

AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT
Heritage Point

This Amended and Restated Disposition and Development Agreement (the "Agreement") is dated April 1, 2019, and is between the County of Contra Costa, a political subdivision of the State of California (the "County") and Heritage Point Commercial LLC, a California limited liability company ("Developer").

RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. The County has succeeded to the housing assets of the former Contra Costa County Redevelopment Agency (the "Former Agency") in accordance with California Health and Safety Code Section 34176. In its capacity as housing successor, the County owns certain parcels of real property, fronting the east side of Fred Jackson Way, between Grove Street and Chesley Avenue, in North Richmond, commonly referred to as the Heritage Point Unified Development Area (and formerly known as the Grove Point Unified Development Area) (the "Site"). The Site is located within the North Richmond Redevelopment Project Area (the "Project Area").

C. The Site has been identified as a "housing asset" pursuant to California Health and Safety Code Section 34176. The Oversight Board of the Contra Costa County Successor Agency and the California Department of Finance have approved such identification. The Former Agency acquired the Site using the Former Agency's low and moderate housing fund, which was established pursuant to California Health and Safety Code Section 33334.2.

D. Pursuant to a Disposition and Development Agreement dated as of May 9, 2017 by and between Community Housing Development Corporation of North Richmond, a California nonprofit public benefit corporation ("CHDC"), the sole member of Developer and the County (the "Initial DDA"), the County agreed to sell the Site to CHDC for the development of affordable housing and related residential and commercial improvements as a unified development.

E. Subsequent to entering into the Initial DDA, the County subdivided the Site into two parcels to facilitate the construction of commercial and retail improvements (the "Development") on one parcel of the Site, (the "Property"), and forty-two (42) affordable rental housing units and attendant improvements on the other, adjacent, parcel (the "Housing Project"). The Property is more particularly described in Exhibit A. The address of the Property is 308 Chesley Avenue. The Development, as well as all landscaping, roads and parking spaces on the Property and any additional improvements on the Property, are the "Improvements". The Improvements are more particularly described in the Conceptual Site Plan attached to this Agreement as Exhibit D.

F. The purpose of this Agreement is to facilitate the development of the Development on the Property. This Agreement amends and restates in its entirety the Initial DDA.

G. The County and Heritage Point A/G, L.P., a California limited partnership (an affiliate of CHDC) have entered into a Disposition, Development, and Loan Agreement dated December 1, 2017 regarding the construction of the Housing Project.

H. The County has determined that Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and that this Agreement is in the best interests, and will materially contribute to the implementation of, the County's affordable housing goals.

I. The Board of Supervisors of the County has conducted a duly noticed public hearing on this Agreement pursuant to Health and Safety Code Section 33433. The County intends to convey the Property in its capacity as housing successor and as permitted under Health and Safety Code Section 33433. The County has the authority to provide seller financing to the Developer in accordance with Government Code Section 25522 and Health and Safety Code Section 33430.

J. The Mitigated Negative Declaration reviewed and approved by the County Board of Supervisors on May 05, 2015, has served as the environmental documentation pursuant to the California Environmental Quality Act (Public Resource Code 21000 et seq.), and its implementing regulations ("CEQA") for the activities proposed to be undertaken under this Agreement.

The parties therefore agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

The following terms have the following meanings:

(a) "Agreement" means this Amended and Restated Disposition and Development Agreement.

(b) "Approved Financing" means all loans, grants, and equity obtained by Developer and approved by the County for the purpose of financing the construction of the Improvements.

(c) "CEQA" has the meaning set forth in Paragraph I of the Recitals.

(d) "Certificate of Completion" means the certificate to be issued by the County pursuant to Section 4.5 of this Agreement, or comparable County sign-off on the completion of construction of the Improvements.

(e) "Close of Escrow" means the date the Grant Deed is recorded against the Property.

- (f) "Commencement of Construction" has the meaning set forth in Section 4.3.
- (g) "Conceptual Site Plan" means the schematic drawings showing the basic physical characteristics, massing, and layout of the Improvements on the Property, attached to this Agreement as Exhibit D.
- (h) "Construction Plans" has the meaning set forth in Section 3.5(a) below.
- (i) "County" has the meaning set forth in the first paragraph of this Agreement.
- (j) "County Documents" means this Agreement, the Note, the Deed of Trust, and the Grant Deed.
- (k) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Developer, as Trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, that will encumber the Property to secure repayment of the Loan.
- (l) "Default Rate" means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.
- (m) "Design Development Documents" means drawings, specifications and other documents that fix and describe the size, quality, and character of the Improvements as to architectural, basic structural and mechanical features and systems and that include a schematic design, a detailed site plan, floor plans, elevations, complete drawings with structural dimensions, materials, colors and other features.
- (n) "Developer" has the meaning set forth in the first paragraph of this Agreement.
- (o) "Development" has the meaning set forth in Paragraph E of the Recitals.
- (p) "Development Budget" means the proforma development budget, including sources and uses of funds, as approved by the County, pursuant to Section 3.4 below, for the construction and operation of the Development and the Improvements.
- (q) "Event of Default" has the meaning set forth in Section 7.1 below.
- (r) "Financing Proposal" means Developer's current plan for financing the construction of the Improvements and operation of the Development attached to this Agreement as Exhibit C.
- (s) "Former Agency" has the meaning set forth in Paragraph B of the Recitals.
- (t) "Grant Deed" means the grant deed by which the County conveys the Property to Developer.

(u) "Hazardous Materials" means: (i) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical, and (ii) any waste, substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic materials", "toxic waste", "toxic substances," or words of similar import under any Hazardous Materials Law.

(v) "Hazardous Materials Claims" means with respect to the Property (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Developer or the Property pursuant to any Hazardous Materials Law; and (ii) all claims made or threatened by any third party against Developer or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials.

(w) "Hazardous Materials Law" means any federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all amendments thereto as of this date and to be added in the future and any successor statute or rule or regulation promulgated thereto.

(x) "Improvements" has the meaning set forth in Paragraph E of the Recitals.

(y) "Initial DDA" has the meaning set forth in Paragraph D of the Recitals.

(z) "Interim Operating Period" means the period between the Close of Escrow and the Commencement of Construction.

(aa) "Land Use Approvals" means the permits and approvals necessary for the development of the Improvements on the Property, including, but not limited to, overall design and architectural review, general plan amendment and rezoning to the extent applicable, and environmental review.

(bb) "Loan" has the meaning set forth in Section 2.3(a).

(cc) "Note" means the promissory note of even date herewith that evidences Developer's obligation to repay the Loan.

(dd) "Option to Purchase" has the meaning set forth in Section 7.4(a).

(ee) "Predevelopment Obligations" has the meaning set forth in Section 3.1 below.

(ff) "Project Area" has the meaning set forth in Paragraph B of the Recitals.

(gg) "Property" has the meaning set forth in Paragraph E of the Recitals.

(hh) "Purchase Price" has the meaning set forth in Section 2.2.

(ii) "Redevelopment Plan" means the redevelopment plan entitled "North Richmond Redevelopment Project," which was recorded in the official records of Contra Costa County on March 15, 1999, as document number 99-0070071, as amended from time to time.

