



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

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MEMORANDUM

DATE: September 11, 2017
TO: Castro Valley Municipal Advisory Council
FROM: Eileen Dalton, Director, Economic & Civic Development Dept.
SUBJECT: Summary of the Disposition & Development Agreement for 3295 Castro Valley Boulevard - Castro Valley Marketplace

Background

During its July 17th meeting, the MAC recommended Castro Valley Marketplace, LLC, (Main Street) as the “preferred developer” for the Daughtrey Building, based upon the development teams’ experience, vision, and ability to deliver a catalyst retail project.

This retail-only project features a 25,000 square feet “department store of food” and utilizes the ground floor, second floor mezzanine, and basement. Ground floor tenants are oriented to the new paseo, and include the Castro Valley Marketplace, an organic specialty grocer offering a deli with prepared foods and currently operating in Alameda as the Alameda Marketplace, a tap room and specialty coffee, and stalls and kiosks featuring a bakery, fish, meat, poultry, sushi, and a florist. The second floor/mezzanine will feature a cooking school, commissary facility, a yoga studio and a wine bar and shop. Blind Tiger, a popular Oakland-based restaurant, would own and operate a new restaurant in the basement specializing in cocktails and tapas plates.

In addition to serving as anchor tenants, the Alameda Marketplace and the Blind Tiger Restaurant are investors and partners in the CV Marketplace development team. This catalyst project meets the parking requirement through the shared parking lot currently under construction.

Disposition and Development Agreement (DDA)

The Disposition and Development Agreement (DDA) between the County and Castro Valley Marketplace, LLC, contains all of the terms and conditions that the developer must meet in order to close escrow and purchase the property from Alameda County. Before the close of escrow, CV Marketplace will have to:

- Submit conceptual development drawings
- Pre-lease at least 50% of the retail space
- Obtain land use approvals from Planning, including MAC review
- Show evidence of final financing commitment

The DDA also includes the following provisions related to development of the property

and delivery of a retail project:

- Negotiated purchase price – The proposed \$405,000 purchase price reflects a public-private partnership where the developer is providing \$495,000 of public benefits and based upon the developer's pro forma.
- List of public benefits - The County is requiring the following amenities above and beyond what a typical development would require. These include: providing space to incubate new businesses, a commissary, a second crosswalk connecting the east paseo with Castro Valley Boulevard, paseo and building enhancements, four electric charging stations, a joint parking maintenance fund deposit, and community-serving space. (*see attached*)
- Schedule of Performance – Sets the key development milestones, culminating in the anticipated opening of the Castro Valley Marketplace in September of 2018.
- Scope of Development – CV Marketplace will renovate the building for 2 major anchors and other food-related uses, as well as retail services (cooking store, yoga studio, etc.)
- Term – The DDA will remain in effect for 10 years from the date of execution, including the restrictions on certain uses, the requirement for anchor retail tenants, and the provision of public benefits such as the use of the commissary and community-serving space

Next Steps

This evening, ECD staff is seeking the MAC's feedback on and endorsement of the draft DDA. ECD staff will post the notice of public hearing 14 days prior to the Board of Supervisors' public hearing to consider approval of the DDA. The DDA and related materials will be available for public review during this time. ECD staff expects to bring the DDA to a Board hearing in October of this year.

Ultimately, the MAC will review the detailed architectural and site plans through its Site Development Review process which includes further public review.

Community Outreach

Focus Groups: 9/13 - Time TBD, hosted by Castro Valley Matters.
9/20 - 7 PM - 9 PM, hosted by Castro Valley Mother's Club
10/8 - Time TBD, hosted by Green Ridge HOA.

CV Marketplace is looking for additional focus group opportunities in September and October.

Events: CV Marketplace hosted a booth at the Chamber's Sept. 9th & 10th Fall Festival and will participate in the Nov. 11th Light Parade in downtown Castro Valley.

List of Public Benefits

CV Marketplace, the Developer, will provide improvements that exceed those typically provided in a retail project and normally required under the site development review process. These improvements will be reviewed and approved by the relevant approval bodies. CV Marketplace will receive a \$495,000 credit towards the purchase price for providing the public benefits listed below. The Developer will allocate \$495,000 to deliver the public benefits.

Paseo and Building Enhancements. The Developer will provide additional enhancements to the paseo and building façade that exceed the standard site development review requirements, as approved by the Director. These improvements could include paseo walls, exterior lighting, plantings, entry features, public art, enhanced signage, and building enhancements.
Estimated Cost: \$200,000

Parking Maintenance Fund. CV Marketplace will contribute thirty-thousand dollars (\$30,000) to the Parking Maintenance Fund in consideration for the disruption and impact to the Share Parking Lot resulting from construction of the retail project, pursuant to the Shared Parking Agreement.
Developer Contribution: \$30,000

Second Crosswalk. In consideration for the Developer's intensive use of the east paseo and the resulting increase in pedestrian activity, and in order to enhance walkability, the Developer will install a new, second crosswalk connecting the north side of Castro Valley Boulevard with the east paseo.
Estimated Cost: \$100,000

Business Incubator/ Commissary Facility/Community-serving Space. The Developer will allow the County's Community Development Agency (CDA) to use the commissary facility for educational and training purposes. The Developer will also provide space to incubate new businesses and for other community uses and will work with CDA to develop a mutually acceptable use agreement to implement these uses.
Estimated Cost: \$150,000

Install Electric Car Charging Stations. The Developer agrees to install four (4) electric car charging stations for public use in the Shared Parking Lot prior to the completion of development.
Estimated Cost: \$15,000

DRAFT

DISPOSITION AND DEVELOPMENT AGREEMENT

Between

COUNTY OF ALAMEDA

and

CASTRO VALLEY MARKETPLACE, LLC

3295 Castro Valley Boulevard, Castro Valley, Alameda County, CA

Dated as of _____, 2017

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Exhibit B:	Financial Proposal
Exhibit C:	Form of County Grant Deed
Exhibit D:	Schedule of Performance
Exhibit E:	Form of Memorandum of DDA
Exhibit F:	Scope of Development
Exhibit G:	Form of Certificate of Completion

DISPOSITION AND DEVELOPMENT AGREEMENT

Castro Valley Marketplace – 3295 Castro Valley Boulevard, Castro Valley, Alameda County, California

This Disposition and Development Agreement (the "Agreement") is dated for identification purposes only as of _____, 2017 (the "Execution Date"), by and between the County of Alameda, a political subdivision of the State of California (the "County"), and Castro Valley Marketplace, LLC (the "Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The Board of Supervisors adopted the “Redevelopment Plan for the Eden Area Redevelopment Project Area”, establishing the Project Area. The goals for the Redevelopment Plan included alleviation of blighting conditions and the stimulation of economic development activities in the Project Area.

