Pollution Liability Insurance Policy required by Section 14.7. The City shall reasonably cooperate with the Developer in such pursuit. If the Developer effectuates a Transfer permitted pursuant to Article 10 in the manner required by Article 10, then the transferring Developer shall have no further obligation pursuant to this Section 12.1 with respect to the portion of the Property Transferred.

(b) New Releases. Effective as of the applicable Closing Date and (i) solely with respect to such Phase and (ii) with respect to releases of Hazardous Material at the Phase caused by the Developer Parties, which releases first occur after the applicable Closing Date or date of Right of Entry for Commencement of construction of such Phase, excluding Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date or date of Right of Entry for Commencement of construction ("**New Releases**"): as between the Developer and the City, the Developer shall keep and maintain any portion of the Property conveyed to the Developer in compliance with, and shall not cause or permit the Property to be in violation of, any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions in, on, under or emanating from the Property including, but not limited to, soil and ground water conditions. The Developer shall not use, generate, manufacture, store or dispose of in, on, or under any portion of the Property conveyed, leased or licensed to the Developer, or transport to such Property or the development any Hazardous Materials, except such of the foregoing as may be customarily kept and used in and about the construction and operation of mixed-use commercial and residential developments or in accordance with law or this Agreement. The Developer shall be responsible for complying with the requirements of the Site Management Plan(s) (to the extent it is a Permitted Exception under Section 4.6) related to the

Property after conveyance of the Property or any portion thereof to the Developer or the date of Right of Entry for Commencement of construction.

Section 12.2 Notifications; City Participation. The Parties shall promptly notify and advise each other in writing if at any time any one of them receives written notice of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against either Party, the Property, or the Project pursuant to any Hazardous Materials Law; (2) all claims made or threatened by any third party against either Party, the Property, or the Project relating to damage, injunctive relief, declaratory relief, violations, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (1) and (2) above are referred to as "**Hazardous Materials Claims**"); and (3) the Party's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property or the Project that could cause part or all of the Property or the Project to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property or the Project under any Hazardous Materials Law. With respect to Hazardous Materials Claims for which the City is not a party, at its sole cost and expense, the City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

Section 12.3 Developer's Hazardous Materials Indemnification. The Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties as set forth in more detail in Section 13.2.

ARTICLE 13.
INDEMNIFICATION

Section 13.1 General Indemnification. The Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Developer's or the Contractor's performance or non-performance of its work under this Agreement or arising in connection with entry onto, ownership of, occupancy in, or construction on the Property by the Developer or its Contractors. This defense, hold harmless and indemnity obligation contained in this Section 13.1 shall not extend to any claim arising solely from any Indemnified Party's gross negligence or willful misconduct or from breach of the DDA by the City. If the Developer effectuates a Transfer permitted pursuant to Article 10 in the manner required by Article 10, then the transferring Developer shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the Transfer and that arise with respect to the obligations Transferred. The Developer's obligation to indemnify, defend and hold harmless under this Section 13.1 shall survive termination of this Agreement as to any acts occurring prior to termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action, so long as within the above parameters.

Notwithstanding the foregoing to the contrary, provisions of this Section 13.1 shall not apply to matters arising out of or related to Hazardous Materials, which are addressed in Section 13.2 below.

Further notwithstanding the foregoing to the contrary, Developer shall have no obligation under this Section 13.1 if and to the extent a Claim or objection arises from a Third Party Challenge to

determine the validity of any exchange agreement (as authorized in Section 6307 of the Public Resources Code) applicable to the Property, including any Claim or objection that might arise as a result of any City initiated validation/quiet title action in an effort to assist with the issuance a title policy for the Property that does not include a significant exception for the public trust, consistent with the City's obligations as set forth in Section 16.19 of this Agreement.

Section 13.2 Hazardous Materials Indemnification. The Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties from and against all third party suits, actions, claims, causes of action, costs, demands, judgments, liens damage, cost, expense or liability any Indemnified Party may incur directly or indirectly arising out of or attributable to any New Release, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Property or the Project, and the preparation and implementation of any closure, remedial or other required plans and (2) all reasonable costs and expenses incurred by Indemnified Parties in connection with clause (1) , including but not limited to reasonable attorneys' fees. In carrying out its obligations under this Section 13.2, the Developer may pursue any available remedy against the Navy or the insurer that has issued the Contractors Pollution Liability Policy or Real Estate Pollution Liability Insurance Policy required by Section 14.7. The City shall reasonably cooperate with the Developer in such pursuit. The defense, hold harmless and indemnity obligations contained in this Section 13.2 shall not extend to any claim arising solely from any Indemnified Party's gross negligence or willful misconduct. The Developer's obligation to indemnify, defend and hold harmless under this Section 13.2 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action. If the Developer effectuates a Transfer permitted pursuant to Article 10 in the manner required by Article 10, then the transferring Developer shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the Transfer.

Section 13.3 No Limitations Based Upon Insurance. The indemnification, defense and hold harmless obligations of the Developer or City under this Article 13 and elsewhere in this Agreement (sometimes collectively, the "**Indemnification Obligations**") shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which the Developer or City is required to carry under this Agreement. In claims against any of the Indemnified Parties by an employee of the Developer, or anyone directly or indirectly employed by the Developer or anyone for whose acts the Developer may be liable, the Indemnification Obligations shall not be limited by amounts or types of damages, compensation or benefits payable by or for the Developer or anyone directly or indirectly employed by the Developer or anyone for whose acts the Developer may be liable.

ARTICLE 14.
INSURANCE REQUIREMENTS

Section 14.1 Required Insurance Coverage. Except as otherwise provided in Section 14.11, during the Term the Developer shall maintain or cause to be maintained and kept in force, at the sole cost and expense of the Developer or the Contractors the insurance applicable to the Project and required under this Article 14.

Section 14.2 Comprehensive General Liability Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, comprehensive general liability insurance in an amount not less than Four Million Dollars ($4,000,000) with limits not less than Four Million Dollars ($4,000,000) each occurrence combined single limit for bodily injury and property damage, including premises operations, underground and collapse, completed operations, contractual liability, independent contractor's liability, broad form property damage and personal injury, and Ten Million Dollars ($10,000,000) general aggregate limit covering, without limitation, all liability to third parties arising out of or related to the Developer's performance of its obligations under this Agreement or other activities of the Developer at or about the Property and the Project, including, without limitation, the Developer's obligations under Section 13.1. Such insurance in excess of Four Million Dollars ($4,000,000) may be covered by a so-called "umbrella" or "excess coverage" policy.

Section 14.3 Vehicle Liability Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, vehicle liability insurance in an amount not less than Two Million Dollars ($2,000,000) (combined single limit) including any automobile or vehicle whether hired or owned by the Developer.

Section 14.4 Workers' Compensation Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, workers' compensation insurance in an amount not less than the statutory limits in accordance with Article I of Chapter 4 of Part I of Division 4 of the California Labor Code.

Section 14.5 Personal Property and Property Insurance. Developer shall maintain in full force throughout the Term, property insurance covering all of its personal property, furniture, furnishings, trade fixtures, and equipment from time to time located in, on, or upon the Property for 100% of the replacement value from time to time during the Term, providing protection against all perils, included within the standard form of "all-risk" (i.e., "Special Cause of Loss") fire and casualty insurance policy, with deductible, if any, reasonably acceptable to the City Risk Manager. Additionally, after conveyance of any portion of the Property to the Developer and continuing through the Term, the Developer shall maintain or cause to be maintained and kept in force, property insurance covering all real property conveyed to Developer and the Vertical Improvements, in form appropriate for the nature of such property, for 100% of the replacement value from time to time during the Term, providing protection against all perils, included within the standard form of "all-risk" (i.e., "Special Cause of Loss") fire and casualty insurance policy, with deductible, if any, reasonably acceptable to the City Risk Manager.

Section 14.6 Construction Contractor's Insurance. The Developer shall cause the General Contractor to maintain insurance of the types and in at least the minimum amounts described in Sections 14.2 (exclusive of the cross-reference to Section 13.1), 14.3, and 14.4, and shall require that such insurance shall meet all of the general requirements of Sections 14.8 and 14.9. Except with respect to construction of tenant improvements, the Developer shall also cause the General Contractor to obtain and maintain Contractor's Pollution Liability Insurance covering the General Contractor and all subcontractors for claims and cleanup costs arising from known and unknown pre-existing pollution conditions exacerbated or disturbed by Contractor's activities on the site and new pollution conditions released by the General Contractor or its subcontractors on, at, under, or from the property on which the General Contractor or its subcontractors are performing work in an amount of not less than Ten Million Dollars ($10,000,000) with a maximum

deductible of One Hundred Thousand Dollars ($100,000) with coverage continuing for ten years after completion of construction, to the extent such coverage is reasonably available.

Section 14.7 Pollution Liability Insurance Policy.

(a) As a condition precedent to any conveyance or issuance of a Right of Entry for Commencement of construction of a Market Rate Infrastructure Phase, the Developer shall procure to the reasonable satisfaction of Developer and the City, at its cost, a real estate environmental liability insurance policy (a "**Real Estate Pollution Liability Insurance Policy** or **"Pollution Liability Insurance Policy"**") covering pre-existing conditions with a term of at least ten (10) years and new conditions with at least a five (5) year term that names the Developer as the named insured with the right to control the policy, and the City as an additional insured. The Real Estate Pollution Liability Insurance Policy shall cover only the Property, and not the RESHAP Property, the location of any Site A improvements, or other areas outside the Property, and shall meet the requirements of Section 14.9(e), shall include a Twenty Million ($20,000,000) policy per claim and in the aggregate coverage limit and a maximum deductible of Two Hundred Fifty Thousand Dollars ($250,000) or other amount reasonably agreed by the City, and shall provide the following types of coverage, to the extent such coverage is commercially available:

(1) Pollution Legal Liability for claims by third parties;

(2) On-Site and Off-Site Clean-Up Costs arising from unknown pre-existing and new pollution conditions released on, at, under, or from the insured property;

(3) Non-Owned Disposal Site;

(4) In-Bound and Out-Bound Contingent Transportation;

(5) Legal Defense Expense; and

(6) Business Interruption for Developer, including soft-costs and construction delays

(b) The Developer shall confer with and consider in good faith the input of the City in connection with procurement of a Real Estate Pollution Liability Insurance Policy. The Developer shall pay the premiums and any other costs of procuring the Real Estate Pollution Liability Insurance Policy, and any required deductible amount to activate the insurance in the event of a claim.

(c) Nothing in this Agreement shall preclude or prevent the Developer from seeking and applying proceeds from claims made under the Real Estate Pollution Liability Insurance Policy toward costs of remediation of Hazardous Materials provided, however, that the Developer shall be solely responsible for the payment of any deductible and other costs in connection with procuring such proceeds.

(d) Developer shall make commercially reasonable efforts to renew the Real Estate Pollution Liability Insurance Policy for one additional ten (10) year term prior to expiration of the Real Estate Pollution Liability Insurance Policy, unless the initial Real Estate Pollution Liability Insurance Policy has a fifteen (15) year term for pre-existing conditions.

(e) Notwithstanding any provision of this Agreement to the contrary, this Section 14.7 and the Real Estate Pollution Liability Insurance Policy requirements set forth herein shall not apply to any work performed by Developer outside the boundaries of the Property or any Right of Entry issued for work outside of the boundaries of the Property (i.e., this Section 14.7 shall not apply with respect to any Right of Entry for RESHAP Infrastructure Phase 1, RESHAP Infrastructure Phase 2, any portion of the Site A Improvements, or any other off-site work, including streets located outside of the boundaries of the Property).

