

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

CITY OF SAN PABLO

and

CITY VENTURES HOMEBUILDING, LLC

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Attachment No. 1	Map of the Site
Attachment No. 2	Legal Description of the Site
Attachment No. 3	Schedule of Performance
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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the “Agreement”) is entered into by and between the CITY OF SAN PABLO (the “City”) and CITY VENTURES HOMEBUILDING, LLC (the “Developer”) as of _____, 2018 (the “Effective Date”). The City and the Developer hereby agree as follows:

ARTICLE 1 SUBJECT OF AGREEMENT

1.1 Purpose of this Agreement

The purpose of this Agreement is to provide for the sale and development of certain real property located within the City. Pursuant to this Agreement, the Developer will acquire certain real property (the “Site”) from the City and will develop the Site with twenty-six attached residential townhomes and two (2) public activity areas as more fully set forth herein.

The sale of the Site by the City, the development of the Site by the Developer, and the fulfillment generally of this Agreement are in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

1.2 The Site

The Site, consisting of approximately 42,000 square feet of land area, is shown on the Map of the Site (Attachment No. 1), and is more particularly described in the Legal Description of the Site (Attachment No. 2). The Site is to be acquired by the Developer from the City pursuant to this Agreement.

1.3 Parties to this Agreement

1.3.1 The City

The City is a municipal corporation. The office of the City is located at 13831 San Pablo Avenue, San Pablo, California, 94806. “City,” as used in this Agreement, includes the City of San Pablo and any assignee of or successor to its rights, powers and responsibilities. The City is the successor-in-interest of the housing assets and functions of the former Redevelopment Agency of the City of San Pablo. The Site was designated a housing asset by action of the San Pablo Local Successor Agency on July 10, 2013, which was approved by the San Pablo Oversight Board on July 12, 2013, and by the California Department of Finance on August 14, 2013. The net proceeds from the sale of the Site will be deposited into the City’s Low and Moderate Income Housing Asset Fund (the “LMIHAF”) to be used for affordable housing programs and projects within the City of San Pablo.

1.3.2 The Developer

The Developer is City Ventures Homebuilding, LLC, a California limited liability company, whose manager is City Ventures Communities, LLC, whose manager is City Ventures, LLC. City Ventures Homebuilding, LLC and City Ventures, LLC are under common management and have overlapping officers and employees. For purposes of this Agreement, the principal address of the Developer is 3121 Michelson Drive, Suite 150, Irvine, California 92612.

Wherever the term “Developer” is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

The qualifications and identity of the Developer are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Agreement. Prior to the issuance of a final Certificate of Completion for the Site as set forth in Section 3.6 hereof, except as otherwise provided in this Agreement, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, and the Developer shall not assign all or any part of this Agreement without the prior written approval of the City. Any such assignment by the Developer in violation of this Agreement shall be void. This Agreement may be terminated by the City pursuant to Section 5.6.2, or the City may exercise its remedies under Section 5.7 hereof, if there is any significant change (voluntary or involuntary) in the membership, management or control of the Developer. Notwithstanding the above, no City approval, except to the extent required where the City is acting in its governmental capacity as a public agency regulator of land use rather than in its proprietary capacity as a seller of land pursuant to this Agreement, shall be required for (i) the execution of one or more deeds of trust and related instruments securing the Developer’s construction loan(s) in accordance with Section 3.4.1 hereof, (ii) a conveyance of the Site resulting from the foreclosure thereof (or a deed-in-lieu of such a foreclosure to the approved construction lender), (iii) the conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, (iv) the granting of easements or permits to facilitate construction of the improvements required hereunder, (v) the sale of for-sale housing units to qualified persons and households in the normal course of business as long as the City has issued a Certificate of Occupancy for the applicable unit(s), or (vi) any transfers of interest in the Developer which do not result in a change of management or control of the Developer.

1.4 Definitions

- 1.4.1 “Agreement” shall mean this Disposition and Development Agreement.
- 1.4.2 “Certificate of Completion” is defined in Section 3.6 of this Agreement.
- 1.4.3 “City” is defined in Section 1.3.1 of this Agreement.
- 1.4.4 “City Conditions Precedent” is defined in Section 2.3.1 of this Agreement.
- 1.4.5 “Contamination” is defined in Section 2.13.2 of this Agreement.
- 1.4.6 “Developer” is defined in Section 1.3.2 of this Agreement.
- 1.4.7 “Developer Conditions Precedent” is defined in Section 2.3.2 of this Agreement.
- 1.4.8 “Environmental Response Actions” is defined in Section 2.13.4 of this Agreement.
- 1.4.9 “Environmental Response Costs” is defined in Section 2.13.4 of this Agreement.
- 1.4.10 “Escrow Agent” is defined in Section 2.2 of this Agreement.

1.4.11 “Feasibility Period” is defined in Section 2.13.1 of this Agreement.

1.4.12 “Hazardous Materials” is defined in Section 2.13.4 of this Agreement.

1.4.13 “Indemnitees” is defined in Section 2.13.2 of this Agreement.

1.4.14 “Project” means the twenty-six attached residential townhomes and two (2) public activity areas to be developed on the Site by the Developer as more fully set forth in this Agreement, in particular, the Scope of Development, Attachment No. 4 hereof.

1.4.15 “Purchase Price” is defined in Section 2.1 of this Agreement.

1.4.16 “Site” is defined in Section 1.2 and Attachment Nos. 1 and 2 of this Agreement.

1.4.17 “Title Company” is defined in Section 2.5 of this Agreement.

1.4.18 “Title Exceptions” is defined in Section 2.5 of this Agreement.

ARTICLE 2 **SALE OF THE SITE**

2.1 Sale and Purchase. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the City agrees to sell, and the Developer agrees to purchase for development, the Site for the sum of FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000.00) (the “Purchase Price”). The Purchase Price was determined by a fair market appraisal prepared by a qualified appraiser retained by the City. The City and the Developer agree that the Purchase Price is based on an assumption that there are no adverse environmental conditions at the Site that would require remediation or removal in connection with the development of the Project. If, during the Feasibility Period identified in Section 2.13.1, the Developer determines, in its reasonable judgment, that adverse environmental conditions do exist at the Site that must be remediated or removed in connection with the development of the Project, or that there are other material adverse conditions of the Site which would require extraordinary Site development costs, the City and the Developer shall negotiate in good faith during the Feasibility Period towards an appropriate adjustment to the Purchase Price to reflect the fair market value of the Site with such adverse conditions in place. If at the conclusion of the Feasibility Period the parties have not agreed on the appropriateness and amount of an adjustment to the Purchase Price to address adverse environmental or other Site conditions, this Agreement may be terminated by Developer as of the end of the Feasibility Period by written notice to the City.

2.2 Escrow

2.2.1 The City agrees to open an escrow with Fidelity National Title Company, as escrow agent (the “Escrow Agent”), for the conveyance of the Site within the time established in the Schedule of Performance (Attachment No. 3). This Agreement, together with any supplemental escrow instructions provided by the parties and consistent herewith, shall constitute the joint escrow instructions of the City and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The City and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement, and,

upon indicating its acceptance of the provisions of this Section 2.2 in writing, delivered to the City and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

2.2.2 The Developer shall deposit with the Escrow Agent the Purchase Price and other sums required herein in accordance with the provisions of Section 2.10 of this Agreement.

2.2.3 The Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, at least one day prior to the scheduled date for the close of escrow:

- a. The escrow fee;
- b. The premium for the title insurance policy or special endorsements to be paid by the Developer as set forth in Section 2.11 of this Agreement;
- c. Recording fees; and
- d. Notary fees.

2.2.4 The City shall timely and properly execute, acknowledge and deliver to the Escrow Agent the deed (in the form required by Section 2.8 hereof) conveying to the Developer fee title to the Site and shall deliver an estoppel certificate certifying that the Developer has completed all acts necessary to entitle the Developer to such conveyance, if such be the fact.

2.2.5 The City shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the City of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow:

- a. Costs necessary to place the title to the Site in the condition for conveyance required by the provisions of this Agreement; and
- b. Any State, County or City documentary transfer tax.

2.2.6 Upon delivery of the grant deed to the Escrow Agent pursuant to Section 2.9 of this Agreement, the Escrow Agent shall record such deed following the parties' satisfaction of all of the conditions to closing set forth in Section 2.3 of this Agreement and when fee title to the Site can be vested in the Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing the Site are not to be transferred.

2.2.7 The Escrow Agent is authorized to:

- a. Pay and charge the City and the Developer, respectively, for any fees, charges and costs payable under this Section 2.2 of this

Agreement. Before such payments are made, the Escrow Agent shall notify the City and the Developer of the fees, charges and costs necessary to clear title and close the escrow;

- b. Disburse funds and deliver documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the City and the Developer; and
- c. Record any instruments delivered through this escrow, if necessary or proper, to vest fee title in the Developer in accordance with the terms and provisions of this Agreement.