C. As of the Execution Date, Alameda County is the owner of the Property, which consists of approximately 44,900 square feet of land.

D. Following the Effective Date, the County desires to convey the Property to the Developer, pursuant to the terms of this Agreement, for the purpose of redeveloping the Property as more particularly set forth in the Scope of Development. The County has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement.

E. Redevelopment of the Property pursuant to this Agreement will realize Alameda County’s goal to transform a vacant building into a catalyst retail project.

F. The County Planning Commission has found and determined, pursuant to Resolution No. PLN2013-00188 adopted on November 18, 2013, and in accordance with the requirements of Government Code Section 65402, that the development of the Property, as contemplated by this Agreement, conforms to the General Plan applicable to the Property.

G. Pursuant to CEQA, the County (in its capacity as "lead agency"), has prepared and reviewed an initial study for the proposed development of the Property as contemplated by this Agreement, and, on June 10, 2014, approved the Mitigated Negative Declaration for the transactions contemplated by this Agreement (including the rehabilitation of the Building), following a duly noticed public hearing. The Mitigated Negative Declaration has served as the environmental documentation for the County's consideration and approval of this Agreement and the transactions contemplated by this Agreement.

H. Documentation for the County's consideration and approval of this Agreement and the transactions contemplated by this Agreement.

THEREFORE, the Parties agree as follows:

ARTICLE 1.

DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

- (a) "Agreement" means this Disposition and Development Agreement, including the attached Exhibits and all subsequent operating memoranda and amendments to this Agreement.
- (b) "Applicable Land Use Approvals" means the County and other governmental permits and approvals necessary for the construction of the Development, including overall design and architectural review (including, but not limited to, compliance with the applicable requirements of the Specific Plan), but excluding a building permit.
- (c) "Applicable Laws" means all laws, rules, regulations, guidelines, permits, entitlements, approvals, and other governmental requirements of any Governmental Authority applicable to the Property from time to time.
- (e) "Board of Supervisors" means the board of supervisors of the County.
- (f) "Building" means the approximately thirty-nine thousand six hundred forty-nine (39,649) square foot building on the Property to be rehabilitated in accordance with this Agreement, and as more particularly set forth in the Scope of Development attached as Exhibit E.
- (g) "CEQA" means the California Environmental Quality Act, and its implementing regulations and guidelines, as may be amended from time to time.
- (h) "Certificate of Completion" means the certificate to be issued by the County upon the completion of construction of the Building Improvements, as more particularly set forth in Section 4.20. A form of the Certificate of Completion is attached as Exhibit G.
- (i) "Closing" means the date mutually acceptable to the Parties within thirty (30) days following the date on which all conditions precedent to conveyance set forth herein have been satisfied, but in no event later than the date(s) set forth in the Schedule of Performance, or such other date that the Parties agree upon in writing.
- (j) "Conceptual Development Documents" means the preliminary design concepts which shall include both (i) preliminary site plan and elevations, and (ii) a detailed narrative. The Conceptual Development Documents shall be consistent with the Scope of Development and

shall address the footprint and general location of the Improvements on the Property, the interior layout, the mix of proposed uses by square footage on each floor, the style and quality of architectural treatment, the materials used on the exterior of the Improvements, the access and pedestrian and traffic circulation features (including location and methods of ingress and egress), the preliminary façade treatment, and all other relevant design factors.

(k) "Control" shall mean direct or indirect management or control: (i) of the managing member or members in the case of a limited liability company; (ii) of the managing general partner or general partners in the case of a partnership; and (iii) of a majority of the directors in the case of a corporation, each as determined by the County.

(l) "County" means the County of Alameda, a political subdivision of the State of California, acting by and through its various departments or agencies.

(m) "County Event of Default" has the meaning set forth in Section 7.3

(n) "County Grant Deed" means the grant deed by which the County shall convey the Property, to the Developer substantially in the form of Exhibit C.

(o) "County Required Building Elements" means, collectively, (i) the commercially feasible and reasonably necessary renovation, or rehabilitation, of the façades of the Building to improve the existing appearance of such facades, and (ii) the ingress and egress access to be developed on the east-side of the Building to provide pedestrian access from the east-side of the Building to the paseo located on the east-side of the Building between the Building and the building commonly known as 3323 Castro Valley Boulevard.

(p) "Deposit" means the good faith deposit in the amount of seventy-five thousand dollars (\$75,000), to be paid to Alameda County.

(q) "Developer" means Castro Valley Marketplace, LLC, a California limited liability company.

(r) "Developer Event of Default" has the meaning set forth in Section 7.4.

(s) "Development" means the Property and the Improvements.

(t) "Director" means the Director of Economic and Civic Development of the Community Development Agency of the County, or any person who shall have been designated in writing to the Developer by the Director as the authorized designee of the Director for the purposes of this Agreement.

(u) "Escrow" means the escrow established with the Title Company for the purpose of conveying the Property from the County to the Developer.

(v) "Execution Date" means the date first written above.

(w) "Financing Plan" means the Developer's plan for financing the acquisition of the Property and the development of the Improvements, approved by the County pursuant to Section 3.5.

(x) "Former Agency" means the former Redevelopment Agency of the County of Alameda, which was dissolved pursuant to California Health & Safety Code Section 34172.

(y) "Governmental Authority(ies)" means any federal, state, and/or local agency, department, commission, board, bureau, administrative or regulatory body, or other public instrumentality having jurisdiction over the Property or any portion thereof, including, but not limited to, the County of Alameda acting in its capacity as a regulatory body.

(z) "Hazardous Materials" means any substance, material, or waste which is: (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) MTBE; or (7) determined by California, federal or local government authority to be capable of posing a risk of injury to health, safety or property. Without limiting the foregoing, Hazardous Materials means and includes any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any Hazardous Materials Laws including any federal, state or local environmental statute, regulation or ordinance presently in effect that may be promulgated in the future, as such as statutes, regulations and ordinances may be amended from time to time.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, or management of commercial properties, buildings and grounds, or typically used in office or residential activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health & Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Improvements, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws.

(aa) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.