Section 14.8 General Insurance Requirements. With the exceptions of the Real Estate Pollution Liability Insurance Policy, the insurance required by this Article 14 shall be provided under an occurrence form, and the Developer shall maintain (or cause to be maintained) such coverage continuously throughout the Term of this Agreement (except for the General Contractor's insurance requirement set forth in Section 14.6, which shall be maintained until the Developer is entitled to issuance of a Vertical Phase Certificate of Completion for the applicable Phase and the Pollution Liability Insurance Policy, which shall be maintained as specified in Section 14.7). Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be two and one-half (2.5) the occurrence limits specified above.

Section 14.9 Additional Requirements. The insurance policies required pursuant to this Article 14 (other than Workers' Compensation insurance) shall be endorsed to name as additional insureds the City and its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers (the "**Additional Insureds**"). All insurance policies shall contain:

(a) if commercially available, an agreement by the insurer to give the City at least thirty (30) days' notice (ten (10) days' notice for non-payment of premium) prior to cancellation or any material change in said policies;

(b) except with respect to the Pollution Liability Insurance Policy, an agreement by the insurer that such policies are primary and non-contributing with any insurance that may be carried by the City. For the Pollution Liability Insurance Policy, the policy shall contain an agreement by the insurer that, upon acquisition of any portion of the Property by the Developer, with respect to the portion of the Property so acquired, the Pollution Liability Insurance Policy is primary and non-contributing with any insurance that may be carried by the City for environmental conditions at, on or under acquired Property;

(c) a provision that no act or omission of the Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained by the Additional Insureds up to applicable policy limits; and

(d) a waiver by the insurer of all rights of subrogation against the Additional Insureds in connection with any claim, loss or damage thereby insured against.

(e) all insurance companies providing coverage pursuant to this Article 14, shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A. M. Best's rating of not less than "A:VII".

Section 14.10 Certificates of Insurance. Upon the City Risk Manager's request, the Developer shall provide certificates of insurance to the City Risk Manager, in form and with insurers reasonably acceptable to the City Risk Manager, and/or insurance policies including all endorsements, evidencing compliance with the requirements of this Section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the Additional Insureds as additional insureds.

Section 14.11 Alternative Insurance Compliance. During such time that a Permitted Mortgagee imposes insurance requirements that are inconsistent with the requirements set forth in Article 14, the Developer may satisfy the insurance requirements of this Article 14, other than the Real Estate Pollution Liability Insurance Policy by meeting the requirements of such Permitted Mortgagee; provided that Developer shall provide at least five (5) Business Days prior written notice to the City specifying: (x) the nature of the inconsistency; (y) a statement that there is no commercially reasonable way for the Developer to comply with **both** the City's and Permitted Mortgagee's insurance requirement; and (z) the alternative insurance requirement the Developer intends to comply with.

ARTICLE 15.
DEFAULT AND REMEDIES

Section 15.1 Application of Remedies. This Article 15 shall govern the Parties' rights to terminate this Agreement and the Parties' remedies for breach or failure under this Agreement.

Section 15.2 No Fault of Parties.

(a) Bases For No Fault Termination. The following events under Section 15.2(a) below shall constitute a basis for the applicable Party to terminate this Agreement without the fault of the other Party:

(1) if despite the responsible Party's good faith and diligent efforts, a condition precedent set forth in Section 4.4 for the conveyance of a Phase or a condition precedent in Section 5.3 for the Commencement of a Phase, as applicable, is not satisfied or, when applicable, waived by the benefitting Party, prior to the date for such satisfaction/waiver (as such date may be extended pursuant to this Agreement), unless such failure is caused by the default of a Party, in which case Section 15.3 or 15.4 shall apply, as applicable.

(2) if Developer elects not to Commence, or does not Commence, Construction of a Market Rate Phase 1 by the applicable Milestone Schedule deadline and the applicable portion of the Property has not been conveyed to the Developer (as the same may be extended by this Agreement).

(b) Termination Notice; Effect of Termination. Upon the happening of an event described in Section 15.2(a)(1) or (2), either Party ("**Notifying Party**") shall have the right to provide written notice to the other of such event (a "**No Fault Termination Event Notice**"). Upon receipt thereof, the Parties shall meet and attempt to in good faith to satisfy the applicable condition or otherwise resolve the matter giving rise to such event. If notwithstanding such good faith efforts the Parties are unable to so satisfy such condition or resolve such matter within two hundred seventy (270) days of the delivery of such No Fault Termination Event Notice, then the Notifying Party may elect to terminate this Agreement by written notice to the other Party. Following a

termination pursuant to Section 15.2(a)(1), this Agreement shall continue with respect to the portions of the Property that have previously been conveyed to, or for which a Right of Entry for the Commencement of Construction of a Phase pursuant to Section 5.2 has previously been entered into with, Developer or any Vertical Developer, and the Developer or any Vertical Developer shall have the right to carry out and complete such Phases and Subphases within the time periods provided for in the Milestone Schedule after taking into account extensions permitted by this Agreement.

Upon a termination pursuant to this Section 15.2(b), any costs incurred by a Party in connection with this Agreement and the Project shall be completely borne by such Party and neither Party shall have any rights against or liability to the other, except with respect to:

(1) any payments made by the Developer to the City prior to the termination pursuant to Article 2 shall remain the property of the City;

(2) the delivery of the Plans, Specifications, Permits and Approvals as set forth in Section 15.7, subject to the City's payment for the same in accordance with Section 15.7;

(3) the obligation of the City to pay Developer under the Disbursement Agreement;

(4) the obligation of the Developer to make the RESHAP Phase 1 Payment, but only if Developer has elected to Commence Construction of Market Rate Infrastructure Phase 1 and is therefore required to make the RESHAP Phase 1 Payment; and

(5) the survival of certain terms of this Agreement as provided in Section 15.9.

Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether an event described in Section 15.2(a)(1) or (2) has occurred, then this Agreement shall not terminate until a court of competent jurisdiction determines that an event described in Section 15.2(a)(1) or (2) has occurred.

Section 15.3 Fault of City.

(a) City Event of Default. Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a "**City Event of Default**":

(1) The City fails to convey the Property or any portion thereof within the time and in the manner specified in Article 4 and the Developer is otherwise entitled to such conveyance.

(2) The City fails to enter into a Right of Entry for Commencement of Construction for a Phase within the time and in the manner specified in Article 5 and the Developer is otherwise entitled to such Right of Entry.

(3) The City breaches any other material provision of this Agreement.

(4) The material breach of any of the City's representations or warranties set forth in this Agreement.

(b) Notice and Cure; Remedies. Upon the happening of an event described in Section 15.3(a), the Developer shall first notify the City in writing of its purported breach or failure. The City shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the City has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, the City shall have such longer period of time as may reasonably be necessary to cure the breach or failure, provided, however, in any event the breach or failure must be cured within one hundred twenty (120) days; provided that such period shall be extended to two hundred seventy (270) days if Developer has elected to terminate this Agreement as a result of such breach. Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the City has caused a breach or failure of performance of this Agreement, then the City shall not be deemed to have caused such breach or failure of performance until the City has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement. If the City does not cure within the applicable cure period set forth above, then the event shall constitute a City Event of Default, and the Developer shall be entitled to the following rights and remedies:

(1) Prior to First Infrastructure Phase Closing or Right of Entry. With respect to a City Event of Default occurring prior to the first Infrastructure Phase Closing or prior to the Right of Entry for Commencement of Construction of the first Market Rate Infrastructure Phase, the Developer shall be entitled to: (i) terminate in writing this entire Agreement, (ii) seek specific performance of this Agreement against the City and/or (iii) exercise any other remedy against the City permitted by law, equity, or under this Agreement, provided, however in no event shall the Developer be entitled to seek or receive consequential damages.

(2) After First Infrastructure Phase Closing or Right of Entry. With respect to a City Event of a Default that occurs after first Infrastructure Phase Closing or Right of Entry for Commencement of Construction for the first Market Rate Infrastructure Phase, the Developer shall be entitled to: (i) terminate this Agreement with respect to the portions of the Property that have not yet been conveyed to, or for which a Right of Entry for Commencement of Construction of a Phase has not been entered into with, Developer, (ii) seek specific performance of this Agreement against the City; and/or (iii) exercise any other remedy against the City permitted by law, equity, or under this Agreement, provided, however in no event shall the Developer be entitled to seek or receive consequential damages.

Section 15.4 Fault of Developer.

(a) Developer Event of Default. Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a "**Developer Event of Default**":

(1) The Developer (or the Vertical Developer if applicable) refuses for any reason (including, but not limited to, lack of funds) to accept conveyance from the City of the Property or any portion thereof within the time and in the manner specified in Article 4 other than a failure of a condition precedent set forth in Section 4.4(b) following Developer's election to Commence Construction of the applicable Phase.

(2) The Developer fails to meet the Major Milestone Date (as the same may be extended by this Agreement) with respect to conveyance of any portion of the Property as required by the terms of this Agreement following Developer's Commencement of Construction of the applicable Phase.

(3) The Developer fails to complete construction of a Phase after having commenced construction of such Phase for which it is responsible in the manner set forth in Articles 5 and 6 by the applicable Major Milestone Date deadline (as the same may be extended by this Agreement).

(4) The Vertical Developer that acquired an applicable Vertical Phase or Subphase fails to construct or cause the construction of the Vertical Improvements, the Moderate Income Units and the Affordable by Design Units, as applicable, to be located on such Vertical Phase or Subphase in accordance with Article 7 by the time period for completion of such Vertical Phase pursuant to the Milestone Schedule (as the same may be extended by this Agreement).

(5) The Developer fails to pay the RESHAP Phase 1 Payment when due, provided that Developer has become obligated to pay the RESHAP Phase 1 Payment pursuant to Section 5.15.

(6) The Developer completes a Transfer except as permitted under Article 10.

(7) The Developer breaches any material provision of this Agreement.

(8) Any representation or warranty of the 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 incorrect.

(9) A court having jurisdiction shall have made or entered any decree or order: (A) adjudging the Developer to be bankrupt or insolvent, (B) approving as properly filed a petition seeking reorganization of the Developer seeking any arrangement for the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (C) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of their properties, or (D) directing the winding up or liquidation of the Developer, if any such decree or order described in clause (A) to (D), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days.

(10) The Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a Security Financing Interest) 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, as applicable, is permitted for such cure under any Security Financing Interest, in which event such greater time period will apply.

(11) The Developer shall have been dissolved or terminated.

(b) Notice and Cure; Remedies. Upon the happening of any event described in Section 15.4(a), the City shall first notify the Developer in writing of its purported breach or failure. The Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the Developer has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure then the cure period shall be extended for such additional amount of time as is reasonably required to complete the cure provided, however, in any event the breach or failure must be cured within one hundred twenty (120) days; provided that such period shall be extended to two hundred seventy (270) days if the City has elected to terminate this Agreement as a result of such breach or has elected to exercise the remedies Section forth in 15.5 or 15.6 as a result of such breach. Notwithstanding the above cure period, a default described in (9), (10) and (11) of Section 15.4(a) shall constitute a Developer Event of Default immediately upon its occurrence without need for notice and without opportunity to cure (each a "**Non-Curable Event of Default**"). Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the Developer has caused a breach or failure of performance of this Agreement, then the Developer shall not be deemed to have caused such breach or failure of performance until the Developer has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement. If the Developer does not cure within the applicable cure period set forth above, then the event shall constitute a Developer Event of Default and the City shall be afforded all of the following rights and remedies:

(1) Prior to First Infrastructure Phase Closing or Right of Entry. With respect to a Developer Event of Default occurring prior to the first Infrastructure Phase Closing or prior to having entered into a Right of Entry for Commencement of Construction for the first Market Rate Infrastructure Phase, the City shall be entitled to terminate in writing this entire Agreement and exercise the rights and remedies described in Section 15.7. The above remedies shall constitute the exclusive remedies of the City for a Developer Event of Default occurring prior to the Closing or Right of Entry for the Commencement of Construction is entered into on the first Infrastructure Phase.