2.2.8 All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a 30-day month.

2.2.9 If this escrow is not in condition to close on or before the time for conveyance established in Section 2.7 of this Agreement, any party who then shall have fully performed the acts to be performed before the conveyance may, in writing, terminate this Agreement in the manner set forth in Section 5.6.1 or 5.6.2 hereof, as the case may be, and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner set forth in Section 5.6.1 or 5.6.2 hereof, as the case may be. If none of the parties shall have fully performed the acts to be performed on or before the time for conveyance established in Section 2.7, no termination or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the 10-day period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the Site until instructed in writing by the City and the Developer or upon final ruling by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 2.2 shall be construed to impair or affect the rights or obligations of the City or the Developer to specific performance or other remedies provided for herein.

2.2.10 Any amendment of these escrow instructions shall be in writing and signed by the City and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

2.2.11 All communications from the Escrow Agent to the City or the Developer shall be directed to the addresses and in the manner established in Section 6.1 of this Agreement for notices, demands and communications between the City and the Developer.

2.2.12 The liability of the Escrow Agent under this Article 2 of this Agreement is limited to performance of the obligations imposed upon it under Sections 2.2 to 2.12, both inclusive, of this Agreement.

2.3 Conditions to Closing

2.3.1 City Conditions to Closing. The City's obligation to proceed with the sale of the Site is subject to the fulfillment (or waiver in writing by the City) of each and all of the conditions precedent set forth in this Section 2.3.1 ("City Conditions Precedent"), which are solely for the benefit of the City, and which shall be fulfilled or waived by the Developer by the time periods provided for herein:

a. No Default. At the time of close of escrow, the Developer shall not be in default of any of its obligations under this Agreement and all representations and warranties of the Developer contained herein shall be true and correct in all material respects.

b. Execution of Documents. The Developer shall have executed any documents required hereunder and shall have delivered such documents into escrow.

c. Payment of Closing Costs. The Developer shall have paid the Purchase Price and Developer's share of all required closing costs to the Escrow Agent in accordance with Section 2.2 hereof.

d. Land Use Approvals. The Developer shall have obtained all land use and other discretionary entitlements necessary for development of the Site pursuant to this Agreement, and the time periods for appeal or legal challenge of such approvals and entitlements shall have expired.

e. Financing. The City shall have approved the Developer's financing, equity funding and final construction budget as provided in Section 2.15 hereof.

f. Building and Other Required Permits. The Developer shall have presented to the City evidence that it has satisfied all requirements necessary to obtain a grading permit and an initial building permit for vertical improvements pursuant to this Agreement, subject only to the payment of all applicable fees.

g. Payment of Fees. The Developer shall have presented to the City evidence of its ability to pay all remaining governmental fees, including City fees, required for the development of the Site pursuant to this Agreement.

h. Insurance. The Developer shall have provided to the City proof of insurance as required by Section 3.1.7.

i. Developer's Deposit to Secure Local Employment and Contracting Obligations. The Developer shall have delivered to the City the Deposit required by Section VIII.C. of the Scope of Development (Attachment No. 4).

j. CC&R's. The City shall have approved the form of the CC&R's described in Section 4.5 of this Agreement.

2.3.2 Developer Conditions to Closing. The Developer's obligation to proceed with the purchase of the Site is subject to the fulfillment (or waiver in writing by the Developer) of each and all of the conditions precedent set forth in this Section 2.3.2 ("Developer Conditions Precedent"), which are solely for the benefit of the Developer, and which shall be fulfilled or waived by the time periods provided for herein:

a. No Default. At the time of close of escrow, the City shall not be in default of any of its obligations under this Agreement and all representations and warranties of the City contained herein shall be true and correct in all material respects.

b. Execution of Documents. The City shall have delivered the grant deed for the Site, properly executed, and any other documents required hereunder into escrow.

c. Payment of Closing Costs. The City shall have paid City's share of required closing costs to the Escrow Agent in accordance with Section 2.2 hereof.

d. Land Use Approvals. The Developer shall have obtained all land use and other discretionary entitlements necessary for the development of the Site pursuant to this Agreement, and the time periods for appeal or legal challenge of such approvals and entitlements shall have expired.

e. Financing. The Developer shall have obtained all financing, including debt and equity funding, needed to pay all costs of developing the Site per the final construction budget as provided in Section 2.15 hereof.

f. Building and Other Required Permits. The Developer shall have satisfied all requirements necessary to obtain a grading permit and an initial building permit for the development of the Site for vertical improvements pursuant to this Agreement, subject only to the payment of all applicable fees.

g. Title Insurance. The Title Company shall, upon payment of Title Company's regularly scheduled premium, be ready to issue an ALTA extended coverage owner's title insurance policy, with any endorsements reasonably requested by the Developer, showing fee simple title to the Site vested in the Developer, subject only to the exceptions listed in Attachment No. 6 or approved by Developer pursuant to Section 2.5 hereof.

h. Approval of Physical Condition of the Site. Developer shall have provided notice to City pursuant to Section 2.13 that all physical aspects of the Site (including without limitation Hazardous Materials contamination, if any, on, under or above the Site, or any portion thereof and the soils condition of the Site) are acceptable to Developer, and there shall have been no material adverse change to the condition of the Site since the date of Developer's notice of approval.

2.4 Representations, Warranties and Covenants

2.4.1 City Representations. The City represents and warrants to the Developer as follows:

a. Authority. The City is a municipal corporation. The City has full right, power and lawful authority to convey the Site as provided herein and the execution, performance and delivery of this Agreement and the grant deed to the Site has been fully authorized by all requisite actions on the part of the City.

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

Until the close of escrow, the City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.4.1 not to be true as of the close of escrow, immediately give written notice of such fact or condition to the Developer. Such exception to a representation shall not be deemed a breach by the City hereunder, but shall constitute an exception that the Developer shall have a right to approve or disapprove if such exception would have a material effect on the value and/or operation of the improvements to be constructed on the Site. If the Developer elects to close escrow following disclosure of such information, the City's representations and warranties contained herein shall be deemed to have been made as of the close of escrow subject to such exception. If, following the disclosure of such information, the Developer elects to not close escrow, then this Agreement and the escrow shall automatically terminate, all money, papers and documents deposited into escrow shall be returned to the party that made such deposit, and neither the City nor the Developer shall have any further rights, obligations or liabilities hereunder, except as otherwise expressly provided in this Agreement.

2.4.2 Developer Representations. The Developer represents and warrants to the City as follows:

a. Authority. Developer has full right, power and lawful authority to accept the conveyance of the Site and undertake all other obligations as provided herein and the execution, performance and delivery of this Agreement by the Developer have been fully authorized by all requisite actions on the part of the Developer.

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

c. No Developer Bankruptcy. The Developer is not the subject of any bankruptcy proceeding, has not made a general assignment for the benefit of creditors, suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally.

Until the close of escrow, the Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.4.2 not to be true as of the close of escrow, immediately give written notice of such fact or condition to the City. Such exception to a representation shall not be deemed a breach by the Developer hereunder, but shall constitute an exception which the City shall have a right to approve or disapprove. If the City elects to close escrow following disclosure of such information, the Developer's representations and warranties contained herein shall be deemed to have been made as of the close of escrow subject to such exception. If, following the disclosure of such information, the City elects to not close escrow, then this Agreement and the escrow shall automatically terminate, all money, papers and documents deposited into escrow shall be returned to the party that made such deposit, and neither the City nor the Developer shall have any further rights, obligations or liabilities hereunder, except as otherwise expressly provided in this Agreement.

2.5 Condition of Title. Prior to the execution of this Agreement, the Developer has obtained a current title report from Title Company for the Site and copies of the title exception documents, and the Developer has determined that the exceptions to title listed in Attachment No. 6 are acceptable. The City and Developer agree that the City shall convey the Site to the Developer subject only to the title exceptions listed in Attachment No. 6. Developer approval shall be required for any exceptions to title which arise after the date of this Agreement.

2.6 Site Delivered Free of Tenants. The Site is currently vacant and has no tenants. The City shall not enter into any lease for all or any portion of the Site during the term of this Agreement. The Site is to be conveyed to the Developer free of any possession or right of possession by any person other than Developer.

2.7 Conveyance of Title and Delivery of Possession.

2.7.1 Provided that the Developer is not in default under this Agreement following notice and expiration of any applicable cure periods, and provided that all conditions precedent to such conveyance have occurred, and subject to any enforced delays pursuant to Section 6.4 below and any mutually agreed upon extensions of time, conveyance to the Developer of title to the Site shall be completed on or prior to the date specified in the Schedule of Performance (Attachment No. 3). The City and the Developer agree to perform all acts reasonably necessary to cause conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

2.7.2 Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Section 2.14 of this Agreement. The Developer shall accept title and possession on or before the said date.

2.8 Form of Deed. The City shall convey to the Developer fee title to the Site in the condition provided in Section 2.5 of this Agreement by grant deed in substantially the form set forth in Attachment No. 5.

2.9 Time for and Place of Delivery of Grant Deed. Subject to any enforced delays pursuant to Section 6.4 below or any mutually agreed upon extensions of time, the City shall deposit the grant deed for the Site on or before the date established for the conveyance of the Site in the Schedule of Performance (Attachment No. 3).