(bb) "Building Improvements" means: (i) the Building, (ii) on-site landscaping, and all other on-site improvements as more particularly set forth on the Conceptual Development Plans, and (iii) all necessary off-site improvements, including, but not limited to, utilities, curbs, gutters, and sidewalks, as expressly required by the Applicable Land Use Approvals, all as more particularly set forth in the Scope of Development attached as Exhibit F.

(cc) "Long Range Property Management Plan" means the plan prepared by the Successor Agency in accordance with California Health & Safety Code Section 34191.5.

(dd) "Memorandum of DDA" means the memorandum of Disposition and Development Agreement to be recorded against the Property at the Closing. The form of the Memorandum of DDA is attached hereto as Exhibit E.

(ee) "Monitoring Requirements" means the requirements set forth in that certain "Notice of General Permit Coverage for Discharge" issued by the San Francisco Regional Water Quality Control Board ("RWQCB") on February 22, 2011, and all RWQCB requirements referenced therein, regarding the ongoing remediation and monitoring of certain Hazardous Materials existing on the Property as of the Execution Date.

(ff) "Shared Parking Agreement" means the Declaration of Agreement Establishing Reciprocal Easements for Shared Parking and Shared Access and Providing for Joint Use and Maintenance entered into by and among the County and the Adjacent Property Owners. Among other things, the Parking Agreement provides the Property vehicular access to Wilbeam Avenue.

(gg) "Parties" means the County and the Developer. "Party" refers to either one of the Parties.

(hh) "Project Area" means the Castro Valley Sub-Area of the Eden Area Redevelopment Project Area, as more particularly described in the Redevelopment Plan.

(ii) "Property" means the real property as more particularly described in Exhibit A (the "Land"); all rights, privileges and easements appurtenant to the Land (collectively, the "Appurtenances"); all improvements and fixtures located upon the Land (collectively, the "Improvements"); all of County's right, title and interest in and to all warranties, reports, studies and other work product, entitlements, governmental permits, licenses, certificates and other governmental approvals, air rights, water, water rights, utility meter credits, and other permits, pre-paid fees, deposits, fee credits, and any refunds, if any, that pertain to the Land, all easements, rights of way and other rights appurtenant used in connection with the beneficial use and enjoyment of the Land, and all of the rights of County, if any, in any other intangible personal property used in connection with the ownership, use and/or operation of the Land, and all service and/or utility agreements that Buyer elects to take an assignment of (collectively, the "Intangible Property"); and all tangible personal property located on or in, or used in the ownership, use, occupancy or operation of the Land and/or Improvements (the "Tangible Personal Property").

(jj) "Redevelopment Plan" means the Redevelopment Plan adopted by the Board of Supervisors prior to the dissolution of the Redevelopment Agency, pursuant to California Health & Safety Code Section 34172.

(kk) "Retail Component" means the approximately 25,000 square feet of usable space utilizing the ground floor, second floor mezzanine, and basement, as well as use of the adjacent paseo for outdoor dining. The Retail Component is more particularly described in the Scope of Development.

(ll) "Schedule of Performance" means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve disposition of the Property to the Developer

and the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit D.

(mm) "Scope of Development" means the description of the basic physical characteristics of the Improvements, including a basic site plan that will serve as a basis for the Developer's application for the Applicable Land Use Approvals. The Scope of Development is attached to this Agreement as Exhibit F.

(nn) "Security Financing Interest" has the meaning set forth in Section 9.1.

(oo) "Specific Plan" means the Castro Valley Central Business District Specific Plan, as amended from time to time.

(pp) "Successor Agency" means the successor agency to the Former Agency as more particularly described in California Health & Safety Code Section 34173.

(qq) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue for ten years.

(rr) "Title Company" means Fidelity National Title located at 505 14th Street, Suite 900, Oakland, CA, 94612, unless modified by the Parties.

(ss) "Title Report" means, collectively, the preliminary title report for the Property dated August 21, 2008 prepared by the Chicago Title Company.

(tt) "Transfer" has the meaning set forth in Section 5.1.

Section 1.2 Exhibits.

The following exhibits are attached to and incorporated in the Agreement:

Exhibit A:	Legal Description of the Property
Exhibit B:	Financial Proposal
Exhibit C:	Form of County Grant Deed
Exhibit D:	Schedule of Performance
Exhibit E:	Form of Memorandum of DDA
Exhibit F:	Scope of Development
Exhibit G:	Form of Certificate of Completion

ARTICLE 2.

PREDISPOSITION REQUIREMENTS

Section 21. Right of Entry; Due Diligence Period

(a) Right to Enter the Property. On, or about, the Execution Date, the Successor Agency has granted, or shall grant, the Developer a right of entry onto the Property pursuant to a separate license agreement between the Successor Agency and the Developer (the "Initial License Agreement"). Provided that: (i) there is no uncured material event of default by the Developer under the Initial License Agreement (beyond any applicable notice and cure provisions set forth in the Initial License Agreement), and (ii) the Developer has delivered evidence of the insurance in accordance with Section 6.6(a)(1)-(3), as of the Effective Date, the County grants the Developer a right of entry onto the Property to inspect and conduct such studies of the Property as the Developer, in its sole discretion, may desire for a period of one hundred fifty (150) days following the Effective Date (the "Due Diligence Period"). On or before the expiration of the Due Diligence Period, the Developer shall give written notice to the Director as to whether the Developer approves or disapproves of the Property, in the Developer's sole and absolute discretion. The Developer's failure to provide notice to the Director on or before the expiration of the Due Diligence Period shall be deemed disapproval of the Property. In the event the Developer approves of the Property, prior to the expiration of the Due Diligence Period, then the Parties shall proceed to the Closing subject to the requirements of this Agreement (including, but not limited to the Developer's satisfaction of all the Developer's conditions precedent to the Closing, and the County's satisfaction of all of the County's conditions precedent to the Closing). In the event the Developer disapproves of the Property, or is deemed to have disapproved of the Property, prior to the expiration of the Due Diligence Period, then the Developer shall deliver a copy of all non-proprietary third-party reports and test results of the Property conducted on behalf of the Developer during the Due Diligence Period (unless such documents were previously delivered to the Successor Agency pursuant to the Initial License Agreement), and upon such delivery, the Deposit (if made) shall be returned to the Developer, this Agreement shall be terminated, and shall be of no further force or effect (except for any provision that explicitly survives termination). In such event, the Parties shall, upon the request of either Party and at no cost to either Party, execute such document(s) as may be reasonably necessary to evidence such termination. The Developer makes no representation or warranty, or any nature whatsoever, regarding the content and/or accuracy of any reports or other materials provided to the County pursuant to this Section.

