

## **SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT**

This SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT ("**Second Amendment**") is made and entered into effective as of August 24, 2021 (the "**Second Amendment Date**"), by and between the CITY OF SAN PABLO, a California municipal corporation ("**City**"), and AMERICAN RECESS, LLC, a California limited liability company, AND THE MULHOLLAND DRIVE COMPANY, LLC, a California limited liability company (together, "**Developer**").

### **Recitals**

A. The City and the Developer entered into that certain Disposition and Development Agreement dated June 4, 2020 ("**DDA**") providing for the sale and development of a portion ("**Development Parcel**") of that certain real property more commonly known as 2600 Moraga Road, San Pablo, California ("**School Site**"), as amended by that certain First Amendment to Disposition and Development Agreement entered into as of June 10, 2021 ("**First Amendment**"). Hereinafter, the term DDA means and refers to the DDA as amended by the First Amendment.

B. Pursuant to the DDA, the Developer is required to conduct its investigations and obtain Entitlements for development of the Development Parcel within the Contingency Period, including any extensions thereto. The Contingency Period, including all extensions thereto, will expire on September 11, 2021.

C. The Developer's investigations of the Development Parcel have revealed that the pipes for delivery of water to the Development Parcel are wholly inadequate to serve the new development and will need to be completely upgraded at a cost potentially in excess of \$1,000,000. In addition, preliminary work on a corner of the Development Parcel has revealed possible archaeological and cultural resources, necessitating further investigatory and potential remedial actions with attendant costs and time delays.

D. Given the results of the Developer's investigations of the Development Parcel described above, the Developer has requested an additional 45-day extension of the Contingency Period and a reduction of the Purchase Price for the Development Parcel, and the City desires to agree to the requested changes.

### **Agreement**

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

1. **Recitals**. The Recitals are true and correct and incorporated herein by this reference.

2. **Terms.** All undefined terms when used herein shall have the same respective meanings as are given such terms in the DDA unless expressly provided otherwise in this Second Amendment.

3. **Extension of Time to Obtain Entitlements.** Notwithstanding anything to the contrary in the DDA, the City agrees that the Developer shall have one further 45-day extension of the Contingency Period beyond September 11, 2021 (to no later than October 26, 2021) solely with respect to obtaining the Entitlements, provided that the Developer shall have increased the Deposit by an additional \$35,000 concurrently with the execution of this Second Amendment.

4. **Reduction of Purchase Price.** The Purchase Price for the Development Parcel, set forth in Section 301 of the DDA, is hereby reduced by the amount of FOUR HUNDRED FIFTY THOUSAND ONE HUNDRED FIFTY-EIGHT AND 33/100 DOLLARS (\$450,158.33), representing a cash reduction in the amount of THREE HUNDRED EIGHTY-TWO THOUSAND FOUR HUNDRED EIGHT AND 33/100 DOLLARS (\$382,408.33) and an allocation of a portion of the West Contra Costa Wastewater District sewer credits for the School Site to the Development Parcel in the amount of SIXTY-SEVEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$67,750.00). The revised Purchase Price for the Development Parcel is FOUR MILLION SIX HUNDRED SEVENTY-FOUR EIGHT HUNDRED FORTY-ONE AND 67/100 DOLLARS (\$4,674,841.67). The Purchase Price shall be paid by the Developer as follows:

- a. Acknowledgment by the Developer of the allocation of sewer credits from the West County Wastewater District in the amount of \$67,750.00; and
- b. Payment by the Developer of cash or certified funds in the amount of \$4,742,591.67.

5. **Compliance with Local, State and Federal Laws.** Section 408 of the DDA is hereby amended in its entirety to read as follows:

“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. The Developer, for itself and for each and every successor-in-interest, hereby releases and waives all rights, causes of action and claims the Developer, or such successors-in-interest, has or may have in the future against the City, and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns (“Releasees”) arising out of or in connection with 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 any obligation related to the payment of prevailing wages under California Labor Code Section 1720 *et seq.* In furtherance of the intentions set forth herein, the Developer, for itself and for each and every successor-in-interest, acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California that provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his

or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

“The Developer, for itself and for each and every successor-in-interest, 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 nonstatutory 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 408.”

6. **Amended Schedule of Performance.** The Schedule of Performance attached to the DDA as Attachment No. 2 is hereby deleted in its entirety and replaced by the “Amended Schedule of Performance” attached to this Second Amendment as “Second Amended Attachment No. 2” and incorporated herein by this reference.

7. **No Other Modifications.** Except as otherwise provided herein, all other terms and provisions of the DDA shall remain in full force and effect, unmodified by this Second Amendment. To the extent of any inconsistency with the terms and conditions of the DDA, the terms and conditions of this Second Amendment shall govern. Nothing in this Second Amendment shall be deemed to reduce the rights and remedies under the DDA.