2.10 Payment of the Purchase Price and Recordation of Grant Deed. The Developer shall deposit the Purchase Price and other sums required hereunder with the Escrow Agent prior to the date for conveyance of the Site, provided that the Escrow Agent shall have notified the Developer in writing that the grant deed, properly executed and acknowledged by the City, has been delivered to the Escrow Agent and that the Condition of Title is as required by Section 2.5 of this Agreement. Upon the close of escrow, the Escrow Agent shall file the grant deed for recordation among the land records in the Office of the County Recorder of Contra Costa County, shall deliver the Purchase Price to the City, and shall deliver to the Developer a title insurance policy insuring title in conformity with Section 2.11 of this Agreement.

2.11 Title Insurance. Concurrently with recordation of the grant deed for the Site, Title Company, shall provide and deliver to the Developer a title insurance policy issued by the Title Company, together with such endorsements requested by Developer, insuring that fee title is vested in the Developer in the Condition of Title required by Section 2.5 of this Agreement. The

Title Company shall provide the City with copies of the title insurance policy. The Developer shall pay for all premiums for title insurance coverage or special endorsements.

2.12 Taxes and Assessments. Ad valorem taxes and assessments, if any, on the Site, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the City. All ad valorem taxes and assessments levied or imposed for any period commencing after closing of the escrow shall be paid by the Developer.

2.13 Condition of the Site

2.13.1 “As-Is”. The City shall provide the Developer with all information of which it has actual knowledge concerning the physical condition of the Site, including, without limitation, information about any Hazardous Materials, as defined below. The Developer acknowledges and agrees that it is acquiring the Site “as is,” in its current physical condition, with no warranties, express or implied, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including without limitation, any Hazardous Materials thereon or therein, and any other matters affecting the Site. It shall be the sole responsibility of the Developer, at the Developer's sole expense, to investigate and determine the soil conditions of the Site and the suitability of such soil conditions for the improvements to be constructed by the Developer. Within the time (the “Feasibility Period”) set forth in the Schedule of Performance (Attachment No. 3), the Developer shall evaluate the condition of the Site and notify the City whether the Developer approves or disapproves the condition of the Site. If the Developer disapproves the condition of the Site, and the reason for disapproval can be corrected by the City, the City may, but shall have no obligation to, take such action as may be necessary to correct the condition of the Site. If, following the Developer's approval of the condition of the Site, the Developer determines that the soil conditions are not in all respects entirely suitable for the use or uses to which the Site will be put, then it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the soil conditions of the Site in a condition suitable for the development of the Site.

2.13.2 Indemnity. The Developer agrees, from and after the date title to or possession of the Site is delivered from the City to the Developer under this Agreement, to defend, indemnify, protect and hold harmless the City and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns (“Indemnitees”) from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined herein), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined herein) or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), whenever arising, resulting from, arising out of or based upon the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials (as defined herein), at, on, in, beneath or from the Site (sometimes herein collectively referred to as “Contamination”). The Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Contamination, at the Developer's sole cost.

2.13.3 Release and Waiver. The Developer hereby releases and waives all rights, causes of action and claims the Developer has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials (as defined herein) at, on, in,

beneath or from the Site. In furtherance of the intentions set forth herein, the Developer acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California, which provides 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.”

The Developer hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the statutory or non-statutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Section 2.13.3.

2.13.4 Definitions.

a. As used in this Agreement, the term “Environmental Response Actions” means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, engendered, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by the Developer.

b. As used in this Agreement, the term “Environmental Response Costs” means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

c. As used in this Agreement, the term “Hazardous Materials” means any substance, material or waste which is (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of California law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903); (8) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

2.13.5 Materiality. The Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Developer for the benefit of the City set forth in this Agreement are a material element of the consideration to the City for the performance of its obligations under this Agreement, and that the City would not have entered this Agreement unless the Developer’s obligations were as provided for herein.

2.13.6 Developer Precautions After Closing. Upon the close of escrow, the Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials that are located in, on or under the Site. Such precautions shall include

compliance with all governmental requirements with respect to Hazardous Materials. In addition, the Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, containment, storage, use, removal and disposal of Hazardous Materials.

2.13.7 Required Disclosures After Closing. After the close of escrow, the Developer shall notify the City, and provide to the City a copy or copies, of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, including notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any governmental requirements relating to Hazardous Materials and underground tanks. The Developer shall report to the City, as soon as possible after each incident, any unusual or potentially important incidents with respect to the environmental condition of the Site.

2.14 Preliminary Work by the Developer

2.14.1 Prior to the conveyance of title to the Site from the City, representatives of the Developer shall have the right of access to the Site, subject to the provisions of Section 2.14.2 below, at all reasonable times for the purpose of obtaining data, making surveys and tests necessary to carry out this Agreement, and grading and preliminary work on the Site. The Developer shall have access to all data and information on the Site available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information.

2.14.2 Any preliminary work undertaken on the Site by the Developer prior to conveyance of title thereto shall be done only after obtaining an encroachment permit from the City's Public Works Department and any other necessary permits from the appropriate governmental agencies, and any such work shall be done at the sole expense of the Developer. The Developer shall save and protect the City against any claims resulting from any such preliminary work, access or use of the Site. Copies of data, surveys and tests obtained or made by the Developer on the Site shall be filed with the City.

2.15 Submission of Evidence of Financing

2.15.1 Within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall provide the City with a complete and firm budget for the construction of the Developer's improvements on the Site required by this Agreement, including all proposed sources and uses of funds, all "hard" and "soft" costs and contingencies and reflecting, to the extent possible, firm bids or accepted contracts and with evidence of sufficient funds to meet all budget requirements.

2.15.2 Unless otherwise approved by the City, the Developer's evidence of sufficient funds, as required in the preceding paragraph, must include only the following: (a) Developer equity; and (b) firm and binding loan commitments (subject to standard qualifications and exceptions), in form and content acceptable to the City. The construction loan may be a loan provided under a line of credit or credit facility. Within ten (10) days after the City's request, the Developer shall provide any additional information requested by the City for evaluation of the actual availability of funds included in such evidence, including without limitation further evidence required for clarification or audited financial reports.

2.15.3 As a material obligation under this Agreement, the Developer shall ensure that the loan documents comply, in all respects, with this Agreement. The City may reject any commitment if it is based upon sources and uses of funds that are different from those approved by the City for the development of the Site. The City may also reject any commitment that requires changes that conflict with this Agreement, that requires amendment of this Agreement or that requires the City to enter into agreements with any lender, guarantor, equity partner or any other third-party.

2.15.4 The City shall approve or disapprove such evidence of financing commitments and the construction budget within thirty (30) days of receipt of a complete submission. Approval shall not be unreasonably withheld or conditioned. The City hereby approves, as evidence of sufficient financing, the credit facility in the aggregate principal amount of Two Hundred Fifty Million Dollars (\$250,000,000.00) to be provided by Wells Fargo Bank, National Association, as administrative agent for the lenders. If the City shall disapprove any such evidence of financing or the construction budget, the City shall do so by notice to the Developer stating the reasons for such disapproval and Developer shall promptly obtain and submit to the City new evidence of financing. The City shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 2.15 for the approval or disapproval of the evidence of financing initially submitted to the City.

ARTICLE 3 **DEVELOPMENT OF THE SITE**

3.1 Development of the Site by the Developer

3.1.1 Scope of Development. The Site shall be developed as provided in the Scope of Development (Attachment No. 4), including the local employment and contracting requirements described in Section VIII thereof.

3.1.2 Preliminary Site Plan. The Developer has prepared and submitted to the City a preliminary site plan for development of the Site. The preliminary site plan is attached to this Agreement as Exhibit A of the Scope of Development (Attachment No. 4). The Site shall be developed as generally shown in the preliminary site plan and related documents except as changes may be mutually agreed upon between the Developer and the City. Any such changes shall be within the limitations of the Scope of Development (Attachment No. 4).

3.1.3 Construction Plans, Drawings and Related Documents. The Developer shall prepare and submit construction plans, drawings and related documents in accordance with all applicable City requirements.

3.1.4 Governmental Agency Permits. Before commencement of construction or development of any buildings, structures or other work of improvement upon the Site, the Developer shall secure or cause to be secured any and all permits, approvals or entitlements which may be required by the City or any other governmental agency affected by such construction, development or work.

3.1.5 Cost of Construction. The cost of developing the Site and constructing all improvements thereon shall be borne by the Developer, except for work expressly set forth in this Agreement to be performed or paid for by the City or others. The City and the Developer

shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

3.1.6 Construction Schedule

a. After the conveyance of title to the Site, the Developer shall promptly begin and thereafter diligently prosecute to completion the development of the Site. The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance (Attachment No. 3) or such reasonable extension of said dates as may be granted by the City or as provided in Section 6.4 of this Agreement. The Schedule of Performance is subject to revision from time-to-time as mutually agreed upon in writing between the Developer and the City.

b. During the period of construction, but not more frequently than once a calendar quarter, the Developer shall submit to the City a written progress report of the construction when and as requested by the City. The report shall be in such form and detail as may reasonably be required by the City and shall include a reasonable number of construction photographs taken since the last report submitted by the Developer.