As of the Effective Date, the County shall provide the Developer (and the Developer's employees and agents) the right to enter upon all portions of the Property for the purposes of conducting soils tests, engineering studies, seismic and geologic studies, inspections and testing for Hazardous Materials, and underground storage tanks, investigation of applicable zoning and other land use regulations, analysis of economic feasibility and other studies related to the Developer's use of the Property and the condition of the Property. Any preliminary work by the Developer, or any party acting on behalf of the Developer, shall be undertaken only after securing the applicable insurance set forth in Section 6.6 and all necessary permits from the appropriate Governmental Authorities.

(b) Right to Market. In addition, as of the Effective Date, the County grants the Developer the right to market the Building to prospective tenants, by taking any, or all, of the following

actions: hiring a real estate broker(s), placing commercially reasonable signs or other marketing materials on or about the Building (subject to Applicable Laws, collectively, the "Marketing Materials"), entering the Property and showing the Building to prospective tenants (or other users), potential lenders, and potential investors, and negotiating agreements with prospective users. Such right granted herein shall automatically terminate upon a Developer Event of Default or upon termination of this Agreement, and upon such termination, the Developer shall, or shall cause, the prompt removal of any personal property, including, but not limited to Marketing Materials located at the Property. As between the Developer and the County, the Developer shall be solely obligated for all costs and expenses incurred by the Developer in connection with the right granted herein, and at the sole risk of the Developer.

(c) Limitation on Developer's Rights. The rights granted to the Developer as set forth above shall be subject to, and limited by, any temporary lease, or other similar agreement for the short-term use and occupancy of the Building, between the County (or the Successor Agency, as applicable) and a third-party, which may be entered into prior to the Effective Date; provided, however, the County shall have the obligation to cause such temporary use to be terminated prior to the Closing.

(d) Indemnity; Obligation to Restore. The Developer shall indemnify, defend (with counsel reasonably selected by the County and which counsel shall be reasonably approved by Developer and Developer's insurance company, if applicable) and hold the County harmless from any claims, losses, liabilities and damages arising out of the activities of the Developer, or any party acting on behalf of the Developer, as set forth in this Section, excluding therefrom any claims, losses, liabilities and damages caused by: (i) the negligence or willful misconduct of the County (or any third-party occupant or user of the Property), or (ii) the mere discovery by the Developer of a pre-existing condition on, or about, the Property. In addition, in the event that the Developer, or any party acting on behalf of the Developer, causes any damage to any portion of the Property or the Building, the Developer shall promptly restore the damaged portion of the Property (or the Building, as applicable) as nearly as possible to the physical condition existing immediately prior to the Developer's entry onto the Property, but in no event to a condition that exceeds the condition prior to Developer's entry. The Developer's failure to promptly restore the Property shall constitute a Developer Event of Default as set forth in Section 8.4. The obligations set forth in this subsection shall survive the termination of this Agreement. Upon request of either Party, the Parties shall execute, or take such other actions as may be necessary, to enter into an agreement in substantially the same form and content of the Initial License Agreement to govern the Developer's right to enter the Property as of the Effective Date.

(e) Delivery of Documents. As of the Effective Date and until the Closing, the Developer shall have the right to review, and make copies of all documents regarding the Development within the Director's possession, including, but not limited to the Hazardous Materials Reports (the "Due Diligence Documents"). The Director shall make available to the Developer the Due Diligence Documents at such times as mutually acceptable to the Parties.

Section 2.2 Conditions Precedent to Conveyance of the Property.

The following requirements set forth in Section 3.2 through Section 3.12, inclusive, of this Article are conditions precedent to the County's obligations to convey the Property to the Developer. The

County's obligation to convey the Property to the Developer shall be subject to the satisfaction of all such conditions precedent prior to the date or dates set forth in the Schedule of Performance.

Section 2.3 Developer Deposit.

(a) Developer Deposit. Within five (5) days of the Effective Date, Developer will provide the County a refundable Deposit of seventy-five thousand dollars (\$75,000).

(b) Within five (5) days of receipt of the Deposit, the County will deliver to the Title Company the Developer Deposit in the amount of seventy-five thousand dollars (\$75,000). The Parties shall direct the Title Company to promptly deposit the Deposit in an interest-bearing account.

(c) At Termination of Agreement. Upon termination of this Agreement after a County Event of Default prior to the Closing, or upon a no-fault termination under Section 7.2, the Title Company shall return the Deposit to the Developer.

(d) At the Closing. At the Closing, the Deposit shall be applied toward the Purchase Price.

Section 2.4 Construction Documents.

(a) Conceptual Development Drawings. No later than the date set forth in the Schedule of Performance, the Developer shall submit the Conceptual Development Documents to the Director for the Director's review and approval. The Director shall approve or disapprove of the Conceptual Development Documents within ten (10) days following submission, and, if not approved or disapproved within such ten (10) day period, the Conceptual Development Documents shall be deemed approved. The Director shall approve the Conceptual Development Documents if they are substantially consistent with the description of the Improvements set forth in the Scope of Development. If the Director disapproves the submission, the Director shall specify in writing the reasons for disapproval. Within thirty (30) days following notice of disapproval from the Director, the Developer shall thereafter revise the Conceptual Development Documents so as to remove the reasons for disapproval and submit those revised Conceptual Development Documents to the Director for approval. The Director shall approve or disapprove of the revised Conceptual Development Documents within ten (10) days following submission, and if not disapproved within that ten (10) day period, the revised Conceptual Development Documents shall be deemed approved. The process for revision and review shall be repeated until the Director has approved the Conceptual Development Documents.

The Developer acknowledges that the Director's right to review and approve the proposed Conceptual Development Documents are in addition to, and shall not be limited by, the County's obligation, if any, to review the Developer's proposed Conceptual Development Documents for consistency with applicable building code requirements. The Developer further acknowledges that the Director shall have no obligation to approve such proposed plans in the event that the Developer fails to incorporate the Director's commercially reasonable requested changes or modifications to the proposed Conceptual Development Documents (even in the event that such requested changes or modifications exceed the minimum thresholds set forth in the applicable building code and have not been required by the County's Planning Department, or any other Governmental Authority),

provided such changes or modifications are substantially consistent with the description of the Improvements set forth in the Scope of Development.

