

MASTER DEVELOPMENT AGREEMENT
Orbisonia Heights Transit Oriented Development Project

This Master Development Agreement (the "Agreement") is dated _____, 2022, and is between the County of Contra Costa, a political subdivision of the State of California (the "County") and Pacific West Communities Inc., an Idaho corporation ("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 approximately forty-four (44) parcels of real property consisting of approximately 7.767 acres, located near West Leland Road and Bailey Road, in the unincorporated area of Bay Point, commonly referred to as the Orbisonia Heights Site (the "Property"). The Property is located within the Bay Point Redevelopment Project Area (the "Project Area") and is more particularly described in Exhibit A attached to and incorporated into this Agreement.

C. The Property 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 Property using the Former Agency's low and moderate housing fund, which was established pursuant to California Health and Safety Code Section 33334.2.

D. The County issued a Request for Qualifications/Request for Proposals (the "RFP") in March 2017 for a developer to develop the Property. The County desires the Property to be developed as a moderately high density residential mixed-use community with neighborhood-serving commercial (i.e., a community that includes businesses that support the residents of the community, such as grocery stores, pharmacies, childcare facilities, a library, health care services, and other services that increase social resilience). The County also desires the development of the Property to take advantage of the area's proximity to the Pittsburg/Bay Point BART Station and Ambrose Park, consistent with the Pittsburg/Bay Point BART Station Specific Plan (the "Specific Plan").

E. After evaluating responses to the RFP, the County selected Developer as the developer of the Property. The County and Developer entered into an Exclusive Negotiating Rights Agreement dated September 12, 2017 (the "Original ENRA"). The Original ENRA was replaced by an Exclusive Negotiating Rights Agreement dated March 9, 2021 (the "ENRA"), pursuant to which the County and Developer began preliminary negotiations of this Agreement. Pursuant to the ENRA, the County and Developer are entering into this Agreement to facilitate the sale of the Property to Developer and the development of the Property.

F. Developer has proposed to develop a mixed-use project on the Property consisting of approximately 384 multi-family residential rental units (each a "Unit", and together, the

"Housing Improvements") and approximately 40,000 square feet of commercial space (the "Commercial Improvements"). Together, the Housing Improvements and the Commercial Improvements are the "Development". The Development, as well as all landscaping, roads and parking spaces on the Property and any additional improvements on the Property, are the "Improvements". A conceptual site plan of the Development showing the basic physical characteristics, massing, and layout of the Improvements is attached to this Agreement as Exhibit B (the "Conceptual Site Plan").

G. As shown on Exhibit B, the Development will include two multi-story buildings. The building on the southern portion of the Property is "Site A." The building on the northern portion of the Property is "Site B." Both Site A and Site B will have Housing Improvements constructed above Commercial Improvements (although not all Housing Improvements will be above Commercial Improvements) or parking. In accordance with the Map Act (California Government Code sections 66410-13.5) and section 659 of the California Civil Code, Developer intends to create vertical subdivisions of the airspace in Site A and Site B in order to create separate parcels for the Housing Improvements and the Commercial Improvements. A vertical subdivision is a three-dimensional division of airspace where one or more airspace lots or parcels exist above or below others. A subdivision of airspace establishes not only horizontal property boundaries, but also vertical boundaries tied to elevation above sea level. The parcels used for the construction of the Housing Improvements are each a "Housing Parcel" and the parcels used for the construction of Commercial Improvements are each a "Commercial Parcel." Together, the Housing Parcels and the Commercial Parcels are the "Development Parcels."

H. The Developer intends to construct the Development in three phases (each a "Phase"). Phase I is anticipated to be constructed on Site A and to consist of (i) approximately 150 Units constructed on top of ground-level podium parking, and (ii) a library (collectively, "Phase I"). Phase II is anticipated to be constructed on Site B and to consist of (i) approximately 184 Units constructed on top of ground-level podium parking and (ii) commercial space (collectively, "Phase II"). Phase III is anticipated to be constructed on Site B and consist of approximately 50 Units constructed with tuck-under parking and surface parking (collectively, "Phase III"). The Developer intends to create three (3) different limited partnerships, each of which will (i) have the Developer or an affiliate of Developer as its general partner, and (ii) own, construct and operate one Phase (each a "Partnership").