(2) Between First Infrastructure Phase Closing and Certificate of Completion. With respect to a Developer Event of Default occurring after the Commencement of construction of Market Rate Infrastructure Phase 1, but prior to the date the Developer is entitled to issuance of a Vertical Phase Certificate of Completion for the applicable Phase of the Project, the City shall be entitled to:

(A) With respect to any portion of the Property that the City has not yet conveyed to, or for which a Right of Entry for Commencement of Construction of a Phase has not been entered into with, Developer terminate in writing this Agreement;

(B) With respect to any portion of the Property that the City conveyed to Developer and is then owned by Developer or for which a Right of Entry for Commencement of Construction of a Phase has been entered into by Developer and City, (i) seek specific performance; (ii) exercise the rights and remedies described in Sections 15.5 and 15.6 (provided the remedies set forth in Section 15.5 and 15.6 shall not apply to any portion of Property for which an Infrastructure Phase Certificate of Completion has been issued or for which Developer is entitled to the issuance of an Infrastructure Phase Certificate of Completion);

provided that such right shall only apply to the Phase or Phases of the Property to which the Developer Event of Default applies; and/or (iii) recover damages against the Developer for the applicable Developer Event of Default, subject to the limitation on such damages set forth in this Agreement.

Section 15.5 Right of Reverter/Power of Termination. If the City exercises its rights under this Section 15.5 pursuant to Section 15.4(b)(2)(B)(ii) as to a Phase following the Closing of such Phase or following a Right of Entry for Commencement of Construction being entered into by Developer and the City with respect to such Phase (the "**Subject Phase**") and prior to the time when the Subject Phase is conveyed to a Vertical Developer (or the Vertical Developer has the right to such conveyance and is ready, willing and able to accept conveyance of the Subject Phase but for a failure of a condition in Section 4.4(b)), then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of the Subject Phase (such Subject Phase meeting the foregoing criteria, the "**Revested Parcel**") with all improvements on the Revested Parcel, and revest in the City the Revested Parcel. For the avoidance of doubt, the City's rights under this Section 15.5 shall terminate and be of no further force and effect upon the earlier of (i) the date the Subject Phase is conveyed to a Vertical Developer, or (ii) the date the Vertical Developer has the right to such conveyance and is ready, willing and able to accept conveyance of the Subject Phase but for a failure of a condition in Section 4.4(b)).

(a) Such right of reverter shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(1) Any Security Financing Instrument with respect to the Revested Parcel; or

(2) Any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Revested Parcel, provided that the holder has elected to complete the Project in a manner provided in this Agreement.

(b) Upon revesting in the City of title or possession to the Revested Parcel as provided in this Section 15.5 (which in the case of a Right of Entry shall mean the termination of such Right of Entry), the City shall, in a commercially reasonable manner resell the Revested Parcel to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Project on the Revested Parcel or such other improvements acceptable to the City. Upon such resale of the Revested Parcel, the proceeds thereof shall be applied as follows:

(1) First to reimburse the City for all costs and expenses incurred by the City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture, management, and resale of the Revested Parcel (but less any income derived by the City from any part of the Revested Parcel in connection with such management); all taxes, installments of assessments payable prior to resale, and water and sewer charges with respect to the Revested Parcel; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Revested Parcel at the time of revesting of title in the City which were imposed by Developer or to discharge or prevent from attaching or being made any subsequent encumbrances or liens on the Revested Parcel due to obligations, defaults, or acts of the Developer; expenditures made or obligations incurred with respect to the making or completion of the

improvements on the Revested Parcel or any part thereof; and any amounts otherwise owing the City with respect to the Revested Parcel by the Developer pursuant to this Agreement.

(2) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to any Development Costs incurred by the Developer for the benefit of the Revested Parcel (including, without limitation, Development Costs to carry out the Infrastructure Package improvements for the benefit of such Revested Parcel, and any costs associated with the in tract improvements installed for the Revested Parcel but only if a successor developer elects to use those in tract improvements and not demolish the in tract improvements), less any gains or income withdrawn or made by the Developer from the Revested Parcel or the improvements thereon.

(3) Any balance remaining after such reimbursements shall be retained by the City as its property.

The rights established in this Section 15.5 are to be interpreted in light of the fact that the City will convey the Property to the Developer for development and not for speculation.

Section 15.6 Option to Repurchase, Reenter and Repossess.

(a) If the City exercises its rights under this Section 15.6 pursuant to Section 15.4(b)(2)(B)(ii) as to a Subject Phase, then the City shall have the option ("**Option**") to repurchase, reenter, and take possession of the Subject Phase prior to the time when the Subject Phase is conveyed to a Vertical Developer (or the Vertical Developer has the right to such conveyance and is ready, willing and able to accept conveyance of the Subject Phase but for a failure of a condition in Section 4.4(b)). For the avoidance of doubt, the City's rights under this Section 15.6 shall terminate and be of no further force and effect upon the earlier of (i) the date the Subject Phase is conveyed to a Vertical Developer, or (ii) the date the Vertical Developer has the right to such conveyance and is ready, willing and able to accept conveyance of the Subject Phase but for a failure of a condition in Section 4.4(b)).

(b) Such right to repurchase, reenter, and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit any Security Financing Instrument with respect to the Property; or any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Property.

(c) To exercise its right to repurchase, reenter and take possession with respect to the Subject Phase, the City shall pay to the Developer in cash an amount equal to the Development Costs incurred by Developer for the benefit of the Subject Phase (including, without limitation, Development Costs to carry out the Infrastructure Package improvements for the benefit of such Subject Phase, and any costs associated with the in tract improvements installed for the Subject Phase but only if a successor developer elects to use those in tract improvements and not demolish the in tract improvements), less any gains or income withdrawn or made by the Developer from the portion of the Property subject to the Option, less the amount of any liens or encumbrances on the portion of the Property subject to the Option which have been imposed by Developer and which the City assumes or takes subject to, less any actual damages that the City has incurred under this Agreement by reason of the Developer Event of Default.

Section 15.7 Plans, Data and Approvals. If this Agreement is terminated pursuant to Section 15.2, or Section 15.4, then provided that City firsts pay to Developer the actual costs and expenses Developer incurred for the Plans, Specifications, Permits and Approvals (as defined below), Developer shall promptly deliver to the City copies of all plans and specifications for the Project (subject to being released by any architects or engineers possessing intellectual property rights), all permits and approvals obtained in connection with the Project, and all applications for permits and approvals not yet obtained but needed in connection with the Project (collectively, the "**Plans, Specifications, Permits and Approvals**"), in each case subject to the rights of third parties and without representation or warranty as to accuracy, reliability, completeness, and/or assignability, and without liability or recourse to Developer. Notwithstanding the foregoing or any provisions of this Agreement to the contrary, the right of City to copies of all plans and specifications for the Project, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit any Security Financing Instrument with respect to the Property; or any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Property.

Section 15.8 Limitation on Damages. Notwithstanding anything to the contrary, neither Party shall have any liability hereunder for any consequential, indirect, or punitive damages.

Section 15.9 Survival. Upon termination of this Agreement under this Article 15, those provisions of this Agreement that recite that they survive termination of this Agreement shall remain in effect and be binding upon the Parties notwithstanding such termination.

Section 15.10 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 15.11 Rights and Remedies of and against Developer and Transferees. Notwithstanding anything herein to the contrary: (i) the rights and remedies of Developer against the City, including, without limitation, any right to terminate this Agreement, shall only apply to those portions of the Property and the Project which have not yet been conveyed to a Vertical Developer and the rights and remedies of any Vertical Developer against the City, including, without limitation, any right to terminate this Agreement, shall only apply to those portions of the Property or Project conveyed to such Vertical Developer and (ii) the rights and remedies of the City against the Developer or any Vertical Developer shall be subject to the provisions of Section 10.6(c).

ARTICLE 16.
GENERAL PROVISIONS

Section 16.1 Notices, Demands and Communications. Method. Any notice or communication required hereunder to be given by the City or the Developer shall be in writing and shall be delivered by each of the following methods: (1) electronically (e.g., by e-mail delivery); and (2) either personally, by reputable overnight courier, or by registered or certified mail, return receipt requested. Notwithstanding the time of any electronic delivery, the notice or communication shall be deemed delivered as follows:

(1) If delivered by email or by registered or certified mail, the notice or communication shall be deemed to have been given and received on the first to occur of: (A) actual receipt by any of the addressees designated below as a party to whom notices are to be sent; or (B) five (5) days after the registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If delivered personally or by overnight courier, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed.

(2) Either Party may at any time, by giving ten (10) days' prior written notice to the other Party pursuant to this Section, designate any other address in substitution of the address to which such notice or communication shall be given.

(b) Addresses. Notices shall be given to the Parties at their addresses set forth below:

If to the City to:
City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager
Telephone: 510-747-4700
Facsimile: 510-865-1498
Email: citymanager@alamedaca.gove

With a copy to:
City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney
Telephone: 510-747-4752
Facsimile: 510-865-4028
Email: cityattorney@alamedacityattorney.org

With a copy to:
City of Alameda
Alameda City Hall
2263 Santa Clara Avenue
Alameda, CA 94501
Attention: Base Reuse Manager
Facsimile: 510-865-4028
Email: athomas@alamedaca.gov

If to Developer to:
Catellus Development Corporation
2000 Powell Street, Suite 500
Emeryville, CA 94608
Attn:
Email:
Telephone:

And

Brookfield Bay Area Holdings LLC
12657 Alcosta BLVD, Suite 250
San Ramon, CA 94583
Attn: President – Josh Roden
Email: Josh.roden@brookfieldpropertiesdevelopment.com
Telephone: (925) 743-8000

With copies to: Cox Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Attn: Mathew A. Wyman
Email: mwyman@coxcastle.com
Telephone: (415) 262-5166

(c) Special Requirement. 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 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.

Section 16.2 Non-Liability of Officials, Employees and Agents. No City elected or appointed official, board member, commission, officer, employee, attorney, agent, volunteer or their respective successors and assigns shall be personally liable to the Developer, or any successor in interest, in the event of a City Event of Default. No direct or indirect principal, member, partner, shareholder, officer, director, employee, attorney or agent of Developer or their respective successors and assigns shall be personally liable to the City, or any successor in interest, in the event of a Developer Event of Default or for any amount which may become due to the City or such successor or on any obligation under the terms of this Agreement.

Section 16.3 Time of the Essence. Time is of the essence in this Agreement.

Section 16.4 Title of Parts and Sections. Any titles of the Sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any of its provisions.

Section 16.5 Applicable Law; Interpretation. This Agreement shall be interpreted under the laws of the State of California. This Agreement shall be construed in accordance with its fair meaning, and not strictly for or against either Party. This Agreement has been reviewed and revised by counsel for each Party, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

Section 16.6 Severability. If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force.

Section 16.7 Legal Actions. Any legal action under this Agreement shall be brought in the Alameda County Superior Court or the United States District Court for the Northern District of California. In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee, or beneficiary

against any other party, beneficiary, or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail.

Section 16.8 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties, and the terms of this Agreement shall constitute covenants running with the land; provided, however, that there shall be no Transfer by the Developer except as permitted in Article 10. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

Section 16.9 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another. The City has not provided any financial assistance in connection with this Agreement or the Project, this Agreement constitutes an arms-length transaction, the Land Payment represents fair market value, and the City has not provided any other subsidies, fee waivers, or other special treatment.