(jj) "Released Parties" has the meaning set forth in 2.7(e).

(kk) "Schedule of Performance" means the schedule for performance of the Predevelopment Obligations that is attached as Exhibit B, as such may be modified pursuant to Section 3.1 below.

(ll) "Security Financing Interest" has the meaning set forth in Section 8.1.

(mm) "Security Financing Interest Assignment" has the meaning set forth in Section 8.4.

(nn) "Site" has the meaning set forth in Paragraph B of the Recitals.

(oo) "Term" means the period of time that commences on the date of this Agreement, and expires, unless sooner terminated in accordance with this Agreement, on the date set forth in the Certificate of Completion.

(pp) "Title Company" means Old Republic Title Company.

(qq) "Title Report" means that certain preliminary title report dated , 2019, issued by the Title Company for the Property.

(rr) "Transfer" has the meaning set forth in Section 5.6 below.

Section 1.2 Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A: Legal Description of the Property
- Exhibit B: Schedule of Performance
- Exhibit C: Financing Proposal
- Exhibit D: Conceptual Site Plan

ARTICLE 2 DISPOSITION OF PROPERTY

Section 2.1 Purchase and Sale.

Provided the closing conditions set forth in Section 2.5 have been satisfied the County will sell to Developer, and Developer will purchase from the County, the Property pursuant to the terms, covenants, and conditions of this Agreement and the Grant Deed.

Section 2.2 Purchase Price.

The purchase price for the Property is Sixty-Six Thousand Three Hundred Thirty Dollars (\$66,330) (the "Purchase Price"). The Purchase Price equals the portion of the value of the Site attributed to the Property, based on the analysis set forth in the summary report prepared by the County pursuant to California Health and Safety Code Section 33433. The Purchase Price will be deemed paid to the County upon Developer's execution of the Note.

Section 2.3 County Loan.

(a) Loan Amount. The County is providing Developer with a seller carry-back loan in the amount of the Purchase Price (the "Loan").

(b) Security. In consideration of the Loan, Developer shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and cause or permit it to be recorded as a lien against the Property.

(c) Interest. Simple interest will accrue on the outstanding principal balance of the Loan at a per annum rate of interest equal to three percent (3%), commencing on the date of disbursement. Upon the occurrence of an Event of a Default, interest will accrue on the outstanding principal balance of the Loan at the Default Rate, beginning on the date of such occurrence and continuing until the date the Loan is repaid in full or the Event of Default is cured.

(d) Payment in Full of Loan. Developer shall pay all outstanding principal and accrued interest on the Loan, in full, on the earliest to occur of: (i) any Transfer other than as permitted pursuant to Section 5.6; (ii) an Event of Default; (iii) thirty (30) months from the date of this Agreement, and (iv) the Commencement of Construction.

(e) Prepayment. Developer may prepay the Loan at any time without premium or penalty.

(f) Non-Recourse. Except as provided below, neither Borrower, nor any partner or member of Borrower, has any direct or indirect personal liability for payment of the principal of, and interest on, the Loan. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, or interest on, the Note will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the County against all such security for the Note, or impairs the right of County to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation to repay the principal and interest on the Note. Except as hereafter set forth; nothing contained herein is intended to relieve Borrower of its obligation to indemnify the County under the County Documents, or liability for: (i) loss or damage of any kind resulting from waste, fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance

policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

Section 2.4 Opening Escrow.

To accomplish the conveyance of the Property from the County to Developer, the parties have established an escrow with the Title Company. The Parties will execute and deliver all written instructions to the Title Company to accomplish Close of Escrow, which instructions must be consistent with this Agreement.

Section 2.5 Close of Escrow.

The following conditions must be satisfied, or waived in writing by the County, prior to or concurrently with, and as conditions of, Close of Escrow:

- (a) The parties have negotiated and executed the County Documents and all other documents and instruments required to be executed and delivered, all in form and substance satisfactory to the County;
- (b) There exists no condition, event or act which would constitute a breach or default under this Agreement, the County Documents, or under any other project financing agreements or contracts related to the Development, or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default;
- (c) All representations and warranties of Developer contained in this Agreement and in any of the County Documents are true and correct in all material respects as of Close of Escrow;
- (d) Developer has provided the County with copies of Developer's organizational documents and a certified copy of a Developer's authorizing resolution, approving the transactions contemplated under the County Documents, and authorizing Developer's execution of the County Documents;
- (e) There exists no material adverse change in the financial condition of Developer from that shown by the financial statements and other data and information furnished by Developer to the County prior to the date of this Agreement;
- (f) Developer has furnished the County with evidence of the insurance coverage meeting the insurance requirements set forth in Section 5.7;
- (g) The County has received from Developer, and approved, a budget for Developer's maintenance of the Property during the Interim Operating Period pursuant to Section 2.10;
- (h) The Grant Deed and the Deed of Trust have been, or concurrently with Close of Escrow, are recorded against the Property; and
- (i) A title insurer reasonably acceptable to the County is unconditionally and

irrevocably committed to issuing a 2006 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require.

Section 2.6 Condition of Title.

Upon Close of Escrow, Developer will have insurable title to the Property which will be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (a) applicable building and zoning laws and regulations;
- (b) the provisions of the Redevelopment Plan;
- (c) the provisions of the Grant Deed;
- (d) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed; and
- (e) exceptions in the Title Report approved by Developer.

Section 2.7 Condition of Property.

(a) In fulfillment of the purposes of California Health and Safety Code Section 25359.7(a), the County hereby represents and warrants that it has no knowledge, and has no reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the County to Developer.

(b) "AS IS" PURCHASE. PRIOR TO THE DATE OF THIS AGREEMENT, BORROWER WAS PROVIDED THE OPPORTUNITY TO INVESTIGATE THE PROPERTY, AND HAS APPROVED THE PHYSICAL CONDITION OF THE PROPERTY. BORROWER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE COUNTY IS SELLING AND BORROWER IS BUYING THE PROPERTY (AND ALL IMPROVEMENTS THEREON) ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT BORROWER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE COUNTY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) 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); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY; (D) 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; (E) THE ZONING

OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (F) 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; (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (H) THE CONDITION OF TITLE TO THE PROPERTY. BORROWER AFFIRMS THAT BORROWER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE COUNTY OR ANY OF ITS AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE COUNTY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. BORROWER 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 SHALL MAKE 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). BORROWER 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.

(c) Survival. The terms and conditions of this Section expressly survive Close of Escrow, will not merge with the provisions of the Grant Deed, or any other closing documents and are deemed to be incorporated by reference into the Grant Deed. The County 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. Developer acknowledges that the Purchase Price reflects the "as is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with Developer's counsel and understands the significance and effect thereof.

(d) Acknowledgment. Developer acknowledges and agrees that: (i) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (i) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the Purchase Price has been adjusted to reflect the same and that the County would not have agreed to sell the Property to Developer for the Purchase Price without the disclaimers and other agreements set forth in this Section.