(b) The Developer shall have the right to submit amended Conceptual Development Documents from time to time in order to obtain the Director's approval of changes that may be required in order to obtain approvals from Governmental Authorities or others. The Director shall approve or disapprove of the amended Conceptual Development Documents within ten (10) days following submission, and, if not approved or disapproved within such ten (10) day period, the Conceptual Development Documents shall be deemed approved. The Director shall approve the Conceptual Development Documents if they are substantially consistent with the description of the Improvements set forth in the Scope of Development. If the Director disapproves the submission, the Director shall specify in writing the reasons for disapproval. Within thirty (30) days following notice of disapproval from the Director, the Developer shall thereafter revise the amended Conceptual Development Documents so as to remove the reasons for disapproval and submit those revised amended Conceptual Development Documents to the Director for approval. The Director shall approve or disapprove of the revised amended Conceptual Development Documents within ten (10) days following submission, and if not disapproved within that ten (10) day period, the revised amended Conceptual Development Documents shall be deemed approved. The process for revision and review shall be repeated until the Director has approved the amended Conceptual Development Documents.

Section 2.5 Financing Plan.

No later than the time set forth in the Schedule of Performance, the Developer shall submit for Director approval in accordance with this Section 2.5, evidence of the availability of the funds necessary to acquire the Property and construct the Improvements in accordance with this Agreement (the "Financing Plan"). The Financing Plan shall be based on the Financing Proposal attached as Exhibit B, and shall include:

- (a) An estimated operating pro forma for the Development for five (5) years, which shall show debt service on all loans;
- (b) An estimated sources and uses budget, including a cost breakdown for costs of acquiring the Property and constructing the Improvements. The sources and uses shall include all assumptions for all debt and equity financing, shall show the timing of uses of each source of financing and shall break down which expenses each source of financing is funding;
- (c) A description of any joint ventures or partnerships the Developer proposes to enter into in order to provide funds for the construction of the Improvements and acquisition of the Property including copies of the proposed joint venture or partnership agreements; provided, however, Director approval of any Financing Plan shall not be deemed to be approval of any Transfer described in such plan, and all Transfers are subject to Article 6;
- (d) A copy of the commitment or commitments obtained by the Developer for any loans to assist in financing the construction of the Improvements, certified by the Developer to be true and correct copies thereof;

(e) A certified financial statement or other financial statement in such form reasonably satisfactory to the Director evidencing other sources of capital sufficient to demonstrate that the Developer has (or will have, as and when needed) adequate funds available and is committing such funds to cover the difference, if any, between costs of development and construction of the Improvements and the amount available to the Developer from external sources;

(f) A description of the proposed uses of the Development, including but not limited to, executed letters of intent from tenant(s) to occupy no less than 50% of the ground floor square footage of the Commercial Component consistent with the terms of this Agreement.

Upon receipt by the Director of the proposed Financing Plan, the Director shall promptly review the Financing Plan and shall approve or disapprove it within ten (10) days after submission if it conforms to the provisions of this Agreement. The Director's review of the proposed Financing Plan shall be limited to determining if the contemplated financing will be reasonably available, if the financing contemplated in the proposed Financing Plan would provide sufficient funds to undertake and complete the development and construction of the Improvements and determining if it is consistent with the terms of this Agreement.

If the proposed Financing Plan is not approved by the Director, the Director shall notify the Developer in writing of the reasons therefore. The Developer shall thereafter resubmit a revised Financing Plan to the Director for its approval within thirty (30) days after the Director's notification of disapproval. The Director will either approve or disapprove the revised Financing Plan within ten (10) days after resubmission by the Developer, and if disapproved, the County may declare a Developer Event of Default in accordance with Article 6. Only upon the approval of the Financing Plan shall this pre-disposition condition be met.

The Parties agree that notwithstanding the time requirements set forth in this Section for submission and resubmission to the Director by the Developer of a proposed Financing Plan and review and approval of the Financing Plan by the Director, the Developer is responsible for assuring that a Financing Plan in approvable form is submitted to the Director in a timely manner such that the Director may have the time permitted by this Section to review and approve a Financing Plan no later than the date set forth in the Schedule of Performance.

Prior to the issuance of the Certificate of Completion, any material change, modification, revision or alteration of the approved Financing Plan must first be submitted to and approved by the Director for conformity to the provisions of this Agreement. If not so approved, the approved Financing Plan shall continue to control.

Section 2.6 Application for Applicable Land Use Approvals.

No later than the date set forth in the Schedule of Performance, the Developer shall apply to the County Planning Department and any other Governmental Authority for the Applicable Land Use Approvals for the Improvements. All applications shall conform with the description of the Building Improvements set forth in this Agreement, unless a variation has been previously approved by the Director in writing. The application shall include a site plan, architectural elevations, and such other information as the County Planning Department, or other Governmental Authority, may require. This condition precedent to the Closing shall be deemed satisfied only

upon the Developer's delivery of documentation reasonably acceptable to the County that all Applicable Land Use Approvals have been obtained, including but not limited to a finding by the County's Planning Director and Planning Commission that the improvements are consistent with the Ashland/Cherryland Business District Specific Plan.

Section 2.7 Building Permit.

No later than the date set forth in the Schedule of Performance, the Developer shall apply to the County Public Works Department for a building permit allowing for the construction of the Building Improvements as set forth in the Conceptual Development Documents. After submitting an application for a building permit, the Developer shall diligently pursue and obtain a building permit for the Building Improvements, and no later than the dates set forth in the Schedule of Performance, the Developer shall deliver evidence to the County that the Developer is entitled to issuance of a building permit for the applicable Building Improvements upon payment of applicable permit fees. If such evidence is not delivered by the dates set forth in the Schedule of Performance, the County may declare a Developer Event of Default pursuant to Article 8. The County shall render all reasonable assistance (at no additional cost to County, other than normal and customary costs incurred by the County in its capacity as a Governmental Authority) to the Developer to obtain the building permits.

The Developer acknowledges that execution of this Agreement by the County does not constitute approval by the County, in its capacity as a Governmental Authority, of any required permits, applications, or allocations, and in no way limits the discretion of the County Public Works Department, or any other Governmental Authority, in the permit allocation and approval process.

Section 2.8 Pre-leasing Commitments.