Section 16.10 Provisions Not Merged With Quitclaim Deed. None of the provisions of this Agreement shall be merged by the Quitclaim Deed or any other instrument transferring title to any portion of the Property, and neither the Quitclaim Deed nor any other instrument transferring title to any portion of the Property shall affect this Agreement.

Section 16.11 Entire Understanding of the Parties. This Agreement and the Development Agreement and any subsequent agreements contemplated by this Agreement to be entered into by the Parties constitute the entire understanding and agreement of the Parties with respect to the conveyance of the Property and the development of the Project.

Section 16.12 Approvals.

(a) City Actions. Whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, 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 or his or her designee, without further approval by the City Council, and any such action shall be in writing, provided, however, any such actions that would extend a Major Milestone Date must be approved by the City Council.

(b) Standard of Approval. Whenever this Agreement grants the City or the Developer the right to take action, exercise discretion or make allowances or other determinations, the City or the Developer shall act reasonably and in good faith, except where a sole discretion standard is specifically provided.

Section 16.13 Authority of Developer. The persons executing this Agreement on behalf of the Developer do hereby covenant and warrant that:

(a) The Developer is a duly formed and existing limited liability company under the laws of the State of Delaware;

(b) The Developer is and shall remain in good standing and qualified to do business in the State of California;

(c) The Developer, has full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement;

(d) The execution and delivery of this Agreement were duly authorized by proper action of the Developer, and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions on the Developer's part contemplated by this Agreement, except as have been obtained and are in full force and effect;

(e) The persons executing this Agreement on behalf of the Developer have full authority to do so; and

(f) This Agreement constitutes the valid, binding and enforceable obligation of the Developer.

Section 16.14 Amendments. This Agreement may be amended only by means of a writing signed by the Parties, and pursuant to a ordinance approved by the City Council.

Section 16.15 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 16.16 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 of 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 a memorandum (individually, an "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

(a) Operating Memoranda that implement the provisions of this Agreement or that provide clarification to existing terms of this Agreement or revise Progress Milestone Dates may be executed on the City's behalf by its City Manager, or the City Manager's designee, without action or approval of the City Council, provided such Operating Memoranda do not change material terms of this Agreement or alter any Major Milestone Dates. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 16.14 and must be approved by ordinance of the City Council.

Section 16.17 Adverse Decisions. If as a result of any administrative or judicial interpretation or application of State, federal, or local requirements (collectively "Interpretation"),

this DDA or any provision hereof would subject the Project or the Developer to Project costs related to construction that are not included in the Preliminary Project Financing Plan submitted to the City ("Unintended Construction Costs"), such Interpretation shall not invalidate or render unenforceable any provision hereof; provided, however, that the Parties hereby agree that, in such event, at the election of Developer in its sole and absolute discretion, the Developer may waive any provision of this DDA that solely benefits the Developer that results in Unintended Construction Costs, provided, however, the Developer shall not be entitled to waive any provisions of this DDA that includes obligations of the Developer or that benefit the City and this DDA shall be reformed to remove any such provision waived by the Developer as though such provisions were never a part of the DDA, and, in lieu of such provision(s), the Parties shall consider amendments to this DDA to replace the provisions removed that are similar in terms to such removed provision(s) as may be possible and legal, valid, and enforceable but without resulting in the adverse impact, provided that such replacement provisions do not diminish any of the benefits of this DDA to the City, increase the obligations of the City, or result in a substantial change to the Project Approvals.

Section 16.18 Surplus Land Act.

The parties intend to proceed with second reading of the Ordinance approving this DDA only after receiving approval from the California Department of Housing and Community Development ("HCD"). Such HCD approval may take the form of an affirmative approval or a complete lack of objection/rejection/negative comment from HCD for a period of thirty (30) days after HCD's official receipt of the City's Surplus Land Act determination. If HCD rejects/objects to/negatively comments upon the City's determination that the Property is Exempt Surplus Land pursuant to the requirements of the California Surplus Land Act ("Exempt Surplus Land Act"), both Parties intend to make reasonable efforts, for a period not to exceed six months, to address the grounds for HCD's rejections/objections/negative comments of the City's determination and seek to obtain HCD approval for the City's determination that the Property is Exempt Surplus Land, during the which time the City will not submit the DDA Ordinance for second reading. If HCD maintains its rejections/objections/negative comments at the end of the six-month period, the parties intend and expect to abandon second reading, in favoring of otherwise fully complying with HCD's mandates and directions.

If third-party litigation is filed against the City and/or the Developer asserting failure to comply with the Surplus Land Act after HCD approval, Developer shall indemnify and defend (with counsel chosen by the City Attorney's Office and reasonably acceptable to the Developer) and hold harmless the Indemnified Parties against any such challenge, provided, however, the Developer's indemnification obligations herein shall not extend to any fines or monetary damages imposed upon the City pursuant to Government Code Section 54230.5(a) only to the extent the City may meet such fines or monetary damages obligations by transferring monies between City controlled funds as contemplated by Section 54230.5(a) as it exists as of the Effective Date, but shall include any and all other award of damages, fines, penalties, assessments, costs and/or attorneys' fees against the City. The Developer's obligation to indemnify, defend and hold harmless under this Section 16.18 shall survive termination of the DDA and shall be interpreted broadly so as to apply to all legal or administrative proceedings, arbitration, or enforcement actions. In the event that Developer fails to defend the City in accordance with this Section 16.18, the City shall have the right to terminate the DDA and recover from the Developer all costs incurred by the City regarding defense of any such challenge prior to the effective date of any such

termination and all award of damages, fines, penalties, assessments, costs and/or attorneys' fees against the City as specified above.

If a subsequent judicial decision invalidates this DDA pursuant to the Surplus Land Act, and only to the extent authorized by law, the City hereby grants the Developer a right of first offer (the "**ROFO**") with respect to any portion of the Property that is terminated from the this DDA by judicial mandate (the "**ROFO Property**"). The ROFO shall be subject and subordinate to the City's obligation to offer any portion of the ROFO Property to third parties pursuant to applicable law. Under the ROFO, and only to the extent authorized by law, the City shall provide the Developer with written notice of (a) its election to develop or dispose of any portion of the ROFO Property (each, an "Initial Notice") and (b) (i) final completion of its obligations under applicable law to provide notice to and, if applicable, negotiate with third party regarding the ROFO Property or (ii) the City's determination to proceed with the disposition of the ROFO Property pursuant to an exemption from the Surplus Land Act, including the basis for that exemption (each, a "**Disposition Notice**"). The Developer shall have thirty (30) days from the receipt of Disposition Notice to provide the City with written notice of the Developer's exercise of the ROFO with respect to such property (each, an "**Exercise Notice**"). If the Developer fails to timely deliver the Exercise Notice, the ROFO shall terminate with respect to the portion of the ROFO Property included in the applicable Disposition Notice.

If the Developer timely delivers the Exercise Notice for the Property, the Developer shall deliver a written offer with the respect to the ROFO Property no later than ninety (90) days after the Developer's receipt of the Disposition Notice for such Property (the "**Offer**") which offer shall include proposed use of the ROFO Property consistent with this Agreement and the Development Plan, with purchase consideration consistent with this Agreement, a proposed transaction timeline consistent with the Milestone Schedule adjusted to account for any delay as a result of the judicial mandate and either the City's obligations to offer the Property to third parties pursuant to applicable law or declare the ROFO Property "Exempt Surplus Land" in accordance with the Surplus Land Act; and any changes to the Project or this Agreement necessary to comply with any exemption pursuant to the Surplus Land Act, any other applicable law and judicial mandate. If the Developer fails to timely deliver the Offer, the ROFO for the ROFO Property shall terminate. If the Developer delivers an Offer, the parties shall negotiate exclusively and diligently to reform the terms of the DDA to address any delays in the Milestone Schedule with respect to the Property and the parties shall not unreasonably withhold their approval of the same. Provided that the Offer is consistent with the requirements of this Section and the parties reach agreement on the revisions to the Milestone Schedule and other revisions to the Project needed to comply with any Surplus Land Act exemption, the parties shall enter into an amendment to the Agreement and the Development Agreement to memorialize the Offer and the Agreement and Development Agreement, as amended shall be reinstated. If notwithstanding their reasonable efforts, the Parties cannot agree upon revisions to the Milestone Schedule and the project necessary to comply with any Surplus Land Act exemption within twelve (12) months of the City's receipt of the Offer, the ROFO for the Property shall terminate.

The provisions of this Section 16.18 shall survive the termination of this Agreement, to the extent authorized by law.

Section 16.19 Public Trust In the event that any title company issuing a Title Policy to Developer or any Vertical Developer in connection with the conveyance of the Property or any

portion thereof to Developer or any Vertical Developer would include any public trust or tidelands related exception in such Title Policy (including but not limited to any exception regarding the Naval Air Station Alameda Title Settlement and Exchange Agreement dated February 18, 2014, between the State Lands Commission and the City of Alameda (as amended) not having been subject to validation proceedings) (any such title exception or defect, a "**Trust Title Issue**"), the City shall use reasonable efforts and to the extent reasonably practicable, be responsible, at City's sole cost and expense, take all actions that are required to remove such exception from the Title Policy, including by providing and signing reasonable indemnity agreements required by a title company to remove such exception. Furthermore, until State legislation is enacted and validation proceedings are successfully commenced and concluded to resolve any Trust Title Issue to the reasonable satisfaction of Developer, the Milestone Schedule Expiration Date and Term shall be tolled during the pendency of any Trust Title Issue.

ARTICLE 17.
DEFINITIONS AND EXHIBITS

Section 17.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply:

(a) **"Additional Approvals-Horizontal"** shall have the meaning set forth in Section 5.5.

(b) **"Additional Approvals–Vertical"** shall have the meaning set forth in Section 6.3.

(c) "**Affiliated Purchaser**" means an entity which qualifies as a Developer Affiliate.

(d) "**Affordable Housing Cost**" means with respect to a Moderate Income Household, a monthly cost that does not exceed thirty percent (30%) of One Hundred Twenty Percent (120%) of the area median income adjusted for household size.

(e) "**Agreement**" means this Disposition and Development Agreement.

(f) **"Applicable Rate"** means the per annum interest rate equal to the lesser of (i) the Prime Rate plus one percent (1%) or (ii) 10%. For purposes of the Applicable Rate, Prime Rate shall mean the prime rate offered by Wells Fargo Bank, N.A. from time to time, or, if not available, Citibank, N.A., from time to time, or if not available, Bank of America, N.A., from time to time, in each case as published in the most recent Wall Street Journal, or if not available, then the comparable rate mutually selected by the Parties.

(g) "**Approved Construction Documents**" means the construction plans and specifications submitted by the Developer or Vertical Developer, as applicable, and approved by the City in connection with the City's grant of the necessary grading, demolition, building, and/or related permits for the Project, as applicable, together with any modifications thereto processed and approved, as appropriate, in accordance with applicable City ordinances, rules and regulations.

(h) "**Backbone Infrastructure**" means, with respect to each Phase, the infrastructure identified in the Infrastructure Package.

(i) "**Brookfield Parent**" shall mean, as the context requires, Brookfield Corporation, a corporation organized under the laws of the Province of Ontario, Canada (formerly known as Brookfield Asset Management Inc.) and/or Brookfield Asset Management Limited, a corporation organized under the laws of British Columbia, or any successor to any one or more Persons who succeeds, to all or substantially all of the business or assets of any of the foregoing.

