

### **Section 2.3 -Contingent Profit Participation**

Add a new paragraph at the end of Section 2.3 (c) to read as follows:

The City desires to utilize a portion of any Contingent Profit Participation to increase the number of Moderate Income Housing Units located in the Block 3 residential condominium development by up to ten (10) units. Therefore, the City is willing to allow the Developer to retain a portion of the funds that would otherwise be paid as Contingent Profit Participation to compensate the Developer for the difference in revenue that the Developer would receive from the sale of the subject units as market rate housing units rather than Moderate Income Housing Units. The number of additional Moderate Income Housing Units to be included in Block 3 shall be determined by dividing (a) the Contingent Profit Participation generated from Phase 1 by (b) the difference between the average actual sales price for the applicable market rate condominium units or, if units have not sold yet, the projected sales price for the applicable market rate condominium units on Block 3 and the Affordable (as defined in the Affordable Housing Implementation Plan) sales price for the applicable Moderate Income Housing Units on Block 3 provided, however, the result of such calculation shall be rounded down to the nearest whole number and in no event shall the number of Moderate Income Housing Units on Block 3 be increased by more than ten (10) units. The reference to the “applicable units” in the foregoing calculation is intended to cause the Parties to take into account the number of bedrooms for the units contemplated to be included as Moderate Income Housing Units pursuant to this Section 2.3 and to calculate the price differential using the average market rate and Affordable sales prices for equivalent units types. If applicable, the projected sales price for a market rate condominium unit will be the projected sales price identified in the Sub-Phase Update for Block 3, as approved by the City.

Therefore, if the Final Phase Accounting for Phase 1 determines that the Threshold Return has been achieved, the Parties agree that notwithstanding any provision of this Agreement to the contrary:

(1) The portion of the funds that would otherwise be deposited into the Contingent Profit Participation Account necessary to compensate the Developer for the difference in revenue related to the additional Moderate Income Housing Units created by this Section 2.3(c) (the “Additional Affordable Housing Funds” or “AAH Funds”) shall be retained by the Developer;

(2) The balance of the Phase 1 Contingent Profit Participation, if any, shall be deposited into the Contingent Profit Participation Account;

(3) The AAH Funds shall be included in the Final Accounting completed in accordance with Subsection 2.3(e) below for purposes of determining the aggregate Contingent Profit Participation, but in no event shall the City be obligated to refund any portion of the AAH Funds if the Final Accounting shows that the aggregate Contingent Profit Participation is less

than the amount previously deposited in the Contingent Profit Participation Account plus the AAH Funds;

(4) The Developer shall select the units to be converted to Moderate Income Housing Units (which selection shall be subject to the applicable requirements of the Affordable Housing Plan regarding location and unit type) and such units shall thereafter be subject to the applicable provisions the Affordable Housing Implementation Plan.

### **Sections 4.3(b)(5) and 5.2(b)(1) – Ferry Terminal Plan**

Section 4.3(b) (5) shall be amended to read as follows:

(5) the Developer and the City Council shall have approved the Ferry Terminal Plan pursuant to Section 5.2;

The first sentence of Section 5.2(b)(1) is amended to read as follows:

The Parties shall negotiate in good faith and use commercially reasonable efforts to agree upon a conceptual design, cost estimate, and delivery schedule for the Ferry Terminal (with a goal of completing the same on or before December 31, 2018) and obtain City Council approval of the same before the date set forth in the Milestone Schedule (the "**Ferry Terminal Plan**").

### **Section 8.14- Ferry Shuttles**

Add a new paragraph at the end of Section 8.14 to read as follows:

In addition to the Developer's obligations pursuant to the TDM Compliance Strategy, if occupancy of 100 or more residential units and 100,000 square feet or more of commercial space occurs prior to the Ferry Terminal being completed and operational at the Seaplane Lagoon, the Developer shall be responsible for providing regular shuttle services from the Project to the Main Street Ferry Terminal during peak hours until the Ferry Terminal at the Seaplane Lagoon is completed and operational. The shuttle service shall be coordinated with the arrivals and departures of ferries from the Main Street Ferry Terminal. The Developer's obligations pursuant to this paragraph are in addition to and not in replacement of any of the Developer's obligations pursuant to the TDM Compliance Strategy and in particular, nothing herein abrogates the Developer's obligations (a) with respect to "last mile" transit service from the Property to and from BART with 15 minute headways or (b) to comply with the approved Public Financing Plan.

### **Section 8.16 – Painting Buildings 117 and 118**

Add a new Section 8.16 to read as follows:

Section 8.16 Improvements to Existing Buildings.

No later than completion of the Vertical Improvements for Phase 1, the Developer shall repaint the exterior of the existing Buildings 117 and 118 on the Property. To the extent necessary the City shall grant the Developer a right of entry to complete such repainting.