8. **Binding Effect.** The provisions of this Second Amendment shall be binding upon and inure to the benefit of the heirs, representatives, successors and permitted assigns of the City and the Developer.

9. **Governing Law.** The provisions of this Second Amendment shall be construed and enforced in accordance with the laws of the State of California.

10. **Authority.** The City and the Developer represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

11. **Counterparts.** This Second Amendment may be executed in any number of counterparts. Any such counterpart, when executed, shall constitute an original of this Second Amendment, and all such counterparts when appropriately delivered between the City and the Developer shall constitute one and the same final Second Amendment.

**IN WITNESS WHEREOF**, the City and the Developer have executed this Second Amendment as of the Second Amendment Date first set forth above.

**“City”**

CITY OF SAN PABLO, a California municipal corporation

By \_\_\_\_\_  
Matt Rodriguez, City Manager

**“Developer”**

AMERICAN RECESS, LLC, a California limited liability company

By Reid Hamilton \_\_\_\_\_  
Reid Hamilton, Manager

AND

THE MULHOLLAND DRIVE COMPANY, LLC, a California limited liability company

By \_\_\_\_\_  
\_\_\_\_\_, Manager

**IN WITNESS WHEREOF**, the City and the Developer have executed this Second Amendment as of the Second Amendment Date first set forth above.

**“City”**

CITY OF SAN PABLO, a California municipal corporation

By \_\_\_\_\_  
Matt Rodriguez, City Manager

**“Developer”**

AMERICAN RECESS, LLC, a California limited liability company

By \_\_\_\_\_, Manager

AND

THE MULHOLLAND DRIVE COMPANY, LLC, a California limited liability company

By  \_\_\_\_\_  
Daniel Daxanian, Manager

## SECOND AMENDED ATTACHMENT NO. 2

### SECOND AMENDED SCHEDULE OF PERFORMANCE

<u>Action</u>	<u>Date</u>
1. <u>Execution and Delivery of Agreement by Developer.</u> The Developer shall execute and deliver this Agreement to the City.	Not later than July 31, 2020.
2. <u>Execution of Agreement by City.</u> The City Council shall hold a meeting to consider and authorize execution of this Agreement, and, if so authorized, the City shall execute and deliver this Agreement to the Developer. (Section 1001)	Within 45 days after the Developer executes this Agreement and delivers it to the City.
3. <u>Opening of Escrow.</u> The City shall open an escrow for conveyance of the Development Parcel to the Developer. (Section 302)	Within 30 days after execution of this Agreement by the City.
4. <u>Deposit.</u> The Developer shall deliver the Deposit to the Escrow Agent. (Section 106)	Within 5 days after the opening of escrow for conveyance of the Development Parcel from the City to the Developer.
5. <u>Contingency Period.</u> The Developer shall review and approve the title and physical condition of the Development Parcel. (Section 202 and Second Amendment to DDA)	No later than October 26, 2021.
6. <u>Governmental Entitlements.</u> The Developer shall obtain any and all permits and entitlements required for the development of the Development Parcel by the City or any other governmental agency. (Sections 202 and 406, and Second Amendment to DDA)	No later than October 26, 2021.

<u>Action</u>	<u>Date</u>
7. <u>Deposit of Purchase Price and Other Required Sums.</u> The Developer shall deposit the Purchase Price and other required sums into escrow. (Section 307)	Prior to the date set forth herein for the close of escrow for conveyance of the Development Parcel from the City to the Developer.
8. <u>Deposit of Grant Deed.</u> The City shall deposit the grant deed into escrow. (Section 306)	Prior to the date set forth herein for the close of escrow for conveyance of the Development Parcel from the City to the Developer.
9. <u>Close of Escrow.</u> The City shall convey title to the Development Parcel to the Developer, and the Developer shall accept such conveyance. (Section 303)	Within 7 days after Developer has obtained all necessary Entitlements, but in no event later than November 2, 2021.
10. <u>Submission -- Certificates of Insurance.</u> The Developer shall furnish to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies. (Section 405)	Prior to the date set forth herein for the commencement of construction of the Developer's improvements on the Development Parcel.
11. <u>Commencement of Construction of Developer's Improvements.</u> The Developer shall commence construction of the improvements to be constructed on the Development Parcel. (Section 404)	Within 30 days after the Developer obtains a demolition permit from the City, but in no event later than December 2, 2021.
12. <u>Completion of Construction of Developer's Improvements.</u> The Developer shall complete construction of the improvements to be constructed on the Development Parcel. (Section 404)	Within 18 months after commencement thereof by the Developer.