I. Each Phase of the Development will be subject to a separate Disposition, Development, and Loan Agreement ("DDLA") setting forth the terms of the development and financing of that Phase, including the terms of the County seller carry-back financing for that Phase. Each Partnership that is designated as the developer of a particular Phase will enter into a separate DDLA with the County. The amount allocated as the County seller carry-back financing for a particular Phase will be equal to an amount determined by multiplying the Property Value, as defined below, by a fraction, the numerator of which is the number of Units in that particular Phase and the denominator of which is the total number of Units expected to be developed on the Property, rounded to the nearest whole dollar. In no event will the sum of the amounts so determined exceed Four Million Six Hundred Thousand Dollars (\$4,600,000). The form of DDLA to be used for each Phase is attached hereto as Exhibit F.

J. The County has prepared the report required by, and has conducted a public hearing pursuant to, California Health and Safety Code Section 33433 with respect to the sale of the Property to Developer for redevelopment of the Property; and the County has made the findings required pursuant to California Health and Safety Code Section 33433 with respect to such sale, including the appraised value of the Property (such value, the "Property Value"). The County intends to convey the Property in its capacity as housing successor and as permitted under Health and Safety Code Section 33433.

K. Pursuant to the California Environmental Quality Act (Public Resource Code 21000 et seq.), and its implementing regulations ("CEQA"), following a duly noticed public hearing, the County has prepared, reviewed and approved the Environmental Impact Report dated June 18, 2002 for the Specific Plan (the "EIR"), which EIR contemplates the Development. The EIR has served as the environmental documentation for the County's consideration and approval of this Agreement and the transactions contemplated by 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) "Accessibility Requirements" has the meaning set forth in Section 4.8(a).
- (b) "Agreement" has the meaning set forth in the first paragraph.
- (c) "Air Rights Parcel Map" means the final subdivision map or final condominium plan (as applicable) recorded against the Property to create the Housing Parcels and the Commercial Parcels.
- (d) "Approved Financing" has the meaning, with respect to each Phase, as defined in Section 1.2(e) of the DDLA for such Phase.
- (e) "CEQA" has the meaning set forth in Recital K.
- (f) "Certificate of Completion" means, with respect to each Phase, the certificate(s) 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.
- (g) "Close of Escrow" means, with respect to each Phase, the date the Grant Deed and the Memorandum of DDLA are recorded against the Housing Parcel that relates to that Phase.

- Section 4.3.
- (h) "Commencement of Construction" has the meaning set forth in
 - (i) "Commercial Improvements" has the meaning set forth in Recital F.
 - (j) "Commercial Parcel" has the meaning set forth in Recital G.
 - (k) "Completion Date" means, with respect to each Phase, the date a final certificate of occupancy, or equivalent document, is issued by the County to certify that the Units in that Phase may be legally occupied.
 - (l) "Conceptual Site Plan" has the meaning set forth in Recital F and is attached to this Agreement as Exhibit B.
 - (m) "Construction Plans" means the detailed plans, specifications, working drawings, elevations and other information that are (i) consistent with the Design Development Documents that are approved in accordance with Section 3.3, and (ii) used by the Developer, its contractors and subcontractors to construct the Improvements.
 - (n) "County" has the meaning set forth in the first paragraph of this Agreement.
 - (o) "County Documents" means, with respect to each Phase, this Agreement, the Memorandum of MDA, the DDLA, the Memorandum of DDLA, the Grant Deed, the Note, the Regulatory Agreement, the Notice of Affordability Restrictions, and the Deed of Trust.
 - (p) "DDLA" has the meaning set forth in Recital I and a form of which is attached to this Agreement as Exhibit F.
 - (q) "Deed of Trust" means, with respect to a particular Phase, the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing among the relevant Partnership, as Trustor, Commonwealth Title Company, as trustee, and the County, as beneficiary, in the form provided by the County, that will encumber the Housing Parcel of that Phase upon transfer of the Housing Parcel to the relevant Partnership, to secure repayment of the Loan for that Phase and performance of the covenants of the County Documents.
 - (r) "Default Rate" means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.
 - (s) "Deposit" has the meaning set forth in Section 2.1.
 - (t) "Design Development Documents" means, with respect to the Development, 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 and means, with respect to a particular Phase, the drawings, specifications and other documents that (i) fix and describe the size, quality, and character of the Improvements for that Phase with respect to architectural, basic structural and mechanical features and systems and, (ii) include a