3.1.7 Indemnification; Bodily Injury, Property Damage and Workers' Compensation Insurance

Until such time as a final Certificate of Completion has been issued by the City as set forth in Section 3.6 hereof, the Developer agrees to and shall indemnify, protect, defend and hold the City, and its representatives, volunteers, officials, officers, employees and agents, harmless from and against all liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) of any kind or nature arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Site resulting from or in connection with the development, use or operation of the Site by the Developer, its agents, servants or employees or the general contractor or any subcontractor or supplier of or to the Site, the Developer's occupancy or use of the Site or the Developer's performance or non-performance under or with respect to this Agreement, except for such matters caused by the gross negligence or willful misconduct of City or its representatives, volunteers, officials, officers, employees or agents. Prior to the close of escrow for conveyance of the Site, the Developer shall furnish or cause to be furnished to the City duplicate originals or appropriate certificates of insurance policies providing the following coverage in not less than the following amounts from insurers reasonably acceptable to the City's Risk Manager:

a. General Liability: Bodily injury, personal injury and property damage insurance policies in the amount of at least \$1,000,000 per occurrence and \$3,000,000 aggregate. If Commercial General Liability insurance or other form with a general aggregate limit shall apply separately to the Site and Developer's obligations under this Agreement, the general aggregate limit shall be twice the required occurrence limit;

b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage;

c. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by state law and Employers' Liability limits of \$1,000,000 per

accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease; and

d. Builders' Risk: Completed value of the improvements on the Site.

The above-required insurance policies shall name the City as additional or co-insureds and be endorsed to provide that coverage shall not be suspended, voided, cancelled or reduced in limit except after thirty (30) days prior written notice to the City. The Developer shall include all contractors or subcontractors with whom it has contracted for the performance of work on the Site as insureds under its policies or shall furnish or cause to be furnished separate certificates of insurance for each contractor or subcontractor. All coverages for contractors shall be subject to all of the requirements listed herein. The Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law. Except as otherwise expressly provided herein, the obligations set forth in this Section 3.1.7 shall remain in effect only until a final Certificate of Completion has been issued as provided in Section 3.6 hereof.

3.1.8 Rights of Access. For the purposes of assuring compliance with this Agreement, representatives of the City shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the City shall be those who are so identified in writing by the City Manager of the City.

3.1.9 Local, State and Federal Laws. The Developer shall carry out the construction of the improvements on the Site in conformity with all applicable laws, including all applicable federal and state labor standards.

3.1.10 Antidiscrimination During Construction. The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

3.2 Taxes, Assessments, Encumbrances and Liens

The Developer shall pay when due all real estate taxes and assessments assessed and levied, if any, on the Site for any period subsequent to conveyance of title thereof to the Developer. Prior to issuance of a final Certificate of Completion (a) the Developer shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement, and (b) the Developer shall remove or have removed any levy or attachment made on the Site (or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

3.3 Prohibition Against Transfer of Site, the Buildings or Structures Thereon and Assignment of Agreement

Except as expressly permitted by this Agreement, prior to issuance of a final Certificate of Completion pursuant to Section 3.6 hereof, Developer shall not sell, transfer, convey, assign or lease the whole or any part of its interest in the Site or the buildings or improvements thereon without the prior written approval of the City. This prohibition shall not be deemed to prevent the granting of easements or permits, or mortgages or deeds of trust permitted under Section 3.4 hereof (or any transfers resulting from the exercise of the rights and remedies of the holders thereof, including foreclosure of the lien of any such mortgage or deed of trust, or if acquired by any holder of a deed of trust or any affiliate thereof, a subsequent transfer by such holder or its affiliate), to facilitate the development of the Site or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

In the absence of specific written agreement by the City, no such transfer, assignment or approval by the City shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

3.4 Security Financing; Rights of Holders

3.4.1 No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development

Notwithstanding Sections 3.2 and 3.3 of this Agreement, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing are permitted but only for the purpose of securing loans of funds to be used for financing the acquisition of the Site, the construction, development and operation of the Project and any other expenditures necessary and appropriate to develop the Site under this Agreement. It is understood by the City that the Developer is the borrower under a borrowing base credit facility pursuant to which projects may be added to the borrowing base from time to time in order to, among other things, finance the acquisition, development and construction of real estate projects owned by Developer and that it is the intent of the Developer to, include the subject Site as a project under that borrowing base credit facility, granting the lenders thereunder a security interest in the Site pursuant to a first-priority deed of trust (the “Secured Credit Facility”) and the City hereby consents thereto. In the event the Developer seeks to finance the Site by other means and not by the Secured Credit Facility, the Developer shall notify the City in advance of any such mortgage, deed of trust, sale and lease-back or other form of conveyance for financing and the Developer shall not enter into any such conveyance for financing without the prior written approval of the City, not to be unreasonably withheld, conditioned or delayed. The words “mortgage” and “deed of trust,” as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development. The City further agrees to reasonably cooperate with the Developer and the holder of the Secured Credit Facility, or any other holder of a mortgage, deed of trust, sale and lease-back or other form of conveyance for the financing of the Site, in connection with such financing and the City further agrees to execute such further and other documents as such holder may require, including without limitation, a subordination and recognition agreement in favor of such holder and an estoppel certificate, all on such terms and conditions as are reasonably required by such holder and as agreed to by the City, which agreement shall not be unreasonably withheld, delayed or conditioned, including with respect to this Section 3.4, Sections 5.7 and 5.8 and any notice and cure rights, termination

rights and any other interests, rights and remedies of the City which may adversely affect the interests, rights and remedies of such holder.

3.4.2 Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

3.4.3 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the improvements, the City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the City therefor, including the holder of the Secured Credit Facility upon the recordation of its deed of trust against the Site. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within one hundred twenty (120) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 3.4.3 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 3.4.3; provided that such holder shall not have any obligation or duty under this Agreement to construct or complete the improvements. In the event any holder elects to complete the improvements, it shall only do so in the manner provided in this Agreement as to the improvements to which the lien or title and shall, prior to commencing such completion, submit evidence reasonably satisfactory to the City that it or its agents or contractors has the qualifications and financial responsibility necessary to complete the improvements. Any such holder properly completing such improvements shall be entitled, upon written request made to the City, to a Certificate of Completion from the City.

3.4.4 Failure of Holder to Complete Improvements

In any case where, six (6) months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the City may pay off the mortgage, deed of trust or other security interest by payment to the holder of (a) in the case of the Secured Credit Facility, the then current collateral value of the Site (including all improvements thereon) as reflected on the holder of such Secured Credit Facility's books and records pursuant to the Secured Credit Facility loan documents or (b) with respect to any other holder, the full amount of the unpaid debt, plus any accrued and unpaid interest, costs and expenses. If the ownership of the Site has vested in the holder, then within ninety (90) days of the date that title has vested in the holder, the City, if it so

desires, shall be entitled to a conveyance of the Site from the holder to the City upon payment to the holder of an amount equal to the above applicable amounts (after application of such credits against such debt resulting from the foreclosure) plus the sum of the following:

- a. All expenses with respect to foreclosure;
- b. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site;
- c. The costs of ownership of such property incurred by such holder after such ownership transfer to holder, including maintenance, security and the aggregate amount of all hard and soft costs actually paid for the construction of the Project by such holder after such ownership transfer and not reflected as part of the collateral value of the Site on such holder's books and records; and
- d. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

3.4.5 Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to the Site prior to the completion of development, and the holder has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Site as authorized herein, and City agrees to enter into one or more subordination agreements with the holders of such mortgages, deeds of trust or other security interests as necessary to permit the release of the City's lien in connection with the release of the holder's lien, including any sale of the Site (whether individual units or a bulk sale) to a third person.

3.5 Right to Satisfy Other Liens on the Site After Title Passes

After the conveyance of title to the Site to the Developer and prior to the issuance by the City of a final Certificate of Completion pursuant to Section 3.6 hereof, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site, the City, after thirty (30) days prior notice to Developer, shall have the right to satisfy any such liens or encumbrance to the extent no longer being reasonably challenged or are no longer capable of challenges, provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site to forfeiture or sale. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Site to the extent of such

costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Site as authorized herein, and City agrees to enter into one or more subordination agreements with the holders of such mortgages, deeds of trust or other security interests as necessary to permit the release of the City's lien in connection with the release of the holder's lien, including any sale of the Site (whether individual units or a bulk sale) to a third person..

3.6 Certificate of Completion

Promptly after completion of all construction and development required by this Agreement to be completed by the Developer upon the Site, the City shall furnish the Developer with a final Certificate of Completion upon written request therefor by the Developer. The City may also issue partial Certificates of Completion following the issuance of a certificate of occupancy by the City for a completed residential townhome on the Site. Any Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of Contra Costa County.

A Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site (or such portion thereof) and of full compliance with the terms hereof pertaining to such construction. After issuance of such Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site covered by said Certificate of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement pertaining to such construction. Except as otherwise provided herein, after the issuance of a Certificate of Completion for the Site (or such portion thereof), neither the City nor any other person shall have any rights, remedies or controls with respect to the Site (or such portion thereof) that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement pertaining to such construction, and the respective rights and obligations of the parties with reference to the Site (or portion thereof) shall be as set forth in the grant deed for the Site. Notwithstanding the foregoing, the provisions of this Agreement shall not merge but shall survive the issuance of a Certificate of Completion as necessary to give full force and effect to the provisions referring to this Agreement in the grant deed and other documents recorded pursuant to this Agreement.