(e) Developer's Release of the County. Developer, on behalf of itself and anyone claiming by, through or under Developer hereby waives its right to recover from and fully and irrevocably releases the County, its board members, officers, directors, representatives, consultants, employees and agents (the "Released Parties") from any and all claims, responsibility and/or liability that Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) 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; (ii) any presence of Hazardous Materials; and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(f) Scope of Release. The release set forth in Section 2.7(e) above includes claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the Released Parties. 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, Developer agrees, represents and warrants that Developer realizes and acknowledges that factual matters now unknown to Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and 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 Developer nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, Developer, on behalf of itself and anyone claiming by, through or under Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right Developer and anyone claiming by, through or under Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Developer's Initials: _____

Notwithstanding the foregoing, this release does not apply to, nor will the County be released from, the County's actual fraud or misrepresentation.

Section 2.8 Costs of Escrow and Closing.

Ad valorem taxes, if any, will be prorated as of the date of conveyance of the Property from the County to Developer. Developer must pay the cost of title insurance, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, and any additional costs to close the escrow. The costs borne by Developer are in addition to the Purchase Price for the Property.

Section 2.9 Mandatory Language in All Subsequent Deeds, Leases and Contracts.

(a) Basic Requirement. Developer may not restrict the rental, sale, lease,

sublease, transfer, use, occupancy, tenure or enjoyment of the Development on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code. Developer or any person claiming under or through Developer may not 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 Development. The foregoing covenant runs with the land.

(b) Provisions in Conveyance Documents. All deeds, leases or contracts made or entered into by Developer, and its successor and assigns permitted under this Agreement, as to any portion of the Property must contain therein the following language:

(i) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any 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 herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(ii) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, 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, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in

Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(iii) In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

Section 2.10 Maintenance of Property.

(a) During the Interim Operating Period Developer shall, at its sole cost and expense: (i) maintain the Property in good repair and in a neat, clean and orderly condition in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) cause the Property to be free of all health and safety defects; (iii) correct any life-threatening maintenance deficiencies, immediately upon notification; (iv) remove all weeds, graffiti, debris, and waste material from the Property, and, (v) erect security fencing around the Property, and as may be necessary, employ a security service.

(b) Developer shall inform the County promptly of the receipt of notice of, or information of, any change in the condition of the Property. Developer shall have in its employ at all times a sufficient number of employees to enable it to professionally maintain and repair the Property in accordance with the terms of this Agreement. Subject to the County's prior approval, Developer may contract with a qualified management company for the performance extraordinary repairs beyond the capability of Developer's regular maintenance employees.

(c) If there arises a condition in contravention of this requirement, and if such condition is curable, Developer has not cured such condition within thirty (30) days after receiving a notice from the County of the existence of the condition, then in addition to any other

rights available to the County, the County has the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(d) Developer is responsible for all costs associated with the maintenance and repair of the Property. Upon the execution of this Agreement Developer shall provide the County, for the County's approval, a budget for Developer's repair and maintenance obligations for the Property, including the sources of funds.

ARTICLE 3 PREDEVELOPMENT OBLIGATIONS

Section 3.1 Predevelopment Obligations.

(a) Within the time periods set forth in the Schedule of Performance and prior to the Commencement of Construction, Developer shall (i) cause the Design Development Documents to be completed by a licensed architect, (ii) submit the Design Development Documents to the County for review, (iii) apply for all necessary Land Use Approvals, other than the building permit, (iv) prepare and submit a Development Budget to the County for approval, (v) cause Construction Plans to be prepared, and (vi) submit the Construction Plans to the County for review, each as more fully described below and each a "Predevelopment Obligation."

(b) Developer shall complete each Predevelopment Obligations no later than the date set forth in the Schedule of Performance attached to this Agreement as Exhibit B, subject to Force Majeure as described in Section 9.14. The Schedule of Performance may be modified by the County Director – Department of Conservation and Development on behalf of the County without formal amendment of this Agreement.

(c) If Developer fails to satisfy all Predevelopment Obligations within the time period set forth in the Schedule of Performance, the County may terminate this Agreement pursuant to Section 7.1 and exercise any and all remedies available to it.

(d) During the performance of the Predevelopment Obligations, Developer shall on the first day of each month, and from time to time as reasonably requested by the County, provide the County with written progress reports regarding the status of the performance of the Predevelopment Obligations.

Section 3.2 Design Development Documents.

(a) During the preparation of the Design Development Documents, Developer shall hold regular progress meetings with the County and communicate and consult informally with the County as frequently as necessary to ensure that the proposed Design Development Documents receive the County's prompt consideration. Developer shall cause the Design Development Documents to be consistent, and in substantial conformity, with the Conceptual Site Plan.

(b) The County shall review the Developer's proposed Design Development Documents and either approve or disapprove them within thirty (30) days after receipt. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail all of the changes the County requests be made in order to obtain approval. Developer shall thereafter submit revised proposed Design Development Documents within thirty (30) days after notification of disapproval. The County shall either approve or disapprove the revised proposed Design Development Documents within thirty (30) days after the date such revised proposed Design Development Documents are received by the County, and shall approve the revised proposed Design Development Documents if the requested changes have been made.

(c) If Developer fails to submit proposed Design Development Documents within the time required by the Schedule of Performance, or if the County disapproves of the revised proposed Design Development Documents, the County may terminate this Agreement pursuant to Section 7.1 and exercise its remedies pursuant to this Agreement. Only upon County approval of Design Development Documents will Developer's obligation to prepare and submit Design Development Documents be deemed satisfied.

Section 3.3 Land Use Approvals. To satisfy its obligation to apply for all necessary Land Use Approvals, other than the building permit, Developer shall deliver evidence of having applied for such permits and approvals to the County not later than the date for performance set forth in the Schedule of Performance. Only upon the County's receipt of satisfactory evidence of Developer having applied for all necessary Land Use Approvals, other than the building permit, will Developer's obligation to submit such evidence be deemed satisfied.

Section 3.4 Development Budget.

(a) Developer shall cause the Development Budget to include a breakdown of the costs of constructing the Improvements based on the Financing Proposal previously approved by the County, and an operating proforma for the first ten (10) years of operation of the Development. Developer shall also submit to the County copies of all required funding commitments for construction and permanent financing for the Development, and any other information that is reasonably necessary to enable the County to determine, in its reasonable judgment, that Developer has the financial capability to pay all costs of constructing and operating the Development, taking into account all committed funds and all realistically established costs of constructing and operating the Development.

(b) The County shall review the proposed Development Budget and shall either approve or disapprove the proposed Development Budget in writing within thirty (30) days after receipt. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail the required revisions to the previously-submitted proposed Development Budget. Developer shall thereafter submit a revised proposed Development Budget within thirty (30) days after notification of disapproval. The County shall either approve or disapprove the revised proposed Development Budget within thirty (30) days after the date the revised proposed Development Budget is received by the County.

(c) If Developer fails to submit a Development Budget within the time required by the Schedule of Performance, or if the County disapproves of the revised Development Budget, the County may terminate this Agreement pursuant to Section 7.1 and

exercise its remedies pursuant to this Agreement. Only upon County approval of a Development Budget will Developer's obligation to prepare and submit a Development Budget be deemed satisfied.