schematic design, a detailed site plan, floor plans, elevations, and complete drawings with structural dimensions, materials, colors and other features.

- (u) "Developer" has the meaning set forth in the first paragraph of this Agreement.
- (v) "Development" has the meaning set forth in Recital F.
- (w) "Development Budget" means, with respect to a particular Phase, the proforma development budget for that Phase, including sources and uses of funds, as approved by the County in accordance with Section 4.5 of the DDLA for that Phase, for the construction and operation of that Phase.
- (x) "Development Parcels" has the meaning set forth in Recital G.
- (y) "EIR" has the meaning set forth in Recital K.
- (z) "ENRA" has the meaning set forth in Recital E.
- (aa) "Escrow" means, with respect to a particular Phase, the escrow established with the Title Company for the purpose of conveying the Housing Parcel and Commercial Parcel for that Phase from the County to the Developer or the relevant Partnership.
- (bb) "Event of Default" has the meaning set forth in Section 7.1.
- (cc) "Former Agency" has the meaning set forth in Recital B.
- (dd) "Grant Deed" means, with respect to a particular Phase, the grant deed by which the County conveys the relevant Housing Parcel to the relevant Partnership, in the form provided by the County.
- (ee) "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.
- (ff) "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.
- (gg) "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.

(hh) "Housing Improvements" has the meaning set forth in Recital F.

(ii) "Housing Parcel" has the meaning set forth in Recital G.

(jj) "Improvements" has the meaning set forth in Recital F.

(kk) "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, to the extent applicable, and environmental review.

(ll) "Loan" means, with respect to a particular Phase, the seller carry-back financing provided by the County to the Developer in the amount set forth in the DDLA for that Phase.

(mm) "Master Development Budget" means the proforma development budget, including sources and uses of funds, as approved by the County, pursuant to Section 3.6 below, for the construction and operation of the Development.

(nn) "Master Financing Plan" means Developer's current plan for financing the construction and operation of the Housing Improvements and Commercial Improvements attached to this Agreement as Exhibit C.

(oo) "Master Schedule of Performance" means the schedule for performance of the Predevelopment Obligations that is attached as Exhibit D.

(pp) "Memorandum of DDLA" means, with respect to a particular Phase, the Memorandum of Disposition, Development, and Loan Agreement, in the form provided by the County, to be recorded against the relevant Housing Parcel for that Phase at Close of Escrow.

(qq) "Memorandum of MDA" means the Memorandum of Master Development Agreement, in the form provided by the County, that is required to be recorded against the Property prior to the closing of the first Phase.

(rr) "Note" means, with respect to each Phase, the promissory note in the form provided by the County that evidences each Partnership's obligation to repay the Loan for each Phase.

(ss) "Notice of Affordability Restrictions" means, with respect to a particular Phase, the Notice of Affordability Restrictions on Transfer of Property, between the County and the relevant Partnership in the form provided by the County, that will encumber the Housing Parcel upon transfer of that Housing Parcel to the relevant Partnership, and will restrict the development and operation of that Housing Parcel to affordable housing.

(tt) "Partnership" has the meaning set forth in Recital H.

(uu) "Partnership Agreements" mean the limited partnership agreements of the

Partnerships, each of which is subject to approval by the County pursuant to Section 5.6(e).

(vv) "Phase" has the meaning set forth in Recital H.

(ww) "Predevelopment Obligation" has the meaning set forth in Section 3.1 below.

(xx) "Project Area" has the meaning set forth in Recital B.

(yy) "Property" has the meaning set forth in Recital B.