The City shall not unreasonably withhold any Certificate of Completion. If the City refuses or fails to furnish a Certificate of Completion for the Site (or such portion thereof) after written request from the Developer, the City shall, within fifteen (15) business days following such written request, provide the Developer with a written statement of the reasons the City refused or failed to furnish a Certificate of Completion. The statement shall also contain the City's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for landscaping, the City will issue the Certificate of Completion upon the posting of a bond by the Developer with the City in an amount representing a fair value of the work not yet completed. If the City shall have failed to provide such written statement within said fifteen (15) business days, the Developer shall be deemed entitled to the Certificate of Completion.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. Such

Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093.

ARTICLE 4 **USE OF THE SITE**

4.1 Uses

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that, during construction and thereafter, the Developer, its successors and assignees shall devote the Site to the uses specified in this Agreement and the grant deed for the Site. The covenants contained in this Section 4.1 shall remain in effect for the useful life of the improvements constructed on the Site pursuant to this Agreement.

4.2 Obligation to Refrain From Discrimination

The Developer covenants by and for itself and any successors in interest 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) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 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 Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

4.3 Form of Nondiscrimination and Nonsegregation Clauses

The Developer shall refrain from restricting the rental, sale or lease of the Site on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators 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) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 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 premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, 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 premises herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"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) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 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 himself or herself, or any person claiming under or through him or her, 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 premises herein leased."

c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 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 premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, 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."

4.4 Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, and any successor in interest to the Site or any part thereof and shall remain in effect until issuance of the final Certificate of Completion or such other date specified in this Agreement, except for the covenants against discrimination which shall remain in effect in perpetuity.

The City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of the City without regard to whether the City has been, remains or is an owner of any land or interest therein in the Site. The City shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

4.5 CC&R's

The Developer shall prepare a Declaration of Conditions, Covenants and Restrictions ("CC&R's") covering the entire Site. The City shall have the right to review and approve the CC&R's prior to the close of escrow for conveyance of the Site to the Developer, and the Developer agrees that the CC&R's submitted to the California Bureau of Real Estate

(CalBRE) shall be substantially in the form approved by the City. The Developer understands and agrees that the City expects that the CC&R's will require standards of use and maintenance within the subdivision comparable to the Abella Paseo and Abella Vista subdivisions in the City.

4.6 One-Year Owner Occupancy Requirement

The Developer shall require each initial purchaser of a completed townhome to reside in and occupy the townhome for a period of one year from the date of sale. The requirement shall be substantially in the form attached hereto as Attachment No. 7. The obligation of the Developer under this Section 4.6 shall be contained in the grant deed conveying the Site, and the Developer acknowledges and agrees that its obligation hereunder is a material part of the Developer's consideration to City under this Agreement.

ARTICLE 5 DEFAULTS, REMEDIES AND TERMINATION

5.1 Defaults -- General

Subject to the extensions of time set forth in Section 6.4 and any mutually agreed upon extensions of time, failure or delay by any party to perform any term or provision of this Agreement within the times provided herein constitutes a default under this Agreement. The party who so fails or delays must cure, correct or remedy such failure or delay within forty-five (45) days after receipt of written notice of default, or if such cure cannot reasonably be effectuated within such 45-day period, the party in default shall commence to cure, correct or remedy such default within said 45-day period and thereafter continuously pursue completion of such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until expiration of the cure period provided for above. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.2 Legal Actions

5.2.1 Institution of Legal Actions

In addition to any other rights or remedies and except as otherwise provided in this Article 5, either party may institute legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement, if such default is not cured by the defaulting party within the time period specified in Section 5.1 above. Such legal actions must be instituted in the Superior Court of the County of Contra Costa, State of California, in an appropriate municipal court in that County or in the appropriate Federal District Court in the State of California.

5.2.2 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

5.2.3 Acceptance of Service of Process

In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Manager of the City or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon either individual of the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

5.2.4 Attorneys' Fees and Costs

If an action is commenced between the parties, the prevailing party in that action shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees and costs, witness fees, arbitrators' fees, and court and arbitration costs. "Prevailing party" shall include, without limitation, the following: (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party who receives performance from the other party for an alleged breach of contract or a desired remedy where the performance is substantially equal to the relief sought in an action; (c) the party who receives any award for relief through arbitration; or (d) the party determined to be the prevailing party by a court of law.

5.3 Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by any other party.

5.4 Damages

If the Developer defaults with regard to any of the provisions of this Agreement, and the Developer fails to cure such default following notice and expiration of applicable cure periods, the Developer shall be liable to the City for any damages caused by such default. The City shall have no liability for damages whatsoever under this Agreement. The Parties acknowledge and agree that it is a material part of Developer's consideration to City that City shall not be at any risk whatsoever to liability for money damages relating to or arising from this Agreement, and that Developer, for itself and for all successors and assignees, hereby releases City and all of its agents, employees, representatives, council members, board members, consultants, and offices of City from any and all claims seeking to impose money damages on City as a result of City's negotiation, drafting, execution or performance of this Agreement.

5.5 Specific Performance

Except as otherwise provided in Section 5.6.1, if the Developer or City defaults under any of the provisions of this Agreement and the defaulting party fails to cure such default

following notice and expiration of applicable cure periods, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement.

5.6 Remedies and Rights of Termination Prior to Conveyance of the Site

5.6.1 Termination by the Developer

In the event that prior to conveyance of title to the Site to the Developer, the City is in breach or default of any of its respective obligations under this Agreement after notice and expiration of applicable cure periods, then the exclusive remedy of the Developer under this Agreement shall be to terminate this Agreement by written notice thereof to the City. Upon such termination, neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement (other than indemnity obligations then accrued).

5.6.2 Termination by the City

In the event that prior to conveyance of title to the Site to the Developer:

a. The Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Site or the buildings or improvements thereon in violation of this Agreement; or

b. There is any significant change in the ownership or identity of the Developer or the parties in control of the Developer or the degree thereof in violation of the provisions of Section 1.3.2 hereof; or

c. The Developer does not submit evidence that it has the necessary equity capital and mortgage financing for development of the Site in satisfactory form and in the manner and by the dates provided in this Agreement; or

d. After satisfaction or waiver by Developer of all Developer's Conditions Precedent, the Developer does not pay the Purchase Price and take title to the Site under tender of conveyance by the City pursuant to this Agreement; or

e. The Developer is in breach or default with respect to any other obligation under this Agreement; and

f. If any default or failure referred to in subdivisions a. through e. of this Section shall not be cured within the time period specified in Section 5.1 above;

then, after notice and expiration of applicable cure periods, this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the City, may, at the option of the City, be terminated by the City by written notice thereof to the Developer. Upon such termination, neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement.

5.7 City Option to Repurchase, Reenter and Repossess

The City shall have, at its option, the additional right, on thirty (30) days prior written notice to the Developer and the holders of any mortgages, deeds of trust or other

financing instruments if such holders made a prior request for such notices in writing to the City, to repurchase, reenter and take possession of the Site (or portion thereof) with all improvements thereon, if after conveyance of title to the Site and prior to the earlier to occur of (i) the issuance of a final Certificate of Completion therefor and (ii) the holders of the Secured Credit Facility's foreclosure (or a deed-in-lieu of such a foreclosure) of the deed of trust securing the Secured Credit Facility, the Developer shall:

- a. Fail to commence construction of the improvements (or portion thereof) within the time required by this Agreement for a period of three (3) months after written notice thereof from the City (subject to extension of time caused by Force Majeure or time of delay caused by or contributed to by the City) to the Developer and the holders of any mortgages, deeds of trust or other financing instruments if such holders made a prior request for such notices in writing to the City; or
- b. Abandon or substantially suspend construction of the improvements (or portion thereof), other than as a result of Force Majeure or any actions by the City which caused or contributed to such suspension, for a period of three (3) months after written notice of such abandonment or suspension from the City to the Developer and the holders of any mortgages, deeds of trust or other financing instruments if such holders made a prior request for such notices in writing to the City; or
- c. Except as permitted by Section 3.3 of this Agreement, assign this Agreement, or transfer or suffer any involuntary transfer of the Site or any part thereof in violation of this Agreement.