(d) Developer shall submit any material revision to an approved Development Budget to the County for its review and approval. Any proposed revised Development Budget shall be considered and approved or disapproved by the County in the same manner and according to the same timeframe set forth above for the initial Development Budget. Until a revised Development Budget is approved by the County, the previously-approved Development Budget shall govern the financing of the Development.

Section 3.5 Construction Plans.

(a) As used in this Agreement, "Construction Plans" means all construction documentation upon which Developer and Developer's contractor rely in constructing the Improvements (including landscaping, parking and common areas) including, but not limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings").

(b) The County shall review the Developer's proposed Construction Plans and either approve or disapprove them within thirty (30) days after receipt. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail all of the changes the County requests be made in order to obtain approval. Developer shall thereafter submit revised proposed Construction Plans within thirty (30) days after notification of disapproval. The County shall either approve or disapprove the revised proposed Construction Plans within thirty (30) days after the date such revised proposed Construction Plans are received by the County, and shall approve the revised proposed Construction Plans if the requested changes have been made.

(c) If Developer fails to submit proposed Construction Plans within the time required by the Schedule of Performance, or if the County disapproves of the revised proposed Construction Plans, the County may terminate this Agreement pursuant to Section 7.1, and exercise its remedies pursuant to this Agreement. Only upon County approval of Construction Plans will Developer's obligation to prepare and submit Construction Plans be deemed satisfied.

ARTICLE 4 CONSTRUCTION OF THE IMPROVEMENTS

Section 4.1 Permits and Approvals.

Developer shall obtain all permits approvals necessary for the construction of the Improvements no later than December 31, 2021 or such later date that the County approves in writing.

Section 4.2 Construction Bonds.

If requested by the County, not later than thirty (30) days prior to the proposed Commencement of Construction Developer shall deliver to the County copies of labor and material bonds and performance bonds for the construction of the Improvements in an amount equal to one hundred percent (100%) of the scheduled cost of the construction of the Improvements. Such bonds must name the County as a co-obligee.

Section 4.3 Commencement of Construction.

Developer shall cause the Commencement of Construction of the Improvements to occur no later than December 31, 2022 or such later date that the County approves in writing, but in no event later than 1 year from date of this Agreement. For the purposes of this Agreement, "Commencement of Construction" means the date set for the start of construction of the Improvements in the notice to proceed issued by Developer to Developer's general contractor.

Section 4.4 Completion of Construction.

(a) Developer shall diligently prosecute construction of the Improvements to completion, and shall cause the construction of the Improvements to be completed no later than December 31, 2024 or such later date that the County approves in writing.

(b) Developer shall give notice to the County upon completion of construction of the Improvements. Upon receipt of such notice, the County will perform an inspection of the Improvements to determine if the Improvements were constructed in accordance with this Agreement. If the County determines the Improvements were not constructed in accordance with this Agreement, the County will provide Developer with a written report of the deficiencies. Developer shall correct such deficiencies within the timeframe set forth in the notice provided to Developer by the County. The Development may not be occupied until such deficiencies have been corrected to the satisfaction of the County.

Section 4.5 Certificate of Completion.

Promptly after completion of the Improvements in accordance with the provisions of this Agreement, the County will provide Developer a Certificate of Completion certifying to the completion of the Improvements. The Certificate of Completion will be conclusive determination that the covenants in this Agreement with respect to the obligations of Developer to construct the Improvements (excluding Developer's compliance with Section 4.7) and the dates for the beginning and completion of construction have been met. The Certificate of Completion will be in such form as will enable it to be recorded against the Property in the official records of Contra Costa County. The Certificate of Completion will not constitute evidence of compliance with or satisfaction of any obligation of Developer: (a) to any holder of a Security Financing Interest; and (b) to pay prevailing wages. The Certificate of Completion may not be deemed a notice of completion under the California Civil Code.

Section 4.6 Changes; Construction Pursuant to Plans and Laws.

(a) Changes. Developer shall construct the Improvements in conformance with (i) the plans and specifications approved by the County's Building Department, and (ii) the Development Budget. Developer shall notify the County in a timely manner of any changes in

the work required to be performed under this Agreement, including any additions, changes, or deletions to the plans and specifications approved by the County's Building Department. Written authorization from the County must be obtained before any of the following changes, additions, or deletions in work for the Improvements may be performed: (i) any change in the work the cost of which exceeds Fifty Thousand Dollars (\$50,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds One Hundred Thousand Dollars (\$100,000) or ten percent (10%) of the Loan amount, whichever is less; or (iii) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Improvements as provided for in the plans and specifications approved by the County. The County's consent to any additions, changes, or deletions to the work does not relieve or release Developer from any other obligations under this Agreement, or relieve or release Developer or its surety from any surety bond.

(b) Compliance with Laws. Developer shall cause all work performed in connection with the Development to be performed in compliance with:

(i) all applicable laws, codes (including building codes and codes applicable to mitigation of disasters such as earthquakes), ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter; and

(ii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. Developer may permit the work to proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Developer is responsible to the County for the procurement and maintenance thereof.

Section 4.7 Prevailing Wages.

(a) State Prevailing Wages.

(i) Developer shall:

(1) pay, and shall cause any consultants or contractors to pay, prevailing wages in the construction of the Improvements as those wages are determined pursuant to California Labor Code Section 1720 et seq.;

(2) cause any consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"), and to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., and implementing regulations of the DIR;

(3) keep and retain, and shall cause any consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed are required by California Labor Code Section 1777.5 et seq.;

(4) post at the Property, or shall cause the contractor to post at the Property, the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR;

(5) cause contractors and subcontractors constructing the Improvements to be registered as set forth in California Labor Code Section 1725.5 and provide County evidence of such registration including all registration numbers, the name of all contractors and subcontractors;

(6) cause all contracts to include the requirements set forth in California Labor Code Section 1720 et seq. including a copy of the California Labor Code Section Sections listed in California Labor Code Section 1775(b)(1);

(7) cause its contractors and subcontractors, in all calls for bids, bidding materials and the construction contract documents for the construction of the Improvements to specify that:

(A) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the construction of the Improvements unless registered with the DIR pursuant to California Labor Code Section 1725.5; and

(B) the construction of the Improvements is subject to compliance monitoring and enforcement by the DIR.

(8) provide the County all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>);

(9) cause its contractors to post job site notices, as prescribed by Title 8 California Code of Regulations 16451(d), or otherwise as required by the DIR; and

(10) cause its contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(ii) Developer shall also comply with the requirements of County Resolution No. 88-9 regarding the payment of prevailing wages (the "County Local Prevailing Wage Requirement").

(b) Indemnity. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County 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 Developer, its contractor and subcontractors) to comply with the County Local Prevailing Wage Requirement, to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., to meet the conditions of California Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of

California Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with the construction of the Improvements or any other work undertaken or in connection with the Property. The requirements in this Section survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 4.8 Equal Opportunity.

During the construction of the Improvements, discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work is not allowed.

Section 4.9 Minority and Women-Owned Contractors.