(zz) "Redevelopment Plan" means the redevelopment plan entitled "Redevelopment Plan for the Bay Point Redevelopment Project Area," as adopted by the Board of Supervisors of the County by Ordinance No. 87-102, on December 29, 1987, as amended from time to time.

(aaa) "Regulatory Agreement" means, with respect to a particular Phase, the Regulatory Agreement and Declaration of Restrictive Covenants between the County and the relevant Partnership, in the form provided by the County, evidencing County requirements, that will encumber the Housing Parcel of that Phase upon transfer of that Housing Parcel to the relevant Partnership.

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

(ccc) "RFP" has the meaning set forth in Recital D.

(ddd) "Site A" has the meaning set forth in Recital G.

(eee) "Site B" has the meaning set forth in Recital G.

(fff) "Specific Plan" has the meaning set forth in Recital B.

(ggg) "Subdivision Map" means the final parcel map or final subdivision map (as applicable) recorded against the Property to create the Development Parcels.

(hhh) "Term" means the period of time that commences on the date of this Agreement, and expires, unless sooner terminated in accordance with this Agreement, (1) as to the Housing Improvements on the fifty-fifth (55th) anniversary of the Completion Date of the last of the Housing Improvements to be completed, and (2) as to the Commercial Improvements, upon the issuance of the Certificate of Completion for the last of the Commercial Improvements to be completed.

(iii) "Title Company" means Commonwealth Title Company.

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

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: Conceptual Site Plan
- Exhibit C: Master Financing Plan
- Exhibit D: Master Schedule of Performance
- Exhibit E: Mitigation Requirements
- Exhibit F: Form DDLA

ARTICLE 2
DISPOSITION OF PROPERTY

Section 2.1 Developer Deposit.

Upon execution of this Agreement, Developer shall deposit with the County the sum of Twenty-Five Thousand Dollars (\$25,000), (the "Deposit"). The Deposit will be applied to County costs incurred in the transfer of the Property including County legal costs, and will not be applied to the purchase price for any part of the Development. The Deposit is nonrefundable.

Section 2.2 Memorandum of MDA

Substantially concurrently with the execution of this Agreement, Developer shall record the Memorandum of MDA against the Property.

Section 2.3 Transfer of Property.

The transfer of the Housing Parcel and Commercial Parcel for each Phase is subject to Article 2 of the DDLA for each Phase.

ARTICLE 3
PREDEVELOPMENT OBLIGATIONS

Section 3.1 Predevelopment Obligations.

(a) Within the time periods set forth in the Master Schedule of Performance, 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 any building permits, (iv) apply for the Subdivision Map and Air Rights Parcel Map in order to facilitate the construction of the Housing Improvements and the Commercial Improvements, (v) prepare and submit a Master Development Budget to the County for approval, (vi) cause Construction Plans to be prepared, and (vii) 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 of the Predevelopment Obligations no later than the date set forth in the Master Schedule of Performance attached to this Agreement as Exhibit D, subject to Force Majeure as described in Section 8.14. The Master 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) Satisfaction of these conditions depends on performance by Developer. Only the County can waive satisfaction of the conditions in this Article 3. If Developer fails to satisfy all Predevelopment Obligations within the time period set forth in the Master Schedule of Performance, the County may terminate this Agreement pursuant to Section 7.2 and exercise any and all remedies available to it.

(d) During the performance of the Predevelopment Obligations, Developer shall, 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 and community outreach regarding the Development.

Section 3.2 Right of Entry.

Prior to the Close of Escrow for each Phase, Developer has the right to enter the Property during normal business hours to conduct investigations in accordance with this Agreement. In the event Developer or its consultants enter upon the Property, Developer shall:

(a) Give the County seventy-two (72) hours' notice of intent to enter the Property and the purpose for such entry;

(b) Repair and restore any damage it may cause;

(c) Deliver to the County, within ten (10) days of receipt thereof, a complete copy of any investigation, test, report or study which Developer conducts, or causes to be conducted, with respect to the Property;

(d) Indemnify, defend and hold the County and its directors, officers, employees and agents harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys' fees and costs) that may proximately arise out of Developer's entry upon the Property or the investigation(s) and test(s) which Developer may conduct; and

(e) Prior to entry, cause the County to be named as an additional insured on a Commercial General Liability insurance policy with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Personal; Injury, Broadform Property Damage, Products and Completed Operations. The required insurance is to be provided under an occurrence form by an insurer authorized and licensed to provide such insurance in the State of California.