Notwithstanding anything to the contrary set forth above, any such right to repurchase, reenter and repossess shall be: (i) subject to and conditioned upon (A) in the case of the Secured Credit Facility, payment to the holders of such Secured Credit Facility the sum of the following: (1) the then current collateral value of the Site (including all improvements thereon) as reflected on the holder of such Secured Credit Facility's books and records pursuant to the Secured Credit Facility loan documents up to, but not to exceed the sum of: (x) the amount of the actual purchase price paid to the City for the Site (or allocable to such portion thereof); plus (y) the aggregate amount of all hard and soft costs (excluding development fees paid to Developer or its affiliates) actually paid for the construction of the Project by the Developer or on behalf of the Developer; (2) all expenses with respect to the holders of the Secured Credit Facility's enforcement of remedies, if any; and (3) the net expense, if any, incurred by the holders of the Secured Credit Facility as a direct result of the management of the Site (or any portion thereof); or (B) with respect to any other first in priority mortgage or deed of trust holder, payment of the full amount of the unpaid debt, plus any accrued and unpaid interest, costs and expenses; and (ii) subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

- d. Any other then existing and remaining mortgage, deed of trust or other security instruments permitted by this Agreement; or
- e. Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

In addition to payment of the amounts required to be paid above, to exercise its right to repurchase, reenter and take possession with respect to the Site (or portion thereof), the City (or its designee) shall pay to the Developer in cash an amount equal to the actual purchase price paid to the City for the Site (or allocable to such portion thereof) reduced by any amount required to be paid to the holders of the Secured Credit Facility or any other holder of a mortgage, deed of trust or other security instrument in connection with the exercise by the City of its right to repurchase hereunder. Developer shall thereupon execute and deliver to City a grant deed transferring to City (or its designee) all of Developer's interest in the Site (or portion thereof) in its AS-IS, WHERE-IS CONDITION, WITHOUT ANY REPRESENTATIONS OR WARRANTIES. In the event City exercises its repurchase option under this Section 5.7, such exercise shall constitute City's sole and exclusive remedy on account of any default of Developer which gives rise to City's repurchase option hereunder, except that the foregoing limitation on remedies shall not affect the Developer's indemnity obligations under Sections 2.13.2, 3.1.7 and 6.9 of this Agreement.

ARTICLE 6 GENERAL PROVISIONS

6.1 Notices, Demands and Communications Between the Parties

Formal notices, demands and communications between the City and the Developer shall be in writing and sent to the following addresses, or at any other address as that party may later designate by notice, by one or more of the following methods:

a. Addresses/Fax Numbers

City: City of San Pablo
 13831 San Pablo Avenue
 San Pablo, CA 94070
 Attention: City Manager
 Telephone: (510) 215-3001
 Fax Number: (510) 215-3011

Developer: City Ventures Homebuilding, LLC
 3121 Michelson Drive, Suite 150
 Irvine, California 92612
 Attention: Ryan Aeh
 Telephone: (949) 258-7512
 Fax Number: (949) 336-4349

b. Methods

(1) Certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the United States mail; or

(2) A nationally recognized overnight courier, by priority overnight service, in which case notice shall be deemed delivered one (1) business day after deposit with that courier; or

(3) Hand delivery with signed receipt for delivery from a person at the place of business of the receiving party and authorized to accept delivery for the receiving party, in which case notice shall be deemed delivered upon receipt; or

(4) Telecopy or facsimile transmission, if a copy of the notice is also sent the same day by United States certified mail, in which case notice shall be deemed delivered one (1) business day after the telecopy or facsimile transmission, provided that a transmission report is automatically generated reflecting the accurate transmission of the notice to the receiving party at the fax number specified in paragraph a. above.

6.2 Conflicts of Interest

No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

6.3 Non-liability of City Officials and Employees

No member, official or employee of the City shall be personally liable to Developer in the event of any default or breach by the City or for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

6.4 Enforced Delay: Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to Force Majeure. "Force Majeure" means war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance by the City) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

6.5 Inspection of Books and Records

The City has the right, upon not less than seventy-two (72) hours' notice, at all reasonable times, to inspect the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement.

6.6 Plans and Data

Where the Developer does not proceed with the purchase and development of the Site, and when this Agreement is terminated pursuant to Section 5.6.2 hereof for any reason, the Developer shall deliver to the City copies of any and all plans and data owned by Developer concerning the Site.

6.7 Further Assurances

The Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement and/or modifications to the forms of documents attached hereto or execution of other implementing documents which may be made by any of the parties hereto, lending institutions, or bond counsel or financial consultants to the City, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. Notwithstanding the foregoing, the City agrees and acknowledges that the holders of the mortgages secured by the Site, the proceeds of which shall be used to acquire the Site and develop, construct and/or operate the Project, may require that the City subordinate certain of the City's rights set forth herein or in the Grant Deed to the rights of said mortgage holders and the City and the Developer shall take such actions as are reasonably requested by the holders of said mortgages, consistent with this Agreement and in conformance with applicable legal requirements.

6.8 City Approvals and Actions

Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager of City or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise. City Manager shall have the right to seek additional authority from the City Council as he may deem advisable or necessary.

6.9 Brokers

City and Developer each represent to the other that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue with respect to the sale of the Site from the City to the Developer. Each party shall indemnify, defend, protect and hold the other party harmless from any and all liabilities, losses, causes of action, claims, costs and expenses (including reasonable attorneys' fees) in connection with any claim asserted that such commissions or fees are alleged to be due from the party making such representations.

6.10 Approvals

Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction (collectively, an "approval") is required of a party pursuant to this Agreement, it shall not be unreasonably withheld or delayed. Unless provision is made for a specific time period, approval shall be given within thirty (30) days after receipt of written request for approval. If a party fails to act within the 30-day period, or other time period for approval as may be specified in this Agreement, the party requesting the approval, consent or satisfaction may send a second and final notice, together with a clear statement indicating that if the other party does not act upon such request within twenty (20) days following receipt of the second notice, the request shall be deemed approved. Failure of a party to act within the 20-day period

shall be deemed an approval of the request, provided the requesting party has included the statement to that effect in its notice and has provided in a timely manner all other information required in connection with said request. All approvals (including conditional approvals) and disapprovals shall be given or made in writing. If a party disapproves, the reasons therefor shall be stated in reasonable detail in writing.

This Section 6.10 shall not apply to the City's approval of land use entitlements or permit approvals for the development of the Site required by this Agreement, which shall be processed in accordance with all applicable City requirements.

ARTICLE 7 **ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS**

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through 28, inclusive, and Attachment Nos. 1 through 6, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on the dates set forth adjacent to their signatures.

CITY OF SAN PABLO

Date Signed: _____

By: _____
City Manager

“CITY”

CITY VENTURES HOMEBUILDING, LLC

By: CITY VENTURES COMMUNITIES, LLC,
a Delaware limited liability company,
its sole member

Date Signed: _____

By: _____

“DEVELOPER”

ATTACHMENT NO. 1

MAP OF THE SITE

[TO BE INSERTED]

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE SITE

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN PABLO, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Lot 4, Subdivision 9331, filed October 30, 2014, Book 521 of Maps, Page 41, Contra Costa County Records.

(APN: 417-310-004)

ATTACHMENT NO. 3
SCHEDULE OF PERFORMANCE

<u>Action</u>	<u>Date</u>
1. <u>Execution of Agreement.</u> The City Council shall consider this Agreement and, if authorized, shall execute and deliver this Agreement to the Developer.	Within 30 days after this Agreement is executed by the Developer and delivered to the City.
2. <u>Submission -- Evidence of Financing.</u> If not already approved by the City pursuant to this Agreement, Developer shall submit to the City for review and approval construction budget and evidence of financing necessary for development of the Site. (Section 2.15)	Within 60 days after execution of this Agreement by the City.
3. <u>Opening of Escrow.</u> The City shall open an escrow for conveyance of the Site. (Section 2.2)	Within 5 days of City's execution of this Agreement.
4. <u>Approval -- Evidence of Financing.</u> If not already approved by the City pursuant to this Agreement, the City shall approve or disapprove Developer's evidence of financing. (Section 2.15)	Within 30 days after receipt thereof by the City and prior to the close of escrow for conveyance of the Site to the Developer.
5. <u>Feasibility Period.</u> The Developer shall evaluate the condition of the Site and notify the City whether the Developer approves or disapproves the condition of the Site. (Section 2.13.1)	Within 60 days after the opening of escrow for conveyance of the Site to the Developer.
6. <u>Submission – Evidence re Governmental Entitlements, Permits and Fees.</u> Developer shall present evidence that it has obtained all land use entitlements and satisfied all requirements to obtain building and grading permits, and is ready to pay all required governmental fees, for the development of the Site. (Section 2.3.1)	Prior to the close of escrow for conveyance of the Site to the Developer.

<u>Action</u>	<u>Date</u>
7. <u>Submission -- Certificates of Insurance.</u> Developer shall furnish to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies. (Section 3.1.7)	Prior to the close of escrow for conveyance of the Site to the Developer.
8. <u>Submission -- Developer's Deposit to Secure Local Employment and Contracting Obligations.</u> The Developer shall have delivered to the City the Deposit required by Section VIII.C. of the Scope of Development (Attachment No. 4). In addition, Developer shall provide evidence of having worked with the San Pablo EDC to provide local contractors with a reasonable opportunity to bid.	Prior to the close of escrow for conveyance of the Site to the Developer.
9. <u>Submission – CC&Rs.</u> The Developer shall provide the CC&Rs for review and approval by the City.	Prior to the close of escrow for conveyance of the Site to the Developer.
10. <u>City Deliver Deed into Escrow.</u> City shall have executed and delivered the grant deed for the Site into escrow. (Section 2.8)	Prior to the close of escrow for conveyance of the Site to the Developer.
11. <u>Close of Escrow.</u> The City shall convey or cause conveyance of title to the Site to the Developer, and the Developer shall accept such conveyance. (Section 2.7)	As soon as practicable after the satisfaction of all conditions precedent to close of escrow, but not later than 12 months after City's execution of this Agreement. If Developer is diligently pursuing required land use entitlements, building and grading permits, but City has not provided final approval by such time, such date shall be extended by written notice of the City Manager for one or more three month periods as necessary to obtain final City approvals.