Developer shall use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the construction of the Improvements. Developer shall, at a minimum, notify applicable minority-owned and women-owned business firms located in Contra Costa County of bid opportunities for the construction of the Improvements. A listing of minority owned and women owned businesses located in the County and neighboring counties is available from the County. Documentation of such notifications must be maintained by Developer and available to the County upon request.

Section 4.10 Progress Reports.

Until such time as Developer has completed construction of the Improvements, as evidenced by the Certificate of Completion, Developer shall provide the County with quarterly progress reports regarding the status of the construction of the Improvements, including a certification that the actual construction costs to date conform to the Development Budget, as it may be amended from time to time.

Section 4.11 Construction Responsibilities.

(a) Developer is responsible for the coordination and scheduling of the work to be performed so that commencement and completion of the construction of the Improvements takes place in accordance with this Agreement.

(b) Developer is solely responsible for all aspects of Developer's conduct in connection with the Improvements, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the County with reference to the Improvements is solely for the purpose of determining whether Developer is properly discharging its obligations to the County, and may not be relied upon by Developer or by any third parties as a warranty or representation by the County as to the quality of the design or construction of the Improvements.

Section 4.12 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the County or any other lender or other third party in connection with the Improvements, then Developer shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the County a surety bond in sufficient form and amount, or provide the County with other assurance satisfactory to the County that the claim of lien or stop notice will be paid or discharged.

(b) If Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the County may (but is under no obligation to) discharge such lien, encumbrance, charge, or claim at Developer's expense. Alternately, the County may require Developer to immediately deposit with the County the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The County may use such deposit to satisfy any claim or lien that is adversely determined against Developer.

(c) Developer shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Improvements for a continuous period of thirty (30) days or more, and take all other steps necessary to forestall the assertion of claims of lien against the Property. Developer authorizes the County, but the County has no obligation, to record any notices of completion or cessation of labor, or any other notice that the County deems necessary or desirable to protect its interest in the Development and Property.

Section 4.13 Inspections.

(a) Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the County and by public authorities during reasonable business hours during the Term, for the purposes of determining compliance with this Agreement.

(b) The County has no duty to visit the Property, or to observe or inspect it in connection with this Agreement. Any site visit or observation by the County is solely for the purpose of protecting the County's rights and interests under this Agreement. No site visit or observation by the County will impose any liability on the County or result in a waiver of any default of Developer. Neither Developer nor any other party is entitled to rely on any site visit or observation by the County. The County owes no duty of care to protect Developer or any other party against, or to inform Developer or any other party of, any adverse condition affecting the Property in connection with this Agreement.

ARTICLE 5 ON-GOING REQUIREMENTS

Section 5.1 Information.

Developer shall provide any information reasonably requested by the County in connection with the Development.

Section 5.2 Hazardous Materials.

(a) Upon transfer of the Property, Developer shall keep and maintain the Property and the Development (including but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and may not cause or permit the Property and the Development to be in violation of any Hazardous Materials Law. Developer may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of any Hazardous Materials, except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

(b) Developer shall immediately advise the County in writing if at any time it receives written notice of any Hazardous Materials Claims, and Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law including but not limited to the provisions of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith.

(c) The County has the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to the County (or counsel of its own choice if a conflict exists with Developer) in any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer.

(d) Developer shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim related to a release of Hazardous Materials after the Close of Escrow; (iii) any actual or alleged present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials released after the Close of Escrow (whether on the Property or any other property); and (v) the breach of any representation of warranty by or covenant of Developer in this Section 5.2, and Section 6.1(l). Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the County in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal,

cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify will survive termination of this Agreement and will not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by the County of Hazardous Materials.

(e) Without the County's prior written consent, which will not be unreasonably withheld, Developer may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the County's judgment, impair the value of the County's security hereunder; provided, however, that the County's prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the County's consent before taking such action, provided that in such event Developer shall notify the County as soon as practicable of any action so taken. The County agrees not to withhold its consent, where such consent is required hereunder, if: (i) a particular remedial action is ordered by a court of competent jurisdiction; (ii) Developer will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Developer establishes to the satisfaction of the County that there is no reasonable alternative to such remedial action which would result in less impairment of the County's security hereunder; or (iv) the action has been agreed to by the County.

(f) Developer hereby acknowledges and agrees that: (i) this Section is intended as the County's written request for information (and Developer's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5; and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(g) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to: (i) waive its lien on such environmentally impaired or affected portion of the Property; and (ii) exercise, (1) the rights and remedies of an unsecured creditor, including reduction of its claim against Developer to judgment, and (2) any other rights and remedies permitted by law. For purposes of determining the County's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Developer will be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Developer knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or

threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the County in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the Default Rate, until paid, will be added to the indebtedness secured by the Deed of Trust and is due and payable to the County upon its demand made at any time following the conclusion of such action.

Section 5.3 Fees and Taxes.

Developer is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property. Developer is also solely responsible for payment of all personal property taxes, and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property.

However, Developer is not required to pay and discharge any such charge so long as: (i) the legality thereof is being contested diligently and in good faith and by appropriate proceedings; and (ii) if requested by the County, Developer deposits with the County any funds or other forms of assurance that the County in good faith from time to time determines appropriate to protect the County from the consequences of the contest being unsuccessful.

In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, will immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 5.4 Notices.

Developer shall promptly notify the County in writing of any and all of the following:

- (a) Any litigation known to Developer materially affecting Developer, or the Property and of any claims or disputes that involve a material risk of litigation;
- (b) Any written or oral communication Developer receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Property or Improvements fail in any respect to comply with any applicable governmental law;
- (c) Any material adverse change in the physical condition of the Property (including any damage suffered as a result of fire, earthquakes, or floods);
- (d) Any material adverse change in Developer's financial condition, any material adverse change in Developer's operations, or any change in the management of Developer;

(e) That any of the statements in Section 6.1(l) regarding Hazardous Materials are no longer accurate;

(f) Any Event of Default or event which, with the giving of notice or the passage of time or both, would constitute an Event of Default; and

(g) Any other circumstance, event, or occurrence that results in a material adverse change in Developer's ability to timely perform any of its obligations under any of the Loan Documents.

Section 5.5 Nondiscrimination.

Consistent with Section 2.9 above, Developer covenants by and for itself and its successors and assigns that there will be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age (except for lawful senior housing in accordance with state and federal law), familial status, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor may Developer or any person claiming under or through 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 or vendees in the Property. The foregoing covenant will run with the land.

Section 5.6 Transfer.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under this Agreement; and/or (ii) any interest in Developer and the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Developer retains title. The County Director – Department of Conservation and Development is authorized to execute assignment and assumption agreements on behalf of the County to implement any approved Transfer.

(b) Except as otherwise permitted in this Section 5.6, no Transfer is permitted without the prior written consent of the County, which the County may withhold in its sole discretion.

(c) The County hereby approves a Transfer of the Property from Developer to a wholly-owned affiliate of Developer, provided that the transferee expressly assumes the obligations of Developer under the County Documents, utilizing a form of assignment and assumption agreement provided by the County.

Section 5.7 Insurance Requirements.

(a) Developer shall maintain the following insurance coverage throughout the Term:

(i) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(ii) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(iii) Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(iv) Builders' Risk insurance during the course of construction, and upon completion of construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County, naming the County as a Loss Payee, as its interests may appear. Flood insurance must be obtained if required by applicable federal regulations.