Section 3.3 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 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 Master Schedule of Performance, or if the County disapproves of the revised proposed Design Development Documents, the County may terminate this Agreement pursuant to Section 7.2 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 3.4 Land Use Approvals.

To satisfy its obligation to apply for all necessary Land Use Approvals, other than the building permits, 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 Master 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 permits, will Developer's obligation to submit such evidence be deemed satisfied.

Section 3.5 Final Maps.

The County acknowledges that during the Term Developer intends to subdivide the Property to create the Development Parcels and then create the Housing Parcels and the Commercial Parcels. The County grants to Developer the right to proceed with subdivision of the Property into the Development Parcels, the Housing Parcels and the Commercial Parcels through the Subdivision Map and the Air Rights Parcel Map, subject to the County's approval of the Subdivision Map and the Air Rights Parcel Map. The County shall cooperate in the subdivision process and execute any necessary consents in its capacity as fee owner of the Property. The Developer shall bear all costs associated with obtaining the Subdivision Map and the Air Rights Parcel Map. The Developer acknowledges that approval of the Subdivision Map and the Air Rights Parcel Map by the County pursuant to this Section is solely in the County's capacity as fee owner of the Property and does not constitute approval by the County in its planning capacity.

Section 3.6 Master Development Budget.

(a) Developer shall cause the Master Development Budget to include a breakdown of the costs of constructing the Improvements for each Phase, based on the Master Financing Plan previously approved by the County, and an operating proforma for the 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. The County acknowledges that all funding may not be committed by the time of approval of the Master Development Budget and will permit an estimate of funds expected to be committed for each Phase. The Development Budget for each Phase will be approved separately in accordance with Section 4.5 of the DDLA for such Phase. The Master Development Budget must show the development and operating costs of the Housing Improvements separate from the development and operating costs of the Commercial Improvements.

(b) The County shall review the proposed Master Development Budget and shall either approve or disapprove the proposed Master 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 Master Development Budget. Developer shall thereafter submit a revised proposed Master Development Budget within thirty (30) days after notification of disapproval. The County shall either approve or disapprove the revised proposed Master Development Budget within thirty (30) days after the date the revised proposed Master Development Budget is received by the County.

(c) If Developer fails to submit the Master Development Budget within the time required by the Master Schedule of Performance, or if the County disapproves of the revised Master Development Budget, the County may terminate this Agreement pursuant to Section 7.2 and exercise its remedies pursuant to this Agreement. Only upon County approval of the Master Development Budget will Developer's obligation to prepare and submit the Master Development Budget be deemed satisfied.

(d) Developer shall submit any material revision to the approved Master Development Budget to the County for its review and approval. Any proposed revised Master 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 Master Development Budget. Until a revised Master Development Budget is approved by the County, the previously-approved Master Development Budget shall govern the financing of the Development.

Section 3.7 Construction Plans.

(a) The County shall review 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. The Developer acknowledges that approval of the Construction Plans by the County pursuant to this Agreement does not constitute approval as required for issuance of a building permit or otherwise in connection with the Land Use Approvals.

(b) If Developer fails to submit proposed Construction Plans within the time required by the Master Schedule of Performance, or if the County disapproves of the revised proposed Construction Plans, the County may terminate this Agreement pursuant to Section 7.2 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 and approvals necessary for the construction of the Improvements for each Phase no later than the date provided in Section 5.1 of the relevant DDLA for each Phase, or as indicated in the conditions of approval for the entitlements, whichever is earlier.

Section 4.2 Construction Bonds.

With respect to each Phase, 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.