<u>Action</u>	<u>Date</u>
12. <u>Commencement of Construction of Developer's improvements on the Site.</u> Developer shall commence construction of the improvements on the Site. (Section 3.1.6)	Within 90 days after the close of escrow for conveyance of the Site to the Developer.
13. <u>Completion of Construction.</u> Developer shall complete construction of the improvements on the Site. (Section 3.1.6) Developer shall provide evidence of compliance with the Local Employment and Contracting requirements of Section VIII of Attachment No. 4.	Within 24 months after the commencement thereof.
14. <u>Issuance – Final Certificate of Completion.</u> The City shall furnish Developer with a final Certificate of Completion. (Section 3.6) If Developer has shown sufficient compliance with Section VIII of Attachment No. 4, then the City shall return the Deposit to Developer.	After completion of all construction required for the improvements on the Site.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

I. GENERAL

The Developer agrees that the Site shall be developed and improved in accordance with the provisions of this Agreement and the plans, drawings and related documents approved by the City pursuant hereto, including, in particular, the preliminary site plan attached to this Scope of Development as Exhibit A.

II. DEVELOPER IMPROVEMENTS ON THE SITE

The Developer shall construct, or cause to be constructed, on the Site approximately twenty-six (26) attached residential townhomes with associated parking and two (2) public activity areas consisting of an exercise area and playground with direct access to the creek trail as depicted on the preliminary site plan (Exhibit A of this Scope of Development). The two (2) public activity areas are of particular importance to the City, and the Developer agrees that the City shall have the right to approve the specific details concerning the layout and features/amenities contained in those areas. The Developer shall also construct other infrastructure, as specified and required by the City to support the improvements on the Site, including streets, sidewalks, curbs, gutters, and utilities. All utilities serving the improvements constructed on the Site shall be connected at Chattleton Lane.

The layout and configuration of the components of the Developer's improvements on the Site are shown on the preliminary site plan (Exhibit A of this Scope of Development).

As set forth in Section 4.6, whenever the townhomes developed on the Site are initially sold, they shall be sold with a requirement of owner occupancy for a period of not less than one (1) year.

III. ARCHITECTURE AND DESIGN

The improvements on the Site shall be of high architectural quality, shall be well-landscaped, shall be effectively and aesthetically designed and shall conform to the design approved by the City through the design review process. The plans submitted by the Developer shall describe in detail the architectural character intended for the Developer's improvements on the Site.

IV. LANDSCAPING

Landscaping shall embellish all open spaces upon the Site to integrate the Developer's improvements with adjacent sites within the area. Landscaping includes such materials as paving, trees, shrubs and other plant materials, landscape containers, plaza furniture, top soil preparation, automatic irrigation, landscape and pedestrian lighting. Landscaping shall carry out the objectives and principles of the City's desire to accomplish a high-quality aesthetic environment and shall be consistent with the design approved by the City through the design review process.

V. SCREENING

Trash areas shall be screened on at least three (3) sides and have movable doors or other devices to obscure such areas from view. All fire standpipes and such other fire related mechanical devices shall be screened with plant materials. Rooftop equipment shall be reasonably hidden so as to mitigate views from principal elevations surrounding the development.

VI. APPLICABLE CODES

The Developer's improvements shall be constructed in accordance with the California Building Standards Code and the Municipal Code.

VII. SITE CLEARANCE AND PREPARATION

The Developer shall perform, or cause to be performed, at its sole cost and expense, the following work:

A. On-Site Demolition and Clearance

1. On the Site, clear, grub and remove (as may be needed and called for in the approved plans) all on-site pavements, walks, curbs, gutters and other improvements as may be required by the City; and

2. Remove or plug utilities, such as storm sewers, sanitary sewers, water systems, electrical overhead and underground systems and telephone and gas systems located on the Site, as may be required by the City.

B. Compaction, Finish Grading and Site Work

The Developer shall compact, finish grade and do such site preparation as is necessary for the construction of the Developer's improvements on the Site.

VIII. LOCAL EMPLOYMENT AND CONTRACTING

A. Local Employment and Training Opportunities. In construction of Developer's improvements, including construction described in Sections II, IV, V, and VII of this Scope of Development, Developer shall ensure that contractors constructing such improvements, in aggregate, sponsor and employ at least 1 New Apprentice(s) to perform at least 400 total construction work hours. A "New Apprentice" is a San Pablo resident who enrolls in a state-registered construction apprenticeship program for the first time at the outset of his or her work on this Project. Developer or contractors shall pay fees related to enrollment and/or sponsorship of such New Apprentices. Construction work hours performed by residents of states other than California shall not be taken into account in application of this paragraph, including calculation of total construction work hours. Developer shall obtain from contractors and subcontractors, and provide to the City upon request, information sufficient to determine compliance with this paragraph. The City shall ensure that the San Pablo Economic Development Corporation (the EDC) works cooperatively with contractors and subcontractors to assist in identification of local workers available to work and interested in enrolling in registered apprenticeship programs. **Because damages for failure to satisfy requirements of this paragraph would be difficult to**

determine, Developer and City agree that if the New Apprentice work-hours requirement of this paragraph is not satisfied, Developer shall pay to the EDC \$30 per hour by which contractors in aggregate fell short of satisfaction of the New Apprentice work-hours requirement, with such funds to be used by the EDC to support training and referral of local residents. THE DEVELOPER AND THE CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

By: _____
Developer

By: _____
City

B. Local Contracting.

1. **Construction Contracts.** Prior to solicitation of bids for contracts for construction of improvements described in Sections II, IV, V, and VII of this Scope of Development, Developer shall meet with the EDC, and work cooperatively with the EDC to contact local contractors to provide a reasonable opportunity to bid, and shall make commercially reasonable efforts to maximize the use of local contractors, including local trucking firms. Developer shall make commercially reasonable efforts to award separate contracts for discrete portions of construction improvements, in order to promote opportunities for local participation. Developer shall require all prime construction contractors that are retaining subcontractors to work cooperatively with the EDC to contact local contractors to provide a reasonable opportunity to bid, and to make commercially reasonable efforts to maximize the use of local contractors, including local trucking firms. Prior to commencement of construction under any prime contract award, Developer shall provide the City with a list of contractors and subcontractors to be used in performance of the contract, and whether each listed contractor or subcontractor is a local business.

2. **Service Contracts During Construction Phase.** Prior to solicitation of bids for service contracts to be performed on-site during construction of improvements, including contracts for security services, Developer or its property manager shall work cooperatively with the EDC to contact local contractors to provide a reasonable opportunity to bid on such service contracts, and shall make commercially reasonable efforts to maximize the use of local contractors.

C. Good Faith Deposit. Prior to and as a condition of the close of escrow for conveyance of the Site from the City to the Developer, the Developer shall deliver to the City a deposit (the "Deposit") of cash or certified check satisfactory to the City in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00) as security for the performance of the obligations of the Developer under this Section VIII. The City shall be under no obligation to pay or earn interest on the Deposit, but if interest is paid thereon, such interest shall become part of the Deposit. The Deposit may be retained by the City in whole or in part to pay the liquidated damages described in paragraph A above. Upon satisfactory completion of construction of all improvements required to be constructed by this Agreement in compliance with the terms hereof,

as evidenced by the City's issuance of a certificate of completion pursuant to Section 3.6 hereof, the City shall return the Deposit to the Developer.

EXHIBIT A

PRELIMINARY SITE PLAN

[INSERT CONCEPTUAL YIELD STUDY DATED 11/17/17]



Conceptual Yield Study (ALTA Property Line)

Block "E" Site
San Pablo, CA

5/07/18

Kevin L. Crook
Architect
Inc

ATTACHMENT NO. 5
FORM OF GRANT DEED

RECORDING REQUESTED BY:

City of San Pablo
13831 San Pablo Avenue
San Pablo, CA 94806
ATTN: City Manager

WHEN RECORDED, MAIL TO:

City Ventures Homebuilding, LLC
3121 Michelson Drive, Suite 150
Irvine, CA 92612

No fee for recording pursuant to
Government Code section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Documentary Transfer Tax: \$605.00
Based upon full fair market value of property

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

THE CITY OF SAN PABLO, a municipal corporation (herein called "Grantor"), hereby grants to CITY VENTURES HOMEBUILDING, LLC (herein called "Grantee"), the real property (the "Property") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference.

1. The Property is conveyed pursuant to the Disposition and Development Agreement (the "DDA") entered into by and between the Grantor and the Grantee and dated _____, 2018. The Property is also conveyed subject to easements of record.

2. The Grantee hereby covenants and agrees, for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that during construction and thereafter, the Grantee, its successors and assignees shall devote the Property to the uses specified in the DDA. The DDA provides that the Grantee will develop twenty-six (26) for-sale townhomes on the Property in addition to parking and related amenities. Specifically, pursuant to Section 4.6 of the DDA, the Grantee shall require each initial purchaser of a completed

townhome to reside in and occupy the townhome for a period of one year from the date of sale. The requirement shall be substantially in the form attached to the DDA as Attachment No. 7.