(v) Commercial crime insurance covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount approved by the County, naming the County a Loss Payee, as its interests may appear.

(b) Developer shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with Developer or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (i), (ii), and (iii) above, except that the limit of liability for commercial general liability insurance for subcontractors must be One Million Dollars (\$1,000,000), and must require that such insurance will meet all of the general requirements of subsections (d) and (e) below.

(c) The required insurance must be provided under an occurrence form, and Developer shall maintain the coverage described in subsection (a) continuously throughout the Term. 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 must be three times the occurrence limits specified above.

(d) Commercial General Liability, Automobile Liability and Property insurance policies must be endorsed to name as an additional insured the County and its officers, agents, employees and members of the County Board of Supervisors.

(e) All policies and bonds are to contain: (i) the agreement of the insurer to give the County at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the County; (iii) a provision that no act or omission of Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver

by the insurer of all rights of subrogation against the County and its authorized parties in connection with any loss or damage thereby insured against.

Section 5.8 Damage and Destruction.

If economically feasible in the County's judgment after consultation with Developer, if any Improvement now or in the future on the Property is damaged or destroyed, Developer shall, at its cost and expense, diligently undertake to repair or restore the Improvement. Such repair or restoration must be consistent with plans and specifications approved by the County, subject to changes that are approved by the County in advance. Such work or repair must be commenced no later than the later to occur of (i) one hundred twenty (120) days after the date of the damage or destruction, and (ii) thirty (30) days after Developer's receipt of the insurance proceeds, or such longer period approved by the County in writing. The work or repair is to be completed within one (1) year after commencement. Any insurance proceeds collected for such damage or destruction are to be applied to the cost of the repairs or restoration and, if such insurance proceeds are insufficient for such purpose, Developer shall make up the deficiency. If Developer does not promptly make the repairs, any insurance proceeds collected for such damage or destruction are to be promptly delivered by Developer to the County as a special repayment of the Loan.

Section 5.9 Covenants Regarding Approved Financing.

- (a) Developer shall promptly pay the principal and interest when due on any Approved Financing.
- (b) Developer shall promptly notify the County in writing of the existence of any default under any documents evidencing Approved Financing whether or not a default has been declared by the lender, and provide the County copies of any notice of default.
- (c) Developer may not amend, modify, supplement, cancel or terminate the Partnership Agreement or any documents related to any loan that is part of the Approved Financing without the prior written consent of the County. Developer shall provide the County copies of all amendments, modifications, and supplements to any document related to any loan that is part of the Approved Financing.
- (d) Developer may not incur any indebtedness of any kind other than Approved Financing or encumber the Development with any liens (other than liens for Approved Financing approved by the County) without the prior written consent of the County.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 6.1 Representations and Warranties.

Developer hereby represents and warrants to the County as follows and acknowledges, understands, and agrees that the representations and warranties set forth in this Article 5 are deemed to be continuing during all times when any portion of the Loan remains outstanding:

(a) Organization. Developer is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the County Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the County Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the County Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. The County Documents and all other documents or instruments executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of the County Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will: (i) conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever that is binding on Developer, or conflict with any provision of the organizational documents of Developer, or conflict with any agreement to which Developer is a party; or (ii) result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) Compliance with Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer,

threatened against or affecting Developer or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Developer, materially affect Developer's ability to construct the Improvements, repay the Loan, or impair the security to be given to the County pursuant hereto.

(h) Title to Land. At the time of recordation of the Deed of Trust, Developer will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens shown on the County's title policy provided pursuant to Section 2.5(h) above, or approved in writing by the County.

(i) Financial Statements. The financial statements of Developer and other financial data and information furnished by Developer to the County fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any material adverse change in the financial condition of Developer from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Developer holds sufficient funds and/or binding commitments for sufficient funds to complete the acquisition of the Property and the construction of the Improvements in accordance with the terms of this Agreement.

(k) Taxes. Developer and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those that are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against Developer or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect on the property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of Developer and its subsidiaries, taken as a whole, or which could result in (i) a material impairment of the ability of Developer to perform under any loan document to which it is a party, or (ii) a material adverse effect upon the legality, validity, binding effect or enforceability against Developer of any Loan Document.

(l) Hazardous Materials. To the best of Developer's knowledge, except as disclosed in writing by Developer to the County prior to the date of this Agreement: (i) no Hazardous Material has been disposed of, stored on, discharged from, or released to or from, or otherwise now exists in, on, under, or around, the Property; (ii) neither the Property nor Developer is in violation of any Hazardous Materials Law; and (iii) neither the Property nor Developer is subject to any existing, pending or threatened Hazardous Materials Claims.

ARTICLE 7 DEFAULT AND REMEDIES

Section 7.1 Events of Default.

Any one or more of the following constitutes an "Event of Default" by Developer under this Agreement:

- (a) Failure to Satisfy Predevelopment Obligations. If Developer fails to satisfy any of the Predevelopment Obligations set forth in Article 3.
- (b) Failure to Construct. If Developer fails to obtain permits, or to commence and prosecute construction of the Improvements to completion, within the times set forth in Article 4 above, as such dates may be extended with the consent of the County.
- (c) Failure to Make Payment. If Developer fails to make any payment when such payment is due pursuant to the County Documents.
- (d) Breach of Covenants. If Developer fails to duly perform, comply with, or observe any other condition, term, or covenant contained in this Agreement (other than as set forth in Section 7.1(a) through Section 7.1(c), and Section 7.1(e) through Section 7.1(m)), or in any of the other County Documents, and Developer fails to cure such default within thirty (30) days after receipt of written notice thereof from the County to Developer.
- (e) Default Under Other Loans. If a default is declared under any other financing for the Development by the lender of such financing and such default remains uncured following any applicable notice and cure period.
- (f) Insolvency. If a court having jurisdiction makes or enters any decree or order: (i) adjudging Developer to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Developer, or seeking any arrangement for 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; (iii) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of their properties; (iv) directing the winding up or liquidation of Developer if any such decree or order described in clauses (i) to (iv), inclusive, is unstayed or undischarged for a period of ninety (90) calendar days; or (v) Developer admits in writing its inability to pay its debts as they fall due or will have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the Events of Default in this paragraph will act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.
- (g) Assignment; Attachment. If Developer assigns its assets for the benefit of its creditors or suffers a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon is returned or released within ninety (90) calendar days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.
- (h) Suspension; Termination. If Developer voluntarily suspends its business or, the partnership is dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(i) Liens on Property and the Development. If any claim of lien (other than liens approved in writing by the County) is filed against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the County.

(j) Condemnation. If there is a condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development.

(k) Unauthorized Transfer. If any Transfer occurs other than as permitted pursuant to Section 5.6.

(l) Representation or Warranty Incorrect. If any Developer representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the County in connection with any of the County Documents, proves to have been incorrect in any material respect when made.

(m) Applicability to General Partner. The occurrence of any of the events set forth in Section 7.1(f), through Section 7.1(h) in relation to Developer's general partner if Developer is a partnership.

Section 7.2 Remedies.