With respect to each Phase, Developer shall cause the Commencement of Construction of the Improvements to occur no later than ninety (90) days after receipt of building permit approval for that Phase, or such later date that the County approves in writing. For the purposes of this Agreement, "Commencement of Construction" means, with respect to each Phase, 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

[thirty (30)] months following Commencement of Construction for Phase I, or such later date that the County approves in writing.

Section 4.5 Certificate of Completion.

(a) Promptly after completion of the Improvements for each Phase in accordance with the provisions of this Agreement, the County will provide Developer a Certificate of Completion certifying to the completion of the relevant Improvements. Separate Certificates of Completion may be issued for the Housing Improvements and the Commercial Improvements for each Phase. 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; (b) to pay prevailing wages; and (c) to rent the housing units that are part of the Housing Improvements in accordance with the terms of this Agreement and the relevant Regulatory Agreement. The Certificate of Completion may not be deemed a notice of completion under the California Civil Code.

(b) With respect to the Housing Improvements, the issuance of the Certificate of Completion by the County shall have no effect on the Term of this Agreement and the provisions of this Agreement remain in effect.

(c) With respect to the Commercial Improvements, the issuance of the Certificate of Completion by the County for the last completed Commercial Improvements in the Development shall serve to terminate this Agreement as to the Commercial Improvements except for those provisions which by their terms survive termination.

Section 4.6 Construction Pursuant to Plans and Laws.

(a) 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) To the extent applicable, 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 as 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.

(b) Local Wage Requirement. 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").

(c) 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 Accessibility.

(a) Developer shall cause the Housing Improvements to be constructed and operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(b) In compliance with the Accessibility Requirements, a minimum of five percent (5%) of the units in the Housing Improvements must be constructed to be fully accessible to households with a mobility impaired member and an additional two percent (2%) of the units in the Housing Improvements must be constructed to be fully accessible to hearing and/or visually impaired persons. In compliance with the Accessibility Requirements Developer shall provide the County with a certification from the Development architect that to the best of the architect's knowledge, the Housing Improvements comply with all federal and state accessibility requirements applicable to the Housing Improvements.

(c) 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 architect, contractor and subcontractors) to construct the Housing

Improvements in accordance with the Accessibility Requirements. The requirements in this Subsection survive repayment of the Loan and the reconveyance of the Deed of Trust for each Phase.

Section 4.9 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 4.10 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 4.11 Progress Reports.

Until such time as Developer has completed construction of the Improvements, as evidenced by the Certificates 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 approved Development Budget, as it may be amended from time to time.

Section 4.12 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 4.13 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 4.14 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.

Section 4.15 CEQA Mitigation Requirements.

Developer shall comply with the CEQA mitigation requirements set forth in the attached Exhibit E in the construction of the Improvements.

ARTICLE 5
ON-GOING REQUIREMENTS

Section 5.1 Applicability.

The conditions and obligations set forth in this Article apply throughout the Term with respect to the Housing Improvements, and until the issuance of the final Certificate of Completion with respect to the last completed Commercial Improvements, unless a different period of applicability is specified for a particular condition or obligation.

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 past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or 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 (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(j). 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 Use of the Property.

(a) Developer shall use the Property for the purposes set forth in this Agreement, each respective DDLA, and the Land Use Approvals.

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 the 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(j) 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 County Documents.

Section 5.5 Nondiscrimination.

(a) 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.

(b) Nothing in this Section prohibits Developer from requiring the Housing Improvements to be available to and occupied by income eligible households in accordance with the relevant Regulatory Agreements.

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 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 term "Transfer" excludes the leasing of any single unit in the Development to an occupant in compliance with the relevant Regulatory Agreement. 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. The Loan for the Phase subject to the Transfer will automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County.

(c) The County hereby approves the grant of the security interests in the Development for Approved Financing.

(d) The County approves the Transfer of the Commercial Parcels and the Commercial Improvements to an affiliate of the Developer upon completion of construction of the Commercial Improvements.