No later than the date set forth in the Schedule of Performance, the Developer shall submit evidence to the Director that the Developer has obtained a binding pre-leasing commitment from retail or commercial tenant(s) for not less than 50% of the Retail Component. Such evidence shall consist of one or more executed leases (conditioned only upon the completion of the construction of the Improvements), between the Developer and retail or commercial tenant(s), for the lease of the applicable portion of the Retail Component for no less than five (5) years, or such other documentation, reasonably acceptable to the County, from retail or commercial tenant(s). The Director shall either approve or disapprove of such evidence within thirty (30) days following the Director's receipt. The Director's failure to either approve or disapprove of such evidence within such thirty (30) day period shall be deemed approval. The Director shall not unreasonably withhold, delay, or condition its approval of such evidence; provided, however, such approval shall in no way be deemed to be a representation by the Director regarding the business advantage or the enforceability of such document, or constitute approval of or concurrence with any other term or condition of such document. Director approval of such pre-leasing commitment documentation shall merely constitute satisfaction of the condition set forth in this Section.

Section 2.9 Excluded Uses

The Developer shall not lease commercial or retail space to any of the following uses: payday lenders, thrift stores, discount stores, vape and cigarette shops, pawn shops, gun and ammunition sales, and cannabis-related outlets. Office use(s) are not allowed on the ground floor.

Section 2.10 Financing.

All financing necessary to acquire the Property and construct the Improvements, as approved by the Director in the Financing Plan, shall be closed by the Developer prior to, or simultaneously with, the execution of the County Grant Deed by the County. The Developer shall also submit to the Director evidence reasonably satisfactory to the Director that any conditions to the release or expenditure of funds described in the approved Financing Plan as the sources of funds to pay the costs of constructing the Improvements have been met or will be met upon the execution of the County Grant Deed and subject to the Developer's satisfaction of standard disbursement preconditions required to be satisfied on a periodic basis, for constructing the Improvements. Submission by the Developer, and approval by the Director (which shall not be unreasonably withheld, delayed, or conditioned), of such evidence of funds availability shall be a condition precedent to the County's obligation to execute the County Grant Deed conveying the Property to the Developer.

Section 2.11 Construction Contract.

No later than the date set forth in the Schedule of Performance, the Developer shall submit to the Director for its limited approval the proposed construction contract for the Improvements. The Director's review and approval shall be limited exclusively to a determination whether (a) the guaranteed maximum construction cost set forth in the construction contract is consistent with the approved Financing Plan; (b) the construction contract is with a reputable licensed contractor reasonably acceptable to the Director; and (c) the construction contract contains provisions consistent with Section 3.11 and Article 5 of this Agreement.

Upon receipt by the Director of the proposed construction contract, the Director shall promptly review same and approve it within ten (10) days if it satisfies the limited criteria set forth above. If the construction contract is not approved by the Director, the Director shall set forth in writing and notify the Developer of the Director's reasons for withholding such approval. The Developer shall thereafter submit a revised construction contract for Director approval, which approval shall be granted or denied in ten (10) days in accordance with the criteria and procedures set forth above. Failure of the Director to respond within the ten (10)-day period(s) set forth above shall be deemed approval by the Director. The provisions of this Section relating to time periods for approval, disapproval, and resubmission of the construction contract shall continue to apply until such agreement has been approved by the Director.

Any construction contract executed by the Developer for the Improvements shall be in a form approved or deemed approved by (or deemed approved by) the Director; provided, however, such approval shall in no way be deemed to be a representation by the County regarding the business advantage or the enforceability of such contract, or constitute approval of or concurrence with any

other term or condition of the construction contract. Director approval of the construction contract shall merely constitute satisfaction of the condition set forth in this Section.

Section 2.12 Construction Bonds.

No later than the date set forth in the Schedule of Performance and following the Director's approval of the construction contract(s), the Developer, or its general contractor(s) shall obtain one (1) labor and material bond and one (1) performance bond for construction of the Building Improvements, each in an amount equal to one hundred percent (100%) of the scheduled cost of construction. Each bond shall name the County as co-obligee and shall be issued by a reputable insurance company licensed to do business in California, reasonably acceptable to the Director. The form of the labor and material bond and the performance bond shall be subject to the Director's prior review and written approval, which shall not be unreasonably withheld.

Section 2.13 Insurance.

The Developer shall furnish to the Director evidence of the insurance coverage meeting the requirements of Section 4.18 below, no later than the date set forth in the Schedule of Performance.

ARTICLE 3. DISPOSITION OF PROPERTY

Section 3.1 Purchase and Sale.

Subject to the terms and conditions of this Agreement (including, but not limited to the satisfaction of all conditions precedent set forth herein), the County shall sell the Property to the Developer, and the Developer shall purchase the Property from the County. The Property shall be conveyed by the County Grant Deed, a form of which is attached as Exhibit C.

Section 3.2 Purchase Price.

The Developer shall pay the County the amount of \$405,000.00 for the Property (the "Purchase Price"). The Purchase Price, less the Deposit, shall be paid in cash at the Closing. The Purchase Price is the price that reflects the Developer's provision of public benefits as described in the Government Code Section 52201 Report.

Section 3.3 Opening Escrow.

To accomplish the conveyance of the Property, the Parties shall establish an escrow with the Title Company and shall execute and deliver to the Title Company written instructions that are consistent with this Agreement.

Section 3.4 Closing Date.

(a) Date. The Closing for the Property shall occur no later than the date set forth in

the Schedule of Performance, and only in the event that all conditions precedent to conveyance set forth in Article 3 have been satisfied by the Developer or waived by the Director.

(b) Additional Closing Conditions. In addition to the conditions precedent to execution of the County Grant Deed as set forth in Article 2, the following conditions shall be satisfied prior to or concurrently with, and as conditions of, execution of the County Grant Deed:

The Developer shall provide the Director with a certified copy of a corporate authorizing resolution, approving this Agreement and the County Grant Deed and the conditions and covenants set forth in this Agreement and the County Grant Deed.

The Developer shall have executed and delivered to the Director the County Grant Deed, the Memorandum of DDA, and any other documents and instruments required under this Agreement to be executed and delivered, all in a form and substance required by or attached to this Agreement, or, if no specific form is required or attached, reasonably satisfactory to the Director.

The County Grant Deed, and the Memorandum of DDA shall have been recorded against the Property.

The Developer shall have provided the Developer evidence that the Developer is entitled to the issuance of a building permit for the Improvements as set forth in Section 3.7.

No Developer Event of Default shall exist under this Agreement.

All representations and warranties of the Developer contained in Section 10.16 of this Agreement shall be true and correct in all material respects.

Section 3.5 Condition of Title.