(j) "**Business Day**" means a day on which the offices of the City are open to the public for business.

(k) "**Casualty**" means any damage or destruction to the Project in excess of One Hundred Thousand Dollars ($100,000), which amount shall be adjusted in accordance with increases in the "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" (hereinafter, "CPI-U"), as published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84 = 100)" (hereinafter, "CPI-W"), published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor, shall be used for making the computation. In the event the Bureau of Labor Statistics shall no longer maintain such statistics on the purchasing power of the U.S. consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority shall be used for making the computation.

(l) "**CDC Parent**" shall mean, as the context requires, Howell Mountain Ventures II, L.P., a Delaware limited partnership, or any successor to any one or more Persons who succeeds, to all or substantially all of the business or assets of the foregoing.

(m) "**CEQA**" means the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and all relevant state and local guidelines in connection therewith.

(n) "**Certificate of Completion**" means a certificate defined in Section 9.4.

(o) "**City**" means the City of Alameda, California, a municipal corporation. Those acting on behalf of the City may include the City Council, the City Planning Board, the City Manager and the City's boards, commissions, departments, employees and consultants.

(p) "**City Council**" means the Alameda City Council.

(q) "**City Event of Default**" has the meaning given in Section 15.3.

(r) "**City Manager**" means the Alameda City Manager or the City Manager's designee.

(s) "**City Released Parties**" has the meaning given in Section 4.7.

(t) "**Closing**" means the close of escrow through which the City will convey its fee estate or any portion thereof in each Phase or Vertical Subphase of the Property to the Developer or a Vertical Developer, as applicable.

(u) "**Commencement of Construction"** or "**Commencement of construction**" or **"Commenced**" shall mean the performance of any work on any Infrastructure Phase or Phase of Vertical Improvements on the Property including clearing, grading, or other preliminary site work; provided, however, "Commencement of Construction" or "Commencement of construction" or "Commenced" for each Infrastructure Phase shall have the meaning set forth below:

(1) Commencement of Market Rate Infrastructure Phase 1: The date that Developer starts rapid impact compaction ("RIC") and wick drain installation for Market Rate Infrastructure Phase 1 as shown on line 29 of the Milestone Schedule. (Note: Demolition and site preparation for Market Rate Infrastructure Phase 1 do not trigger "Commencement" of Market Rate Infrastructure Phase 1.)

(2) Commencement of Market Rate Infrastructure Phase 2: The date that Developer first starts any one of the following construction activities for Market Rate Infrastructure Phase 2: construction of the backbone street infrastructure for Market Rate Phase 2 Infrastructure Package as shown in line 38 of the Milestone Schedule, removal of previously placed surcharge, or placement of lightweight fill. (Note: Demolition, site preparation, RIC, wick drain installation, and soil import and surcharging for Market Rate Infrastructure Phase 2 do not trigger "Commencement" of Market Rate Infrastructure Phase 2.)

(3) Commencement of Market Rate Infrastructure Phase 3: The date that Developer first starts any one of the following construction activities: RIC and wick drain installation for Market Rate Infrastructure Phase 3C, as shown on line 49 of the Milestone Schedule, construction of backbone street infrastructure for the Market Rate Phase 3 Infrastructure Package, placement of lightweight fill or removal of previously placed surcharge from any portion of Market Rate Infrastructure Phase 3 (Note: Demolition and site preparation for Market Rate Infrastructure Phases 3A, 3B, 3C, and 3D, and RIC, wick drain installation, soil import and surcharging for Market Rate Infrastructure Phases 3A and 3B do not trigger "Commencement" of Market Rate Infrastructure Phase 3.)

(v) "**Commercial Element**" has the meaning given in Recital S.

(w) "**Completion Assurances**" means any payment and performance bonds, labor and materials bonds, or completion guarantees from the Developer or other persons or entities, irrevocable letters of credit, or other legal instruments providing assurances and remedies for the breach of a Public Improvement Agreement by the Developer.

(x) "**Contractors**" means, collectively, the General Contractor and any other contractors or subcontractors retained directly or indirectly by the Developer, Vertical Developer, or the General Contractor in connection with the construction of any Infrastructure Phase or Phase of the Vertical Improvements.

(y) "**Controlling Interest**" has the meaning provided in Section 10.1(b).

(z) "**CPI Increase**" means increases in the "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" (hereinafter, "CPI-U"), as published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI-U is discontinued, the "Consumer Price

Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84 = 100)" (hereinafter, "CPI-W"), published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor, shall be used for making the computation.

(aa) "**Day**" means calendar day unless otherwise specified.

(bb) "**DDA Memorandum**" means the memorandum of this Agreement, substantially in the form of the attached Exhibit E, to be recorded as provided in Section 1.1.

(cc) "**Developer**" means BC WEST MIDWAY LLC, a Delaware limited liability company, or any successor permitted pursuant to the terms of this Agreement.

(dd) "**Developer Affiliate**" means an entity in which either or both Brookfield Parent or CDC Parent holds directly or indirectly (1) ten percent (10%) or more of the profits, capital, or equity interest of such entity; and (2) the power to direct the day to day affairs or management of such entity subject to customary major decision approval rights and the exercise of customary rights and remedies including management removal rights.

(ee) "**Developer Parent**" mean either Brookfield Parent or CDC Parent.

(ff) "**Developer Event of Default**" has the meaning given in Section 15.4.

(gg) "**Development Agreement**" means that certain development agreement between the City and the Developer pursuant to Government Code Section 65864 approved on ___, 2023 pursuant to Ordinance No. _____.

(hh) "**Development Costs**" has the meaning set forth in Section 2.2.

(ii) "**Development Plan**" means the plan setting forth the parameters of the Project approved by the Planning Board on May 22, 2023, consistent with the Alameda Municipal Code Section 30-4.13 (j), the Planning Documents, and the Main Street Neighborhood Plan attached as Exhibit H hereto (provided that the phasing of the Phases and Subphases of the Project shall be as set forth in the Phasing Plan rather than as shown on the Development Plan).

(jj) "**DIR**" means the California Department of Industrial Relations.

(kk) "**EDC Agreement**" means the Memorandum of Agreement For the Conveyance of Portions of the Naval Air Station Alameda from the United States of America to the Alameda Reuse and Redevelopment Authority, dated as of June 6, 2000, as amended.

(ll) "**Effective Date**" has the meaning set forth in Section 1.1.

(mm) "**EIR**" has the meaning set forth in Recital K.

(nn) "**ENA**" means the Exclusive Negotiation Agreement entered into by the City and the Developer as of October 6, 2020.

(oo) "**Escrow Holder**" means the Pleasanton, California office of First American Title Insurance Company, or such other title company or qualified escrow holder upon

which the Parties may subsequently agree, with which an escrow shall be established by the Parties to accomplish the Closing as provided in Article 4 of this Agreement.

(pp) "**Financing Plan**" shall mean the Preliminary Project Financing Plan, as updated by the Phase Updates as such terms are defined in Section 3.1.

(qq) "**General Contractor**" means a licensed and experienced general contractor with which the Developer enters into a Construction Contract for the construction of the Project or a Phase.

(rr) "**Hazardous Materials**" means any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation, any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal, state or local laws, ordinances or regulations.

(ss) "**Hazardous Material Delay**" means delay caused by (1) the requirement by an environmental regulatory agency to perform investigation or remedial action beyond the segregation, characterization, and proper disposal (including reuse) required by any applicable Site Management Plan for any Hazardous Materials (A) not previously identified at the Property (based on information included in the Hazardous Materials Documents), (B) previously identified at the Property, but that are encountered in a previously unidentified location or in concentrations in excess of those previously identified (each based on information included in the Hazardous Materials Documents), except to the extent the Hazardous Materials are associated with an open Petroleum Program site (which are addressed in clause (2) below), or (C) encountered in the construction of any portion of the Infrastructure Package located outside of the Property boundaries; (2) the requirement by an environmental regulatory agency to perform investigation or remedial action beyond the preparation of work plans for additional sampling or investigation, the implementation of such approved work plans and the preparation of closure reports necessary to address or obtain closure for non-CERCLA Hazardous Materials located at the Property to the extent such investigation or remedial action is necessary to permit the land uses identified in the Development Plan; (3) the performance of investigation or remedial action for Hazardous Materials that are the result of a Regulatory Reopener; or (4) the investigation or remediation by the Navy of contaminants for which it is responsible, including, but not limited to, "emerging contaminants," such as per- and polyfluoroalkyl substances (which includes, but is not limited to, perfluorooctanoic acid ("**PFOA**") and perfluorooctanesulfonic acid ("**PFOS**")), or additional requirements on the management or disposition of such contaminants encountered during development activities.

(tt) "**Hazardous Materials Laws**" means any applicable federal, state or local laws, ordinances, or regulations related to any Hazardous Materials.

(uu) "**Incidental Migration**" means the non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of Hazardous Materials.

(vv) "**Inclusionary Housing Ordinance**" means City of Alameda Ordinance 2926, set forth in Section 30-16 (Inclusionary Housing Requirements for Residential Projects) of Chapter XXX (Development Regulations) of the Municipal Code.

(ww) "**Indemnification Obligations**" has the meaning given in Section 13.3.

(xx) "**Indemnified Parties**" means, collectively, the City, its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers and their successors and assigns.

(yy) **"Infrastructure Package**" means the infrastructure to be constructed as part of the Project as more specifically set forth in Exhibit G including, as required by the MIP, cost contributions to infrastructure. For the avoidance of doubt, such cost contributions include the Main Street Adaptation Cost Participation described in Section XII of the MIP as amended n August 2020.

(zz) "**Infrastructure Phase**" has the meaning given in Section 5.1.

(aaa) "**Land Payment**" has the meaning given in Section 2.1(a).

(bbb) "**Low Income Unit**" means the Residential Units in the RESHAP project that are affordable to and occupied by Low Income Households.

(ccc) "**Low Income Household**" means a household whose income does not exceed eighty percent (80%) of the area median income in Alameda County as annually estimated by the United States Department of Housing and Urban Development ("HUD") or such other low income limit as published by HUD.

(ddd) "**Major Milestone Dates**" means the dates identified as "Major Milestone" dates in the Milestone Schedule.

(eee) "**Market Rate Unit" or "Market Rate Residential Unit**" means any of the residential units in the Project that are not Moderate Income Units or Affordable by Design Units.

(fff) "**Milestone Schedule**" means the schedule for performance of various tasks and obligations under this Agreement that is attached as Exhibit F, and as may be modified from time to time pursuant or extended pursuant to the terms of this Agreement.

(ggg) "**Mitigation Measures**" means the mitigation measures set forth in the Mitigation Monitoring and Reporting Program that is attached as Exhibit D.

(hhh) "**MMR Program**" has the meaning set forth in Recital U and is attached as Exhibit D.

(iii) "**Moderate Income Household**" means households whose income does not exceed the moderate income limits applicable to Alameda City as published annually by HCD pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision). The term Moderate Income Household shall be read to include a Very Low Income Household and Low Income Household.

(jjj) "**Moderate Income Units**" means Residential Units which are affordable to and occupied by Moderate Income Households, and which may be for-sale Residential Units or a rental Residential Units. The parties contemplate that the Moderate Income Units may be constructed in multiple phases within the market rate residential developments.

(kkk) "**Operating Memorandum**" has the meaning given in Section 16.16.

(lll) "**Outside Phase Closing Date**" has the meaning given in Section 4.3.

(mmm)"**Outside Infrastructure Phase Commencement Date**" or "**Outside Phase Commencement Date**" shall mean those dates set forth in the Milestone Schedule identified as an "Outside Commencement Date" for an Infrastructure Phase.