(e) With respect to the Housing Parcel for each particular Phase, the County approves the Transfer of the Housing Parcel to the relevant Partnership, and approves the assignment of the Loan and the County Documents for each Phase, to the extent they pertain to the Housing Improvements, to the Partnership in connection with the syndication of the low income housing tax credits that will be generated by the Housing Improvements, provided that: (1) Developer or an affiliate of Developer is a general partner in the Partnership, (2) all documents associated with the low income housing tax credit syndication including the

Partnership Agreement are submitted to the County for approval prior to execution, (3) the Partnership Agreement and/or the instrument(s) of Transfer provide for development and operation of the Housing Improvements in a manner consistent with the approved Master Financing Plan and the provisions of Article 3 of the relevant DDLA regarding the amount and repayment of the Loan for such Phase, and (4) the Partnership expressly assumes the obligations of Developer under the County Documents executed by Developer, utilizing a form of assignment and assumption agreement to be provided by the County.

(f) The County acknowledges that in connection with the Transfer of the Housing Parcel of each Phase to the relevant Partnership, and assignment of the Loan and the County Documents to the Partnership, lenders and investors of the Partnership may require amendments to this Agreement and/or the DDLA based on individual lending and investing requirements. The County agrees, upon the request of such lender or investor to cooperate in executing any amendment to this Agreement as may be reasonably required and which do not adversely affect the County's rights or increases the County's obligations under this Agreement, and are consistent with the customary and standard requirements of lenders and investors of developments similar to the Housing Improvements.

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.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

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 6 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 or will be 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 or to be 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 Loans, or impair the security to be given to the County pursuant hereto.

(h) 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.

(i) 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 unpaid tax assessed against Developer or any of its subsidiaries that is 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 County Document.

(j) 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.

(c) Breach of Covenants. If Developer fails to duly perform, comply with, or observe any other condition, term, or covenant contained in this Agreement, 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.

(d) 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.

(e) 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.

(f) Suspension. If Developer voluntarily suspends its business.

(g) 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.

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

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

(j) 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.

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. 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) 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 this Agreement or to enjoin acts on things that may be unlawful or in violation of the provisions of this Agreement.

(b) 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.

Section 7.3 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 7.4 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
GENERAL PROVISIONS

Section 8.1 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 8.2 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 8.3 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 8.4 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(s) of Completion, the expiration of the Term and the reconveyance of each Deed of Trust.

Section 8.5 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 8.6 No Third-Party Beneficiaries.

There are no third-party beneficiaries to this Agreement.

Section 8.7 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 8.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 8.8(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 8.8(a) is followed.

(b) The conflict of interest provisions of Section 8.8(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 8.9 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: Deputy Director – Policy Planning

Developer: Pacific West Communities Inc.
430 E. State Street, Ste. 100
Eagle, ID 83616
Attention: President and CEO

with a copy to: Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, IL 6066-3693
Attention: David P. Cohen

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 8.10 Applicable Law.

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

Section 8.11 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 8.12 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 8.13 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 8.14 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 8.15 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. Developer acknowledges that nothing in this Agreement (including any approval by the County Director in accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (a) the County's planning department, in connection with the review and approval of the proposed Construction Plans for the Development, or any use, or proposed use, of the Property; (b) the County's issuance of a building permit; or (c) any other office or department of the County acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Development.

Section 8.16 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 8.17 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 8.18 Entire Understanding of the parties.

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

Section 8.19 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 8.20 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 8.21 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:

MARY ANN MCNETT MASON
County Counsel

By: _____
Kathleen Andrus
Deputy County Counsel

DEVELOPER:

Pacific West Communities Inc., an Idaho
corporation

By: _____
Caleb Roope, President and CEO

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The real property located in the unincorporated area of the County of Contra Costa, State of California, described as follows:

EXHIBIT B

CONCEPTUAL SITE PLAN

EXHIBIT C

MASTER FINANCING PLAN

EXHIBIT D

MASTER SCHEDULE OF PERFORMANCE

EXHIBIT E

MITIGATION REQUIREMENTS

EXHIBIT F
FORM DDLA

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MASTER DEVELOPMENT AGREEMENT

Between

COUNTY OF CONTRA COSTA

And

PACIFIC WEST COMMUNITIES INC.

Orbisonia Heights Transit Oriented Development Project

dated _____, 2022