At the Closing, the County shall convey to the Developer insurable fee interest to the Property which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (a) applicable building and zoning laws and regulations;
- (b) the provisions of this Agreement (as evidenced by the Memorandum of DDA), and the County Grant Deed;
- (c) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Memorandum of DDA;
- (d) the liens of any loan approved by the County in the Financing Plan;
- (e) conditions, covenants, restrictions or easements currently of record or as otherwise approved by the Developer in its reasonable discretion; and

(f) exceptions, _____, inclusive, as shown in the Title Report for the Property, or any other lien or exception created due to any act, or omission, of the Developer.

Section 3.6 Condition of Property.

(a) **"AS IS" CONVEYANCE.** THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE COUNTY IS CONVEYING AND THE DEVELOPER IS OBTAINING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE COUNTY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (F) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, AND (H) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE COUNTY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE COUNTY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS

ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(b) Survival. The terms and conditions of this Section shall expressly survive the Closing, shall not merge with the provisions of the County Grant Deed, or any other closing documents and shall be deemed to be incorporated by reference into the County Grant Deed. The County is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Developer acknowledges that the Purchase Price reflects the "as is" nature of this conveyance and any faults, liabilities, defects or other adverse matters that may be associated with the Property. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

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

(d) Developer's Release of the County. Except in the case of the County's negligence, fraud, willful misconduct, material misrepresentation or County Event of Default, the Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the County, and its board members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility, and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(e) Scope of Release. The release set forth in Section 4.6(d) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and

acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

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

Developer's Initials: _____

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

Section 3.7 Costs of Escrow and Closing.

Ad valorem taxes, if any, shall be prorated as of the Closing. In addition to the Purchase Price, the Developer shall pay: (i) any cost necessary for the Title Company to issue an ALTA "extended coverage" title insurance policy in the amount of the Purchase Price, with such endorsements as may be requested by the Developer, or such other form of title insurance policy requested by the Developer, (ii) any transfer tax due in connection with the recordation of the County Grant Deed, and (iii) all Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, and any additional costs to close Escrow.

ARTICLE 4. CONSTRUCTION OF BUILDING IMPROVEMENTS

Section 4.1 Construction Pursuant to Plans.

Unless modified by operation of Section 4.2, the Building Improvements shall be constructed substantially in accordance with the Conceptual Development Documents and the terms and conditions of the Applicable Land Use Approvals, the building permit(s), and all Applicable Laws.

Section 4.2 Change in Construction of Improvements.

If the Developer desires to make any material change in the Building Improvements which are not substantially consistent with the Conceptual Development Documents, the Developer shall submit the proposed change to the Director for its approval, which shall not be unreasonably withheld, delayed, or conditioned. No change which is required for compliance with building codes or other government health and safety regulations shall be deemed material. If the Building Improvements, as modified by any such proposed change, will substantially conform to the requirements of this Agreement, and the Conceptual Development Documents, the Director shall approve the change by notifying the Developer in writing.

Unless a proposed change is rejected by the Director within ten (10) working days, it shall be deemed approved. If rejected within such time period, the previously approved Conceptual Development Documents shall continue to remain in full force and effect. If the Director rejects a proposed change, the Developer shall provide the Developer with the specific reasons therefore.

The approval of changes in the Conceptual Development Documents by the Director pursuant to this Section, if any, shall be in addition to any approvals required to be obtained from the County Public Works Department pursuant to building permit requirements or any Applicable Laws. Approval of changes in the Conceptual Development Documents by the Director pursuant to this Section (if any), in its capacity as the seller of the Property as set forth in this Agreement, shall not constitute approval by the County Public Works Department or any other Governmental Authority, and shall in no way limit the County's discretion in its capacity as a Governmental Authority.

Section 4.3 Public Benefits

The Developer will provide improvements and assets that exceed those typically provided in a retail project and normally required under the site development review process. These improvements and assets will be reviewed and approved by the relevant approval bodies. The Developer is receiving a \$495,000 credit towards the purchase price for providing the public benefits listed below in 4.3 a-e. The Developer will allocate \$495,000 to deliver the public benefits. 4.3(a),(b),(d), and (e) shall be completed by the execution of the Certificate of Completion. 4.3(c) shall be completed by _____.

- (a) Paseo and Building Enhancements. Additional enhancements to the paseo and building façade will be provided that exceed the standard site development review requirements, as approved by the Director. These improvements could include paseo walls, exterior lighting, plantings, entry features, public art, enhanced signage, and building enhancements.
- (b) Parking Maintenance Fund. The Developer will contribute thirty-thousand dollars (\$30,000) to the Parking Maintenance Fund in consideration for the disruption and impact to the Share Parking Lot resulting from construction of the retail project, pursuant to the Shared Parking Agreement (Exhibit G).
- (c) Second Crosswalk. In consideration for the Developer's intensive use of the east paseo and the resulting increase in pedestrian activity, and in order to enhance walkability, the Developer will install a new, second crosswalk connecting the north side of Castro Valley Boulevard with the east paseo.
- (d) Business Incubator/ Commissary Facility/Community-serving Space. The Developer agrees to allow the County's Community Development Agency (CDA) to use the commissary facility for educational and training purposes, and to provide space to incubate new businesses and a community-serving space. The Developer agrees to work with CDA to develop a mutually acceptable use agreement.

- (e) Install Electric Car Charging Stations. The Developer agrees to install four (4) electric car charging stations for public use in the Shared Parking Lot prior to the completion of development.

Section 4.4 Commencement of Construction.

The Developer shall commence construction of the Building Improvements no later than the date set forth in the Schedule of Performance.

Section 4.5 Completion of the Building Improvements.

The Developer shall diligently prosecute to completion the construction of the Building Improvements no later than the date set forth in the Schedule of Performance.

Section 4.6 Equal Opportunity.

During the construction of the Building Improvements there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the hiring, firing, promoting or demoting of any person engaged in the construction work.

Section 4.7 Compliance with Applicable Laws; Prevailing Wage Requirement.

(a) The Developer shall cause all building construction to be performed in compliance with (a) all Applicable Laws, now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every Governmental Authority now having or hereafter acquiring jurisdiction. The work shall proceed only after the payment of all applicable fees that are typically applied at the time of building or grading permit issuance, procurement of each permit, license, or other authorization that may typically be required by any Governmental Authority having jurisdiction at the time construction begins, and the Developer shall be responsible to the County for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Property.