Upon the occurrence of an Event of Default and until such Event of Default is cured or waived, the County is relieved of any obligation to transfer the Property or disburse any portion of the Loan. In addition, upon the occurrence of an Event of Default and following the expiration of all applicable notice and cure periods the County may proceed with any and all remedies available to it under law, this Agreement, and the other County Documents. Such remedies include but are not limited to the following:

(a) Acceleration of Note. The County may cause all indebtedness of Developer to the County under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. Developer waives all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. Developer is liable to pay the County on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the County in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The County has the right to mandamus or other suit, action or proceeding at law or in equity to require Developer to perform its obligations and covenants under the County Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the County Documents.

(c) Termination. The County may terminate this Agreement by giving written

notice to Developer; provided, however, that the County's remedies pursuant to this Article 7, and the indemnification provisions of this Agreement survive such termination.

(d) Additional Remedies. The County may exercise any of the remedies specified in Sections 7.3 and 7.4 below.

Section 7.3 Right of Reverter.

(a) In the event that, following Close of Escrow, there is an Event of Default and such Event of Default occurs prior to issuance of a Certificate of Completion for the Improvements, then the County has the right to reenter and take possession of the Property and all improvements thereon and to revest in the County the estate of Developer in the Property. Developer agrees to execute such documents as reasonably necessary to cause Developer's interest in the Property to revert and revest in the County.

(b) Upon vesting or revesting in the County of title to the Property, the County will use its best efforts to resell the Property consistent with the County's obligations under applicable laws. Upon sale the proceeds will be applied as follows:

(1) First, to reimburse the County for any costs it incurs in managing or selling the Property (after exercising its right of reverter), including but not limited to amounts to discharge or prevent liens or encumbrances arising from any acts or omissions of the Developer;

(2) Second, to reimburse the County for damages to which it is entitled under this Agreement by reason of Developer's default;

(3) Third to the County, to repay the Loan;

(4) Fourth, to Developer in the amount of the reasonable cost of the improvements Developer has placed on the Property that were not financed by the County; and

(5) Fifth, any balance to the County.

Section 7.4 Option to Repurchase, Reenter and Repossess.

(a) The County has the additional right at its option to repurchase, reenter and take possession of the Property or any portion thereof owned by the Developer with all improvements thereon (the "Option to Purchase"), in the event that, following Close of Escrow, there is an Event of Default and such Event of Default occurs prior to issuance of a Certificate of Completion for the Improvements.

(b) To exercise the Option to Purchase, the County shall pay to Developer the amount of One Hundred Dollars (\$100.00).

(c) Upon vesting in the County of title to all or a portion of the Property, the County shall use its best efforts to resell it, subject to a requirement that the Property be developed in accordance with this Agreement. Upon any resale of the Property or portion

thereof by the County, the County shall apply such sale proceeds as follows:

(i) To Developer, the fair market value of any improvements existing on the applicable portion of the Property at the time of the repurchase, reentry and repossession; less

(1) Any gains or income withdrawn or made by Developer from the applicable portion of the Property or the improvements thereon; less

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

(ii) The remaining sale proceeds, if any, shall be retained by the County.

Section 7.5 Right to Cure Monetary Default at Developer's Expense.

The County has the right (but not the obligation) to cure any monetary default by Developer under a loan other than the Loan. Upon demand therefor, Developer shall reimburse the County for any funds advanced by the County to cure such monetary default by Developer, together with interest thereon from the date of expenditure until the date of reimbursement at the Default Rate.

Section 7.6 Right of Contest.

Developer may contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest is to be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder.

Section 7.7 Remedies Cumulative.

No right, power, or remedy given to the County by the terms of this Agreement or the other County Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy is cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Developer and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies will operate as a waiver thereof, nor does any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 8
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 8.1 No Encumbrances Except for Development Purposes.

Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon Developer's interest in the Property, but only for the purpose of securing Approved Financing. Mortgages, deeds of trust, or other reasonable security instruments securing Approved Financing, are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 8.2 Rights of Holders of Security Financing Interests.

Any rights of the County under Sections 7.3 and 7.4 will not defeat, limit or render invalid any Security Financing Interest permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of Security Financing Interests. Any conveyance or reverter of the Property to the County pursuant to Sections 7.3 and 7.4 will be subject to Security Financing Interests permitted by this Agreement.

Section 8.3 Holder Not Obligated to Construct.

The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion; nor will any covenant or any other provision in conveyances from the County to Developer evidencing the realty comprising the Property or any part thereof be construed so to obligate such holder. However, nothing in this Agreement is deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

Section 8.4 Notice of Default and Right to Cure.

Whenever the County pursuant to its rights set forth in Article 7 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the County will at the same time deliver to each holder of record of any Security Financing Interest, a copy of such notice or demand. Each such holder (insofar as the rights of the County are concerned) has the right, but not the obligation, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement is deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing Developer's obligations to the County relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the County and recordable among the official records of the County (the "Security Financing Interest Assignment"). The holder in that event must agree to complete, in the manner provided in this Agreement (or as may be amended by the Security Financing Interest Assignment; provided, however, the County is under no obligation to extend the dates for performance set forth in this Agreement), the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph must assume all rights and

obligations of Developer under this Agreement and will be entitled, upon completion and written request made to the County, to a Certificate of Completion from the County.

Section 8.5 Failure of Holder to Complete Improvements.

In any case where six (6) months after default by Developer in completion of construction of the Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct pursuant to the Security Financing Interest Assignment, has not proceeded diligently with construction (as reasonably determined by the County), the County shall be afforded those rights against such holder it would otherwise have against Developer under this Agreement.

Section 8.6 Right of County to Cure.

In the event of a default or breach by Developer of a Security Financing Interest prior to the completion of the Improvements, and the holder has not exercised its option to complete the Improvements on the Property, the County may cure the default, prior to the completion of any foreclosure. In such event the County will be entitled to reimbursement from Developer of all costs and expenses incurred by the County in curing the default. The County will also be entitled to a lien upon the Property or any portion thereof to the extent of such costs and disbursements. The County agrees that such lien will be subordinate to any Security Financing Interest, and the County will execute from time to time any and all documentation reasonably requested by Developer to effect such subordination.

Section 8.7 Right of County to Satisfy Other Liens.

After the conveyance of title to the Property or any portion thereof and after Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Property or any portion thereof, the County will have the right to satisfy any such lien or encumbrances; provided, however, that nothing in this Agreement will require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as Developer in good faith may contest the validity or amount therein and so long as such delay in payment is not subject the Property or any portion thereof to forfeiture or sale.

Section 8.8 Holder to be Notified.

Developer will insert each term contained in this Article 8 into each Security Financing Interest to the extent deemed necessary by, and in form and substance reasonably satisfactorily to the County, or will procure acknowledgement of such terms by each prospective holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

ARTICLE 9
GENERAL PROVISIONS

Section 9.1 Relationship of Parties.

Nothing contained in this Agreement is to be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the County and Developer or its agents, employees or contractors, and Developer will at all times be deemed an independent contractor and to be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Developer has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the construction and operation of the Development, Developer is solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and must include requirements in each contract that contractors are solely responsible for similar matters relating to their employees. Developer is solely responsible for its own acts and those of its agents and employees.