(nnn) "**Outside Infrastructure Phase Completion Date**" or "**Outside Phase Completion Date**" shall mean those dates set forth in the Milestone Schedule identified as Outside Infrastructure Phase Completion Dates or Outside Phase Completion Dates.

(ooo) "**Permitted Exceptions**" has the meaning given in Section 4.6(a).

(ppp) "**Phase**" means either an Infrastructure Phase, a Vertical Phase or the Commercial Phase, as applicable.

(qqq) "**Phase 1 RESHAP Infrastructure Phase**" or "**RESHAP Infrastructure Phase 1**" means the RESHAP Infrastructure Phase described and depicted on Exhibit G attached hereto as the "Phase 1 RESHAP Infrastructure Phase".

(rrr) "**Phase 2 RESHAP Infrastructure Phase**" or "**RESHAP Infrastructure Phase 2**" means the RESHAP Infrastructure Phase described and depicted on Exhibit G attached hereto as the "Phase 2 RESHAP Infrastructure Phase".

(sss) "**Phasing Plan**" means the Phasing Plan attached as Exhibit C.

(ttt) "**Phase Construction Contract**" means a Construction Contract between the Developer and the General Contractor for construction of the Infrastructure Phase or any portion thereof, to the extent applicable.

(uuu) "**Pollution Liability Insurance Policy**" or "B" has the meaning given in Section 14.7.

(vvv) "**Project**" means the improvements to be constructed and developed by the Developer and Vertical Developers in accordance with this Agreement. The proposed Project is generally described in Recital S and will be more specifically set forth and depicted in the Development Plan and the Approved Construction Documents.

(www) "**Property**" has the meaning given in Recital N, and is more particularly described in the attached Exhibit A, and shown on the map of the Property attached hereto as Exhibit B.

(xxx) "**Public Improvement Agreement**" shall mean the Public Improvement Agreement or Subdivision Improvement Agreement for the Backbone Infrastructure or the in-tract infrastructure for each Phase substantially in the form attached as Exhibit M.

(yyy) "**Qualified Developer**" means a real property development entity that (i) in the reasonable judgment of the City is financially capable of performing the Developer's obligations under this Agreement and any other agreements related to the portion of the Property proposed to be Transferred; (ii) has experience developing residential projects (or mixed use and/or commercial projects with respect to the Commercial Phase), which projects are comparable to the development proposed for the portion of the Property proposed to be Transferred; and (iii) is able to demonstrate to the City's reasonable satisfaction that it has the experience and capability to develop a quality project on the portion of the Property proposed to be Transferred. Notwithstanding anything herein to the contrary, a Developer Affiliate and Affiliated Purchaser shall each be considered a Qualified Developer hereunder.

(zzz) "**Quitclaim Deed**" means the quitclaim deed by which the City will convey its fee estate in the Property to the Developer at the Closings. A form of the Quitclaim Deed is attached to this Agreement as Exhibit I.

(aaaa) "**Renewed Hope Settlement Agreement**" means that certain Settlement Agreement dated as of March 20, 2001, related to the *Renewed Hope Housing Advocates and Arc Ecology v. City of Alameda, et al*.

(bbbb) "**Residential Units**" has the meaning given in Recital S.

(cccc) "**Security Financing Interest**" has the meaning given in Section 11.1.

(dddd) "**Site A DDA**" means that certain Disposition and Development Agreement previously entered into by the City with Alameda Point Partners, LLC that provides the terms and conditions for the City to convey the Alameda Point-Site A property to Alameda Point Partners, LLC, dated as of August 6, 2015, as amended by that certain First Amendment to Disposition and Development Agreement for Alameda Point-Site A, dated as of February 8, 2017, and effective as of March 9, 2019, that Second Amendment to Disposition and Development Agreement for Alameda Point-Site A, dated as of July 19, 2017, that Third Amendment to Disposition and Development Agreement for Alameda Point-Site A, dated as of March 7, 2018, that Fourth Amendment to Disposition and Development Agreement for Alameda Point-Site A, dated as of October 10, 2018, that certain Fifth Amendment to Disposition and Development Agreement for Alameda Point-Site A, dated October 10, 2018, entered into by and between the City and Eden Housing, Inc., that certain Sixth Amendment to the Disposition and Development Agreement dated September 22, 2022, and as clarified by Operating Memoranda dated September 16, 2015, October 26, 2015, March 6, 2017, December 8, 2017, March 7, 2018 and July 25, 2019 and [_____], as such Disposition and Development Agreement may be further amended from time to time.

(eeee) "**Successor**" means, with respect to a Person or Persons, any successor to such Person or Persons who succeeds to all or substantially all of the business or assets of any of such Person or Persons.

(ffff) "**Supplemental Approvals**" means collectively the following City approvals related to and necessary for development of the Infrastructure Package on the applicable Phase consistent with this Agreement:

(1) a subdivision map;

(2) design review approval for the design of the parks included in the applicable Phase;

(3) Improvement Plans for the Backbone Infrastructure included in the Infrastructure Package for the applicable Phase;

(4) a grading permit and demolition permit;

(5) a Public Improvement Agreement for the Backbone Infrastructure in the applicable Phase; and

(6) will serve letters or other contracts from the utility companies providing utility services to the Property demonstrating that utility service is available for the applicable Phase.

(gggg) "**Term**" has the meaning given in Section 1.2.

(hhhh) "**Title Commitment**" means the title commitment attached hereto as Schedule 1 to Exhibit W.

(iiii) "**Title Policies**" has the meaning given in Section 4.8(b).

(jjjj) "**Main Street Neighborhood Plan**" means the Main Street Neighborhood Precise Plan for Alameda Point approved by the City Council on March 21, 2017, and all documents comprising the approval by the City of the Main Street Neighborhood Plan.

(kkkk) "**Transfer**" has the meaning given in Section 10.1.

(llll) "**Vertical Improvements**" shall mean for a particular Phase the buildings and other improvements (including horizontal improvements) specified for such Phase in the Development Plan other than the Backbone Infrastructure.

(mmmm) "**Vertical Phase**" has the meaning given in Section 5.1.

(nnnn) "**Vertical Subphase**" has the meaning given in Section 5.1.

(oooo) "**Very Low Income Unit**" means the Residential Units in the RESHAP project that are affordable to and occupied by Very Low Income Households.

(pppp) "**Very Low Income Household**" means a household whose income does not exceed fifty percent (50%) of the area median income for Alameda County as annually estimated by HUD or such other very low income limit as published by HUD.

Section 17.2 Exhibits. The following exhibits are attached to (or upon preparation will be attached to) and incorporated into this Agreement:

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Phasing Plan
Exhibit D	Mitigation Monitoring and Reporting Program
Exhibit E	Form of DDA Memorandum
Exhibit F	Milestone Schedule
Exhibit G	Infrastructure Package
Exhibit H	Development Plan
Exhibit I	Form of Quitclaim Deed
Exhibit J	Right of Entry
Exhibit K	General Assignment
Exhibit L	Bill of Sale
Exhibit M	Public Improvement Agreement
Exhibit N	City Disclosure Documents
Exhibit O-1	Notice of City Release of Environmental Claims
Exhibit O-2	Notice of Developer Release of Environmental Claims
Exhibit P-1	Fair Market Value Determination Process – Residential
Exhibit P-2	Fair Market Value Determination Process – Commercial
Exhibit Q	List of Navy Quitclaim Deeds and CRUPs
Exhibit R	Affordable Housing Covenant
Exhibit S	Intentionally Omitted
Exhibit T	RESHAP Phase I Payment Guaranty
Exhibit U	Arbitration Procedures
Exhibit V	Partial Assignment of DDA
Exhibit W	Title Commitment and Permitted Exceptions
Exhibit X	HOA Maintenance Map
Exhibit Y	Special Tax District Formation Procedures
Exhibit Z	RESHAP Phase 2 Completion Guaranty
Exhibit AA	Disbursement Agreement Terms

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In WITNESS WHEREOF, the Parties have signed this Disposition and Development Agreement on the dates indicated below.

CITY OF ALAMEDA

By: _____
Jennifer Ott, City Manager

Date: _____

Attest: **Recommended for Approval:**

_____ _____

Lara Weisiger, City Clerk

Approved as to Form:

_____

Assistant City Attorney

Authorized by City Council Ordinance No. _____

Signatures continue on next page

DEVELOPER:

BC WEST MIDWAY LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Exhibits:

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Phasing Plan
Exhibit D	Mitigation Monitoring and Reporting Program
Exhibit E	Form of DDA Memorandum
Exhibit F	Milestone Schedule
Exhibit G	Infrastructure Package
Exhibit H	Development Plan
Exhibit I	Form of Quitclaim Deed
Exhibit J	Right of Entry
Exhibit K	General Assignment
Exhibit L	Bill of Sale
Exhibit M	Public Improvement Agreement
Exhibit N	City Disclosure Documents
Exhibit O-1	Notice of City Release of Environmental Claims
Exhibit O-2	Notice of Developer Release of Environmental Claims
Exhibit P-1	Fair Market Value Determination Process - Residential
Exhibit P-2	Fair Market Value Determination Process - Commercial
Exhibit Q	List of Navy Quitclaim Deeds and CRUPs
Exhibit R	Affordable Housing Covenant
Exhibit S	Intentionally Omitted
Exhibit T	RESHAP Phase I Payment Guaranty
Exhibit U	Arbitration Procedures
Exhibit V	Partial Assignment of DDA
Exhibit W	Title Commitment and Permitted Exceptions
Exhibit X	HOA Maintenance Map
Exhibit Y	Special Tax District Formation Procedures
Exhibit Z	RESHAP Phase 2 Completion Guaranty
Exhibit AA	Disbursement Agreement Terms

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The Property referred to in the Agreement to which this Exhibit A is attached is situated in the State of California, Alameda County, City of Alameda and is described as follows:

EXHIBIT B

MAP OF THE PROPERTY

EXHIBIT C

PHASING PLAN

EXHIBIT D

MITIGATION MONITORING AND REPORTING PROGRAM

EXHIBIT E

FORM OF DDA MEMORANDUM

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: City Attorney City of Alameda 2263 Santa Clara Avenue Alameda, CA 94501 No fee for recording pursuant to Government Code Section 27383	

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memorandum") is made as of _____, 2023, by and between the City of Alameda (the "City"), and BC WEST MIDWAY LLC, a Delaware limited liability company (the "Developer"). This Memorandum confirms that the City and the Developer entered into that certain Disposition and Development Agreement, dated as of _____, 2023 (the "DDA"). The DDA sets forth certain rights and obligations of the City and the Developer with respect to conveyance, development, operation, maintenance and transfer of ownership interests in that certain real property in Alameda, California, described in the attached Attachment No. 1 (the "Property"). Such rights and obligations as set forth in the DDA constitute covenants running with the land and are binding upon the City, the Developer, and their respective permitted successors in interest under the DDA.

The DDA and this Memorandum shall terminate with respect to each Residential Unit and residential lot and each commercial unit and commercial lot developed on the Property, and such Residential Unit and residential lot and commercial unit and commercial lot shall be released and no longer be subject to the DDA and this Memorandum and all obligations and liabilities hereunder, and the transferees of such units and lots and their successors and assigns shall have no obligations or liabilities under the DDA and this Memorandum (including with respect to any obligations that survive the termination of the DDA), without any further action by City or Developer and without the execution or recordation of any further document, when a Certificate of Occupancy has been issued by the City for such unit or lot, as applicable.