3. Prior to the issuance of a final Certificate of Completion by the Grantor as provided in the DDA, the Grantee shall not, except as permitted by the DDA, sell, transfer, convey, assign or lease the Property (or any portion thereof) without the prior written approval of the Grantor. This prohibition shall not apply subsequent to the issuance of a final Certificate of Completion with respect to the improvements upon the Property (or portion thereof). This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property or to prohibit or restrict the lease or sale of any part or parts of a building or structure when said improvements are completed.

4. The Grantor shall have, at its option, the additional right, on thirty (30) days prior written notice to the Grantee and the holders of any mortgages, deeds of trust or other financing instruments, to repurchase, reenter and take possession of the Property (or portion thereof) with all improvements thereon, if after conveyance of title to the Property and prior to the the earlier to occur of (i) the issuance of a final Certificate of Completion therefor and (ii) the holders of the Secured Credit Facility's foreclosure (or a deed-in-lieu of such a foreclosure) of the deed of trust securing the Secured Credit Facility, the Grantee shall:

- a. Fail to commence construction of the improvements (or portion thereof) within the time required by the DDA for a period of three (3) months after written notice thereof from the Grantor (subject to extension of time caused by Force Majeure or time of delay caused by or contributed to by the Grantor) to the Grantee and the holders of any mortgages, deeds of trust or other financing instruments; or
- b. Abandon or substantially suspend construction of the improvements (or portion thereof), other than as a result of Force Majeure or any actions by the Grantor which caused or contributed to such suspension, for a period of three (3) months after written notice of such abandonment or suspension from the Grantor to the Grantee and the holders of any mortgages, deeds of trust or other financing instruments; or
- c. Except as permitted by Section 3.3 of the DDA, assign the DDA, or transfer or suffer any involuntary transfer of the Property or any part thereof in violation of the DDA.

Notwithstanding anything to the contrary set forth above, any such right to repurchase, enter and repossess shall be: (i) subject to and conditioned upon (A) in the case of the Secured Credit Facility, payment to the holders of such Secured Credit Facility the sum of the following: (1) the then current collateral value of the Property (including all improvements thereon) as reflected on the holder of such Secured Credit Facility's books and records pursuant to the Secured Credit Facility loan documents up to, but not to exceed the sum of: (x) the amount of the actual purchase price paid to the City for the Site (or allocable to such portion thereof); plus (y) the aggregate amount of all hard and soft costs (excluding development fees paid to Developer or its affiliates) actually paid for the construction of the Project by the Developer or on behalf of the Developer; (2) all expenses with respect to the holders of the Secured Credit Facility's enforcement of remedies, if any; and (3) the net expense, if any, incurred by the holders of the Secured Credit Facility as a direct result of the management of the

Site (or any portion thereof); or (B) with respect to any other first in priority mortgage or deed of trust holder, payment of the full amount of the unpaid debt, plus any accrued and unpaid interest, costs and expenses; and (ii) subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

- d. Any other then existing and remaining mortgage, deed of trust or other security instruments permitted by the DDA; or
- e. Any rights or interests provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments.

In addition to payment of the amounts required to be paid above, to exercise its right to repurchase, reenter and take possession with respect to the Property (or portion thereof), the Grantor (or its designee) shall pay to the Grantee in cash an amount equal to the actual purchase price paid to the Grantor for the Property (or allocable to such portion thereof) reduced by any amount required to be paid to the holders of the Secured Credit Facility or any other holder of a mortgage, deed of trust or other security instrument in connection with the exercise by the City of its right to repurchase hereunder. Grantee shall thereupon execute and deliver to Grantor a grant deed transferring to Grantor (or its designee) all of Grantee's interest in the Property (or portion thereof) in its AS-IS, WHERE-IS CONDITION, WITHOUT ANY REPRESENTATIONS OR WARRANTIES. In the event Grantor exercises its repurchase option under this Section 4, such exercise shall constitute Grantor's sole and exclusive remedy on account of any default of Grantee which gives rise to Grantor's repurchase option hereunder, except that the foregoing limitation on remedies shall not affect the Grantee's indemnity obligations under Sections 2.13.2, 3.1.7 and 6.9 of the DDA.

5. The Grantee covenants by and for itself and any successors in interest 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) or (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 Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

- a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, 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) or (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 premises herein conveyed, nor shall the grantee or any person claiming under or through

him or her, 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 premises herein conveyed. The foregoing covenants shall run with the land.”

b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“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) or (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 himself or herself, or any person claiming under or through him or her, 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.”

c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (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 premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, 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.”

6. The covenants contained in paragraph 2 of this Grant Deed shall remain in effect for the useful life of the improvements constructed on the Property pursuant to the PSA. The covenants contained in paragraphs 3, 4 and 5 shall remain in effect for the periods of time stated therein. The covenants against discrimination contained in paragraph 6 of this Grant Deed shall remain in perpetuity.

7. The covenants contained in paragraphs 2, 3, 4 and 5 of this Grant Deed shall be binding for the benefit of the Grantor, its successors and assigns, and any successor in interest to the Property or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to

enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this _____ day of _____, 20____.

THE CITY OF SAN PABLO,
"GRANTOR"

By: [Not for Execution/Form Only]
City Manager

APPROVED:

By: [Not for Execution/Form Only]
Counsel for Grantor

The provisions of this Grant Deed are hereby approved and accepted by the Grantee.

CITY VENTURES HOMEBUILDING, LLC,
"GRANTEE"

By: CITY VENTURES COMMUNITIES, LLC,
a Delaware limited liability company,
its sole member

By: [Not for Execution/Form Only]

EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN PABLO, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Lot 4, Subdivision 9331, filed October 30, 2014, Book 521 of Maps, Page 41, Contra Costa County Records.

(APN: 417-310-004)

ATTACHMENT NO. 6

TITLE EXCEPTIONS

[TO BE INSERTED]

ATTACHMENT NO. 7

FORM OF OWNER OCCUPANCY COVENANT

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO:

City of San Pablo
13831 San Pablo Avenue
San Pablo, CA 94806
Attention: City Manager

No fee for recording pursuant to
Government Code section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This document creates an encumbrance on and limits the use of the real property.

OWNER OCCUPANCY COVENANT

This Owner Occupancy Covenant (the "Covenant") is entered into as of _____, 20____, by and between _____ (the "Owner") and City Ventures Homebuilding, LLC (the "Developer").

Recitals

A. This Covenant applies to the real property commonly known as _____, San Pablo, California, 94806, which is fully described in Exhibit A attached hereto and incorporated herein by this reference (the "Townhome").

B. The Townhome is a portion of certain real property (the "Site") acquired by the Developer from the City of San Pablo (the "City") for development pursuant to a Disposition and Development Agreement dated _____, 2018 (the "DDA"). Under the DDA, the Developer will construct twenty-six (26) for-sale townhomes on the Site.

C. A condition of the sale of the Site by the City is the obligation of the Developer to require each initial purchaser of a townhome developed on the Site to occupy the townhome as his/her/their principal residence for not less than one (1) year.

Agreements

NOW, THEREFORE, THE OWNER AND THE DEVELOPER AGREE AS FOLLOWS:

1. Owner Occupancy Covenant. The Owner agrees that he/she/they shall occupy the Townhome as his/her/their principal place of residence. "Principal place of residence" means the place where a person or persons reside on a full-time basis.

2. Term of Covenant. This Covenant shall bind the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, for a period of one (1) year from the date of this Covenant, after which this Covenant shall automatically expire and be of no further force or effect.

3. Enforceability. The Owner, for himself/herself/themselves, hereby grants and assigns to the City the right to review and enforce compliance with this Covenant and, in furtherance of this right, grants to the City:

a. The right to receive the rents due or collected during the entire period the Townhome is occupied in violation of this Covenant; and

b. The right to apply to a court of competent jurisdiction for specific performance of this Covenant, for an injunction prohibiting a proposed letting or transfer of the Townhome in violation of this Covenant, to void an executed letting or transfer in violation of this Covenant, or for any such other relief as may be appropriate.

4. Rental of Townhome/Personal Hardship Requirements. The Owner shall not rent or lease the Townhome without the prior written approval of the City and the City will only approve a request to rent or lease the Townhome if the Owner has met the personal hardship requirements described in this Section 4. A personal hardship exception to this Covenant may be granted by the City if it is determined that one or more the circumstances listed below will result in an economic hardship to the Owner, such that the retention of the Townhome without the ability to rent or lease it would result in a substantial and irrevocable loss of the Owner's investment in the Townhome:

a. An emergency or a long-term illness or injury requiring medical attention of the Owner or a member of the Owner's immediate family;

b. The death of the Owner or a member of the Owner's immediate family;

c. The loss of job by the Owner or a mandatory job transfer beyond commuting distance from the Townhome; or

d. Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Owner.

IN WITNESS WHEREOF, the Owner and the Developer have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this _____ day of _____, 20____.

OWNER:

By: [Not for Execution/Form Only]

DEVELOPER:

CITY VENTURES HOMEBUILDING, LLC

By: CITY VENTURES COMMUNITIES, LLC,
a Delaware limited liability company,
its sole member

By: [Not for Execution/Form Only]

EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN PABLO, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

[TO BE INSERTED]