Section 9.2 No Claims.

Nothing contained in this Agreement creates or justifies any claim against the County by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the construction or operation of the Development, and Developer shall include similar requirements in any contracts entered into for the construction or operation of the Development.

Section 9.3 Amendments.

No alteration or variation of the terms of this Agreement is valid unless made in writing by the Parties. The County Director, Department of Conservation and Development is authorized to execute on behalf of the County amendments to the County Documents or amended and restated County Documents as long as any discretionary change in the amount or terms of this Agreement is approved by the County's Board of Supervisors.

Section 9.4 Indemnification.

Developer shall indemnify, defend and hold the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property and the development, construction, marketing and operation of the Development, except to the extent such claim arises from the gross negligence or willful misconduct of the County, its agents, and its employees. The provisions of this Section will survive the issuance of the Certificate of Completion, the expiration of the Term and the reconveyance of the Deed of Trust.

Section 9.5 Non-Liability of County Officials, Employees and Agents.

No member, official, employee or agent of the County is personally liable to Developer in the event of any default or breach of this Agreement by the County or for any amount that may become due from the County pursuant to this Agreement.

Section 9.6 No Third Party Beneficiaries.

There are no third party beneficiaries to this Agreement.

Section 9.7 Discretion Retained By County.

The County's execution of this Agreement in no way limits any discretion the County may have in the permit and approval process related to the construction of the Improvements.

Section 9.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 9.8(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have a financial interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have immediate family or business ties, during, or at any time after, such person's tenure. Developer shall exercise due diligence to ensure that the prohibition in this Section 9.8(a) is followed.

(b) The conflict of interest provisions of Section 9.8(a) above apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the County.

(c) In accordance with California Government Code Section 1090 and the Political Reform Act, California Government Code section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of Developer, or immediate family member of any of the preceding, may make or participate in a decision, made by the County or a County board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Developer. Interpretation of this section is governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 et seq., its implementing regulations manual and codes, and California Government Code Section 1090.

Section 9.9 Notices, Demands and Communications.

All notices required or permitted by any provision of this Agreement must be in writing and sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

County: County of Contra Costa
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Attention: Assistant Director

Developer: Heritage Point Commercial LLC
c/o Community Housing Development Corporation of North
Richmond
1535A Fred Jackson Way
Richmond, California 94801
Attention: Executive Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 9.10 Applicable Law.

This Agreement is governed by the laws of the State of California.

Section 9.11 Parties Bound.

Except as otherwise limited herein, this Agreement binds and inures to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and to bind Developer and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof is to inure to the benefit of the County and its successors and assigns.

Section 9.12 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

Section 9.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 9.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either party will not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, or court order. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days after receipt of the notice. In no event will the County be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 9.15 County Approval.

The County has authorized the County Director, Department of Conservation and Development to execute the County Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the Loan and the existence of Developer defaults under the County Documents.

Section 9.16 Waivers.

Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement does not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Developer may not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 9.17 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and are to be disregarded in interpreting any part of the Agreement's provisions.

Section 9.18 Entire Understanding of the Parties.

The County Documents constitute the entire agreement of the parties with respect to the Loan.

Section 9.19 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 9.20 No Brokers.

Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim must indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's reasonable attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section survive expiration of the Term or other termination of this Agreement, and will remain in full force and effect.

Section 9.21 Provision Not Merged with Deed.

None of the provisions of this Agreement are intended to or will be merged by any grant deed transferring title to any real property which is the subject of this Agreement from County to Developer or any successor in interest, and any such grant deed will not be deemed to affect or impair the provisions and covenants of this Agreement.

Remainder of Page Left Intentionally Blank

The parties are entering into this Agreement as of date first set forth above.

COUNTY:

COUNTY OF CONTRA COSTA, a political
subdivision of the State of California

By: _____
John Kopchik
Director, Department of Conservation and
Development

APPROVED AS TO FORM:

SHARON L. ANDERSON
County Counsel

By: _____
Kathleen Andrus
Deputy County Counsel

DEVELOPER:

Heritage Point Commercial LLC, a California
limited liability company

By: Community Housing Development
Corporation of North Richmond, a California
nonprofit public benefit corporation, its sole
member/manager

By: _____
Donald Gilmore, Executive Director

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

SCHEUDLE OF PERFORMANCE

This Schedule of Performance summarizes the schedule for various activities under the Amended and Restated Disposition and Development Agreement (the "Agreement") to which this exhibit is attached. The description of items in this Schedule of Performance are meant to be descriptive only, and do not modify in any way the provisions of the Agreement to which such items relate. Section references to the Agreement are intended merely as an aid in relating this Schedule of Performance to other provisions of the Agreement and do not have any substantive effect.

Whenever this Schedule of Performance requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the County or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, Developer shall consult with County staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

Action	Date
1. <u>Submission – Design Development Documents</u> . Developer shall prepare and submit the Design Development Documents for County approval. [§3.2]	Within 365 days of the date of the Agreement.
2. <u>Approval – Design Development Documents</u> . The County shall approve or disapprove the Design Development Documents. [§3.2]	Within 30 days after receipt of the Design Development Documents. Opportunity is provided in §3.2 for resubmission and further review of disapproved Design Development Documents.
3. <u>Application – Land Use Approvals</u> . Developer shall apply for the Land Use Approvals and shall provide evidence of the same to the County. [§3.3(a)]	Within 420 days of the date of the Agreement.
4. <u>Receipt – Land Use Approvals</u> . Developer shall obtain the Land Use Approvals and shall provide evidence of the same to the County [§3.3(b)]	Within 180 days of application to the City.

Action	Date
<p>5. <u>Submission – Development Budget.</u> Developer shall prepare and submit the Development Budget for County approval. [§3.4]</p>	<p>With 30 days after receipt of Land Use Approvals.</p>
<p>6. <u>Approval – Development Budget.</u> The County shall approve or disapprove the Development Budget. [§3.4]</p>	<p>Within 30 days after receipt of the Development Budget. Opportunity is provided in §3.4 for resubmission and further review of the disapproved Development Budget.</p>
<p>7. <u>Submission – Construction Plans.</u> Developer shall prepare and submit the Construction Plans for County approval. [§3.5]</p>	<p>Within 30 days after approval of the Development Budget.</p>
<p>8. <u>Approval – Construction Plans.</u> The County shall approve or disapprove the Construction Plans. [§3.5]</p>	<p>Within 30 days after receipt of the Construction Plans. Opportunity is provided in §3.5 for resubmission and further review of disapproved Construction Plans.</p>
<p>9. <u>Performance Due Date.</u> Developer shall satisfy all conditions in Article 3. [§3.1]</p>	<p>December 1, 2022.</p>

EXHIBIT C

FINANCING PROPOSAL

EXHIBIT D

CONCEPTUAL SITE PLAN

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DISPOSITION AND DEVELOPMENT AGREEMENT

Between

COUNTY OF CONTRA COSTA

And

HERITAGE POINT COMMERCIAL LLC

Heritage Point

dated April 1, 2019