The DDA and this Memorandum shall also terminate with respect to any portion of the Property that is dedicated to the City pursuant to the terms of an applicable public improvement agreement or subdivision improvement agreement, and such portion of the Property shall be released and no longer be subject to the DDA and this Memorandum and all obligations and liabilities hereunder (including with respect to any obligations that survive the termination of this Agreement), without any further action by City or Developer and without the execution and

recordation of any further document, at the time the City accepts the improvements for such portion of the Property.

The DDA and this Memorandum shall also terminate with respect to any portion of the Property that is conveyed or dedicated to any home owners association or property owners association and such portion of the Property shall be released and no longer be subject to this Agreement and all obligations and liabilities hereunder (including with respect to any obligations that survive the termination of this Agreement), without any further action by City or Developer and without the execution and recordation of any further document, at the time of such dedication or conveyance.

This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the DDA.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Disposition and Development Agreement this _____, 2023.

CITY:

CITY OF ALAMEDA,
a municipal corporation

By: _____
Jennifer Ott, City Manager

Approved as to Form:

_____
Len Aslanian
Assistant City Attorney

DEVELOPER:

BC West Midway LLC, a Delaware
Limited liability company

By: _____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

SIGNATURES MUST BE NOTARIZED

ATTACHMENT NO. 1 TO DDA MEMORANDUM

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT F

MILESTONE SCHEDULE

EXHIBIT G

INFRASTRUCTURE PACKAGE

EXHIBIT H

DEVELOPMENT PLAN

EXHIBIT I

FORM OF QUITCLAIM DEED

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: City Attorney City of Alameda 2263 Santa Clara Avenue Alameda, CA 94501 No fee for recording pursuant to Government Code Section 27383	

QUITCLAIM DEED

For valuable consideration, the receipt of which is hereby acknowledged, the City of Alameda, a municipal corporation (the "Grantor"), hereby grants to _____ (the "Grantee"), the real property (the "Property") more particularly described in Attachment A attached hereto and incorporated into this Quitclaim Deed (this "Quitclaim Deed") by this reference, and all existing improvements existing on the Property.

1. The Property is conveyed subject to the Disposition and Development Agreement entered into by and between Grantor and Grantee dated as of _____, 2023 (the "DDA"). Capitalized terms used, but not defined, in this Quitclaim Deed, shall have the meaning set forth in the DDA.

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that until Grantee is entitled to a Vertical Phase Certificate of Completion with respect to the Vertical Improvements constructed on the Property pursuant to Section 9.4 of the DDA, the Grantee shall devote the Property only to the uses specified in the DDA, or as otherwise approved in writing by the Grantor. Except as otherwise provided in Section 9.4 of the DDA, Grantee's entitlement to a Vertical Phase Certificate of Completion shall be a conclusive determination of the satisfaction and termination of the agreements and covenants in the DDA with respect to the construction and development obligations of the Grantee and its successors and assigns with respect to the Property.

3. The Grantee covenants and agrees, for itself and its successors and assigns that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sexual orientation, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee itself or any person claiming under or through it 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 in the Property and the Vertical Improvements thereon.

4. The Grantee represents and agrees that the Property will be used for the purposes set forth in the DDA. The Grantee further recognizes that in view of the following factors, the qualifications of the Grantee are of particular concern to the community and the Grantor:

(a) The importance of the development of the Property to the general welfare of the community; and

(b) 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 the Grantee or the degree thereof is for practical purposes a transfer or disposition of the Property.

(c) For the reasons stated above, the Grantee covenants, for itself and its successors and assigns, that until a Vertical Phase Certificate of Completion has been issued with respect to the Property, there shall be no Transfer in violation of the DDA.

(d) No voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under this Quitclaim Deed or the DDA except as expressly set forth in this Quitclaim Deed or the DDA.

5. The covenants contained in this Quitclaim Deed shall remain in effect until Grantee is entitled to a Vertical Phase Certificate of Completion with respect to the Property, except for the nondiscrimination covenants contained in Section 4 above which shall run with the land in perpetuity.

6. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Quitclaim Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust, or other financing or security instrument permitted by the DDA. However, any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise.

7. The covenants contained in this Quitclaim Deed shall be, without regard to technical classification or designation, legal or otherwise specifically provided in this Quitclaim Deed, to the fullest extent permitted by law and equity, binding for the benefit and in favor of and enforceable by the Grantor, its successor and assigns, and any successor in interest to the Property or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and such aforementioned parties shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other property proceedings to enforce the curing of such breach subject however to the limitations provided in the DDA. The covenants contained in this Quitclaim Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors, and such aforementioned parties.

8. **[NOTE: SECTION 8 SHALL NOT BE INCLUDED IN ANY QUITCLAIM DEED TO A VERTICAL DEVELOPER]** Subject to any rights or interests provided in the DDA for the protection of the holder of a Security Financing Interest with respect to the Property, the Grantor shall have the right, at its option, to reenter and take possession of the Property, as set forth in Section 15.5 of the DDA. Such right to reenter, repossess and revest shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any mortgage, deed of trust or other security instrument permitted by the DDA; and

(b) Any rights or interest provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments.

9. **[NOTE: SECTION 9 SHALL NOT BE INCLUDED IN ANY QUITCLAIM DEED TO A VERTICAL DEVELOPER]** Subject to any rights or interests provided in the DDA for the protection of the holder of a Security Financing Interest with respect to the Property, the Grantor shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of Section 9, including also the right to execute and record or file with the Recorder of the County written declaration of the termination of all rights and title of the Grantee, and its successors in interest and assigns, but in all cases on and subject to the terms and conditions of the DDA. Any delay by the Grantor in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that Grantor should not be constrained so as to avoid the risk of being deprived of or limited to the exercise of the remedy provided in this Section because of concepts of waiver, laches, or others), nor shall any waiver in fact made by the Grantor with respect to any specific default by the Grantee, its successors and assigns, be considered or treated as a waiver of the rights of the Grantor with respect to any other defaults by the Grantee, its successors and assigns, or with respect to the particular default except to the extent specifically waived. The Grantor's interest in the Property, as set forth in Section 9 and subject to the terms of Section 15.5 of the DDA, shall be a "power of termination" as defined in California Civil Code Section 885.010.

10. **[NOTE: SECTION 10 SHALL NOT BE INCLUDED IN ANY QUITCLAIM DEED TO A VERTICAL DEVELOPER**] On and subject to Section 15.6 of the DDA, the Grantor may at its option, in addition to other rights granted in the DDA, but subject to the terms and conditions of the DDA, including, without limitation, any rights or interests provided in the DDA for the protection of the holder of a Security Financing Interest with respect to the Property, repurchase, reenter and take possession of the Property as set forth in the DDA.

11. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Quitclaim Deed. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and not to include a tenant, lessee, easement holder, licensee, mortgagee, trustee,

beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property.

12. In the event there is a conflict between the provisions of this Quitclaim Deed and the DDA, it is the intent of the parties hereto and their successors in interest that the DDA shall control.

13. This Quitclaim Deed may be executed and recorded in two or more counterparts, each of which shall be considered for all purposes a fully binding agreement between the parties.

14. **NAVY QUITCLAIM DEED PROVISIONS** Prior to execution of this Quitclaim Deed, the applicable provisions from the Navy Quitclaim Deed or Deeds conveying the Property subject to this Quitclaim Deed will be incorporated herein.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Quitclaim Deed this _____ day of _____, 20____.

GRANTOR:

CITY OF ALAMEDA,
a California charter City

By: _____
Jennifer Ott, City Manager

Approved as to Form:

_____ _____

Senior Assistant City Attorney

GRANTEE:

SIGNATURES MUST BE NOTARIZED

ATTACHMENT 1

PROPERTY DESCRIPTION

The land referred to herein is situated in the State of California, County of Alameda, City of Alameda and is described as follows:

EXHIBIT J

RIGHT OF ENTRY

EXHIBIT K

FORM OF GENERAL ASSIGNMENT

GENERAL ASSIGNMENT
(Alameda Point West Midway, [Phase/Subphase])

THIS GENERAL ASSIGNMENT ("**Assignment**") is entered into the day of _____, 20__ (the "**Effective Date**"), by and between the CITY OF ALAMEDA, a California charter city (the "**City**"), and _____ ("**Developer**").

RECITALS

A. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2023, as amended, regarding the portion of Alameda Point commonly known as West Midway (the "**DDA**"). Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the DDA.

B. Pursuant to the DDA, the City is obligated, inter alia, to assign the following to the Developer and the Developer is obligated to accept the following from Assignor: (1) any and all permits, entitlements, rights, intangible property and/or privileges appurtenant or otherwise related to [Phase/Subphase] more particularly described on Schedule 1 attached hereto, including, without limitation, the EDC Agreement, (collectively, the "[**Phase/Subphase] ___ Intangible Property**").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment and Acceptance. Effective as of the Effective Date, (a) the City hereby assigns the [Phase/Subphase] ___ Intangible Property to the Developer and (b) the Developer hereby accepts the foregoing assignment.

2. Notice. From and after the Effective Date, the notices to be delivered with respect to the [Phase/Subphase] ___ Intangible Property shall be delivered to:

Developer:

With copies to:

With copies to:

3 Attorneys' Fees. If legal action is brought by either Party against the other for default under this Assignment or to enforce any provision herein, each Party shall bear their own attorney's fees, expert witness fees, and court costs and neither Party shall be entitled to recover attorneys' fees or costs from the other Party regardless of whether a Party is a prevailing party.

4. Entire Agreement. All attachments are incorporated herein by this reference, are an integral part of this Assignment, and will be read and interpreted together as a single document. This Assignment and the applicable provisions of the DDA set forth the complete, exclusive and final statement of the agreement between the parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties regarding such subject matter.

5. Counterparts. This Assignment may be executed in one or more counterparts by actual or electronic signature. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatory to the same counterpart.

6. Further Assurances. Each of the parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Assignment.

7. Miscellaneous. This Assignment shall be binding upon and inure to the benefit of the respective successors, assigns, personal representatives, heirs and legatees of the city and the Developer. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the Effective Date.

CITY:

CITY OF ALAMEDA,
a California charter city,

By: _____
Name: _____
Title: _____

DEVELOPER:

Schedule 1 to General Assignment

Legal Description of the Phase/Subphase

EXHIBIT L

FORM OF BILL OF SALE

BILL OF SALE

This **BILL OF SALE** is entered into as of , 202_ , by and between the CITY OF ALAMEDA, a California charter city (the "**City**"), and _____ ("**Developer**").

RECITALS

A. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2023, as amended, regarding the portion of Alameda Point commonly known as West Midway (the "**DDA**"). Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the DDA.

B. Pursuant to the DDA, the City is obligated to, inter alia, transfer the [Phase/Subphase] ___ Personal Property (defined below) to the Developer.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Transfer. In consideration of the portion of the Land Payment allocated to the [Phase/Subphase] and other provisions of this Bill of Sale, the City does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to the Developer the personal property listed in Exhibit 1 attached hereto (the "[**Phase/Subphase ____ Personal Property**"). The Developer hereby accepts the [Phase/Subphase] ___ Personal Property pursuant to the terms of this Bill of Sale.

2. City's Representations; As-Is Purchase; Waiver of Implied Warranties; Limitation of Liability.

The City hereby represents that the Phase Personal Property is free and clear of all liens and encumbrances.

The Developer acknowledges that the Developer has had the opportunity to inspect the [Phase/Subphase] _ Personal Property and, except as expressly set forth in Section 2.1, hereby agrees that the Developer is accepting the [Phase/Subphase] _____Personal Property in their "As-Is" condition.

Except as expressly set forth in Section 2.1, the Developer agrees that no other representations or warranties (express or implied) are made by the City, and any implied warranties of merchantability or fitness for a particular purpose are hereby disclaimed.

3. Attorneys' Fees. If legal action is brought by either Party against the other for default under this Assignment or to enforce any provision herein, each Party shall bear their own

attorney's fees, expert witness fees, and court costs and neither Party shall be entitled to recover attorneys' fees or costs from the other Party regardless of whether a Party is a prevailing party.

4. Entire Agreement. All attachments are incorporated herein by this reference, are an integral part of this Bill of Sale, and will be read and interpreted together as a single document. This Bill of Sale (including all attachments thereto) and the applicable provisions of the DDA set forth the complete, exclusive and final statement of the agreement between the parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties regarding such subject matter.

5. Counterparts. This Bill of Sale may be executed in one or more counterparts by actual or electronic signature. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatory to the same counterpart.

6. Further Assurances. Each of the parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Assignment.

7. Miscellaneous. This Bill of Sale shall be binding upon and inure to the benefit of the respective successors, assigns, personal representatives, heirs and legatees of the city and the Developer. This Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have executed and delivered this Bill of Sale as of the day and year first above written.

CITY:

CITY OF ALAMEDA,
a California charter city,

By: _____
Name: _____
Title: _____

DEVELOPER:

EXHIBIT "1" TO BILL OF SALE

[Phase/Subphase] ___Personal Property

EXHIBIT M

PUBLIC IMPROVEMENT AGREEMENT

EXHIBIT N
CITY DISCLOSURE DOCUMENTS

[To Be Attached]

EXHIBIT O-1

NOTICE OF CITY RELEASE OF ENVIRONMENTAL CLAIMS

CITY OF ALAMEDA – OFFICIAL BUSINESS DOCUMENT REQUIRED TO BE RECORDED UNDER GOVERNMENT CODE SECTION 37393 AND ENTITLED TO FREE RECORDING UNDER GOVERNMENT CODE SECTION 27383 RECORDING REQUESTED BY AND RETURN TO:	

(Above for recorder's use)

APNs:

MEMORANDUM OF RELEASE OF CLAIMS
(City)

This MEMORANDUM OF RELEASE OF CLAIMS ("**Memorandum**") dated as of _____ ____, 20___ (the "**Effective Date**"), is made and entered into by the CITY OF ALAMEDA, a California charter city (the "**City**"), and _____("**Developer**"), with respect to the real property more commonly known as [Phase/Subphase] ____ of West Midway of Alameda Point (the "**Property**"), as legally described on **Exhibit A** attached hereto and incorporated herein.

WITNESSETH:

1. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in **Exhibit B**, attached hereto and incorporated herein.

2. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2023, as amended, regarding the Property (the "**DDA**"). As more particularly set forth in the DDA, the City on behalf of itself and anyone claiming by, through or under the City (including, without limitation, any successor owner of the NAS Alameda Property, whether acquired prior to or after the applicable Closing Date), provided Developer, its partners and their respective partners, members, shareholders, managers, directors, officers, employees, attorneys, agents, and successors and assigns (the "**Developer Released Parties**") a waiver of its rights to recover from and fully and irrevocably released the Developer Released Parties from any and all Claims that the City may have or hereafter acquire against any of the Developer Released Parties arising from or related to the Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date from the Property to any portion of the NAS Property acquired by the City (whether previously acquired by the City and previously conveyed to a third party, previously acquired by the City and currently owned by the City and/or

later acquired by the City), whether such Incidental Migration occurs prior to or after the applicable Closing Date (the "**Release of Claims**").

The foregoing Release of Claims did not negate, limit, release, or discharge the Developer Released Parties in any way from, and shall not be deemed a waiver of any Claims by the City with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the Developer Released Parties, (ii) any premises liability or bodily injury claims accruing after the applicable Closing Date to the extent such claims are not based on the acts of the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns, (iii) any violation of law by any of the Developer Released Parties after the applicable Phase Closing, (iv) a breach of Developer's obligations under the DDA or any other agreement between the City and the Developer, (v) the release (including negligent exacerbation but excluding any Incidental Migration) of Hazardous Materials by the Developer Released Parties at, on, under or otherwise affecting any portion of the NAS Alameda Property acquired by the City (whether previously acquired by the City and previously conveyed to a third party, previously acquired by the City and currently owned by the City, and/or later acquired by the City), which release first occurs after the applicable Closing Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by Developer.

3. The sole purpose of this Memorandum is to provide notice of the Release of Claims contained in the DDA in and as a matter of the public record and, to the maximum extent permitted by law, notify and bind successor owners and lessees of any portion of the NAS Alameda Property acquired by the City to the Release of Claims contained in the DDA. To the extent that there is any inconsistency between this Memorandum and the DDA, the DDA shall control.

4. This Memorandum and the notice provided herby shall be binding upon, and shall inure to the benefit of, the City, Developer and each of their legal representatives, successors and assigns, including each future owner and/or lessee of any portion of the NAS Alameda Property acquired by the City.

Signatures on next page]

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum as of the date indicated above.

CITY OF ALAMEDA,

By:_____
Type or Print Name_____
Title:_____

By: _____
Name: _____
Title:_____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

(SEE ATTACHED)

[Note: Insert references to applicable Phase/Subphase Property.]

EXHIBIT B

DEFINITIONS

Hazardous Materials: means any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation, any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal, state or local laws, ordinances or regulations.

Incidental Migration: means the non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of Hazardous Materials.

NAS Alameda Property: means the Naval Air Station Alameda and the Fleet and Industrial Supply Center, Alameda Annex and Facility , which encompasses the Naval facilities and grounds comprising the western end of the City of Alameda and consists of approximately 1,546 acres of real property, together with the buildings, improvements and related other tangible personal property located thereon and all rights, easements and appurtenances thereto, which was decommissioned by the United States Department of the Navy (the "**Navy**") in 1993 and closed in 1997.

EXHIBIT O-2

NOTICE OF DEVELOPER RELEASE OF ENVIRONMENTAL CLAIMS

CITY OF ALAMEDA – OFFICIAL BUSINESS DOCUMENT REQUIRED TO BE RECORDED UNDER GOVERNMENT CODE SECTION 37393 AND ENTITLED TO FREE RECORDING UNDER GOVERNMENT CODE SECTION 27383 **RECORDING REQUESTED BY AND RETURN TO:**	

(Above for recorder's use)

APNs:

MEMORANDUM OF RELEASE OF CLAIMS
(Developer)

This MEMORANDUM OF RELEASE OF CLAIMS ("**Memorandum**") dated as of _____ ____, 20___ (the "**Effective Date**"), is made and entered into by the CITY OF ALAMEDA, a California charter city (the "**City**"), and _____("**Developer**"), with respect to the real property more commonly known as [Phase/Subphase] ____ of West Midway of Alameda Point (the "**Property**"), as legally described on **Exhibit A** attached hereto and incorporated herein.

WITNESSETH:

1. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in **Exhibit B**, attached hereto and incorporated herein.

2. The City and Developer have entered into that certain Disposition and Development Agreement, dated _____, 2023, as amended, regarding the Property (the "**DDA**"). As more particularly set forth in the DDA, Developer on behalf of itself and anyone claiming by, through or under Developer (including, without limitation, any successor owner of the Property), provided the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "**City Released Parties**") a waiver of its rights to recover from and fully and irrevocably released the City Released Parties from any and all Claims that Developer may have or hereafter acquire against any of the City Released Parties arising from or related to:

(1) Claims Related to the Property: (A) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (B) any presence of Hazardous

Materials that were existing at, on, or under the Property as of the applicable Closing Date; and (C) any information furnished by the City Released Parties related to the Property under or in connection with the DDA; and

(2) Claims for Incidental Migration: the Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date from any portion of the NAS Alameda Property acquired by the City to the Property, whether such Incidental Migration occurs prior to or after the applicable Closing Date (the "**Release of Claims**").

The foregoing Release of Claims does not negate, limit, release, or discharge the City Released Parties in any way from, and shall not be deemed a waiver of any Claims by Developer (or anyone claiming by, through or under Developer, including, without limitation, any successor owner of the applicable Phase) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the City Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Closing Date to the extent such claims are not based on the acts of the Developer, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives, (iii) any violation of law by any of the City Released Parties prior to the applicable Closing Date, (iv) any breach by the City of any of the City's representations, warranties or covenants expressly set forth in the DDA, (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by the City Released Parties at, on, under or otherwise affecting the Property, or any other portion of the NAS Alameda Property acquired by the City (whether previously acquired by the City and previously conveyed to a third party, previously acquired by the City and currently owned by the City, and/or later acquired by the City), which release first occurs after the applicable Closing Date, or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the City.

3. The sole purpose of this Memorandum is to provide notice of the Release of Claims in the DDA in and as a matter of the public record and, to the maximum extent permitted by law, notify and bind successor owners and lessees of the Property, or any portion thereof, to the Release of Claims contained in the DDA. To the extent that there is any inconsistency between this Memorandum and the DDA, the DDA shall control.

4. This Memorandum and the notice provided herby shall be binding upon, and shall inure to the benefit of, the City, Developer and each of their legal representatives, successors and assigns, including each future owner and/or lessee of the Property or any portion thereof.

[Signatures on next page]

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum as of the date indicated above.

CITY OF ALAMEDA,

By:_____
Type or Print Name_____
Title:_____

By: _____
Name: _____
Title:_____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(SEE ATTACHED)

[Note: Insert references to applicable [Phase/Subphase] Property.]

EXHIBIT B

DEFINITIONS

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EXHIBIT P-1

FAIR MARKET VALUE DETERMINATION PROCESS -RESIDENTIAL

EXHIBIT P-2
FAIR MARKET VALUE DETERMINATION PROCESS - COMMERCIAL

EXHIBIT Q
LIST OF NAVY QUITCLAIMS DEEDS AND CRUPS

Quitclaim Deeds

1. Quitclaim Deed recorded 6/6/13 for Parcel ALA-37, ALA-38, ALA-55, ALA-57, ALA-59 and ALA-61, Series No.2013199810
2. Quitclaim Deed recorded 6/6/2013 for Parcel ALA-60-EDC, Series No. 2013199826
3. Quitclaim Deed recorded 10/2/2017 for Parcel ALA-82-EDC, Series No 2017217077
4. Quitclaim Deed recorded 10/2/2017 for Parcel ALA-83-EDC, Series No 2017217078
5. Quitclaim Deed recorded 10/2/2017 for Parcel ALA-84-EDC, Series No 2017217079
6. Quitclaim Deed recorded 4/5/2017 for Parcel ALA-78-EDC, Series No. 2017078010)

CRUPS

1. Covenant to Restrict Use of Property – Environmental Restriction (Re: Parcel No. ALA-82-EDC, ALA-83-EDC and ALA-84 EDC-DTSC Site Code 201971), 10/2/2017, Series No 2017-217085
2. Covenant to Restrict Use of Property – Environmental Restriction (RE: Parcel No. ALA-37-EDC (partial), ALA-38-EDC, ALA-39-EDC, ALA-55-EDC, ALA-56-EDC, ALA-57-EDC, ALA-59-EDC, ALA-60-EDC and ALA-61-EDC- DTSC Site Code 201971), 6/6/2013, Series No. 2013 199837

Note:

- There are two additional CRUPS that include a partial area of Parcel ALA-37. A review of the CRUPS documents indicate that the area does not include the project site.
    - CRUP ALA-37-EDC (partial), ALA-57-EDC, and ALA-72-EDC (partial)
    - CRU" ALA-37-EDC, ALA-42-EDC, ALA-56-EDC, and ALA-62-EDC

EXHIBIT R

AFFORDABLE HOUSING COVENANT

EXHIBIT S

INTENTIONALLY OMITTED