(b) To the extent required by any applicable law, the Developer shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Building Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR") and comply with the other applicable provisions of Labor Code Sections 1720 et seq., including but not limited to the hiring of apprentices as required by Labor Code Sections 1775 et seq., and the implementing regulations of the DIR. The Developer shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and, upon request by the County from time to time, the Developer shall promptly deliver or cause the delivery of such records to the County. Copies of the currently applicable per diem prevailing wages are available from the DIR. During the construction of the Building Improvements the Developer shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. The Developer shall indemnify, hold harmless

and defend (with counsel reasonably selected by the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with construction of the Building Improvements or any other work undertaken or in connection with the Property.

Section 4.8 Progress Report.

The Developer will provide quarterly progress reports to the County regarding the status of construction of the Development, including a certification regarding the actual construction cost. The Developer shall provide the reports and information required under this Section until completion of construction of the Building Improvements, as evidenced by the Certificate of Completion.

Section 4.9 Construction Responsibilities.

The Developer shall coordinate and schedule the building construction work to be performed so that commencement and completion of the construction will take place in accordance with this Agreement. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the construction of the Building Improvements, including (but not limited to): (i) the quality and suitability of the Conceptual Development Documents, (ii) the supervision of construction work, (iii) the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers, (iv) the means, methods, or techniques utilized by the Developer or any party under direct or indirect control of the Developer, and (v) obtaining all necessary permits or approvals required by all Applicable Laws. Any review or inspection undertaken by the Director with reference to the Development is solely for the purpose of determining whether the Developer is properly discharging its obligations to the County, and shall not be relied upon by the Developer or by any third parties as a warranty or representation by the County as to the quality of the design or construction of the Improvements.

Section 4.10 Mechanics Liens, Stop Notices, and Notices of Completion.

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

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

(c) The Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property and/or Improvements. Nothing in this Section shall be deemed to require the County to issue the Certificate of Completion which shall only be issued in accordance with Section 4.20.

Section 4.11 Inspections.

The Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the Director and by public authorities, upon reasonable notice, during reasonable business hours for the purposes of determining compliance with this Agreement. The Developer acknowledges that the Director is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the Director therefore. Any inspection by the Director during the construction of the Building Improvements is entirely for its purposes in determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. As more particularly set forth in Section 3.10, the Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

Section 4.12 Information.

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

Section 4.13 Records.

(a) The Developer shall maintain complete, accurate, and current records pertaining to the Development for a period of five (5) years after the creation of such records, or for the entire Term (whichever is earlier) and shall permit any duly authorized representative of the County to inspect and copy records upon reasonable notice to the Developer.

(b) The County shall notify the Developer of any records it deems insufficient. The Developer shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then the Developer shall begin to correct the deficiency within thirty (30) days and complete the correction of the deficiency as soon as reasonably possible.

Section 4.14 Financing; Revisions to Plan.

As of the Effective Date, the Director has approved the Financing Proposal set forth in Exhibit B. In accordance with Section 2.5, the Developer shall obtain the Director's approval of the Financing Plan. The Developer shall submit any required amendments to the Financing Plan, including but not limited to any amendments or modifications to the development budget, the commitment letter from any lender, or the pre-leasing commitments set forth in Section 2.8, to the Director for approval within fifteen (15) days of the date the Developer receives information indicating that actual costs of the Development vary or will vary from the line item costs shown on the Financing Plan. Written consent of the Director shall be required to amend the Financing Plan, which shall not be unreasonably withheld, conditioned or delayed.

Section 4.15 Maintenance.

The Developer agrees, for the entire Term of this Agreement, to maintain all completed exterior improvements, including landscaping, of the Development in first-class condition, repair and sanitary condition (and, as to landscaping, in a healthy condition), and all in accordance with Applicable Laws. The Developer shall keep the Development free from all graffiti and any accumulation of debris or waste material, except such debris or waste material that would normally accumulate on a well-managed construction project. The Developer shall promptly make all repairs and replacements necessary to keep the Development in first-class condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable materials.

In the event that the Developer breaches any of the covenants contained in this Section and such default continues for a period of ten (10) days after written notice from the County, with respect to graffiti, debris, waste material, and general maintenance (provided, however, if a period longer than ten (10) days is necessary to correct such breach, then the Developer shall commence to cure such breach within ten (10) days, and shall thereafter pursue such cure to completion as reasonably possible, but in no event to exceed sixty (60) days), or thirty (30) days after written notice from the County, with respect to landscaping and building improvements, and subject to any stricter requirements included in any Applicable Law (provided, however, if a period longer than thirty (30) days is necessary to correct such breach, then the Developer shall commence to cure such breach within thirty (30) days, and shall thereafter pursue such cure to completion as reasonably possible, but in no event to exceed sixty (60) days) then the County, in addition to whatever other remedy it may have under this Agreement, at law or in equity, shall have the right to enter upon the Development and perform or cause to be performed all such acts and work necessary to cure the default. By execution of this Agreement, the Developer is deemed to have provided such irrevocable right of entry to the County. Pursuant to such right of entry, the County shall be permitted (but is not required) to enter upon the Development and perform all acts and work necessary to protect, maintain and preserve the exterior components of the Improvements and landscaped areas of the Property, and to attach a lien on the Developer's fee interest in the Property, or to assess the Developer's fee interest in the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure. The Developer shall promptly pay to the County, as applicable, the amount of the expenditure arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure, including a fifteen percent (15%)-administrative charge. The

foregoing provisions shall be covenants running with the land until expiration of the Term, enforceable by the County (or its successors or assigns).

Section 4.16 Taxes and Assessments.

Following the Closing, the Developer shall pay all real property taxes on the Development, personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property or the Developer's fee interest in the Property; provided, however, that the Developer shall have the right to contest in good faith any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 4.17 Mandatory Language in All Subsequent Deeds, Leases and Contracts.

All deeds, leases or contracts entered into by Developer as to any portion of the Property or the Improvements shall contain the following language:

(a) In Deeds:

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

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

(b) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or

segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

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

(c) In Contracts:

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

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

Section 4.18 Hazardous Materials.

(a) Covenants.

No Hazardous Materials Activities. During the Term, the Developer shall not cause or permit the Property, or the Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

Hazardous Materials Laws. During the Term, the Developer shall comply and cause the Property, and the Improvements thereon to comply with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

Notices. During the Term, the Developer shall immediately notify the County in writing of: (i) the discovery of any Hazardous Materials on or under the Property; (ii) any knowledge by the Developer that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions pending or threatened against the Developer, the Property, or the Improvements by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws (collectively "Hazardous Materials Claims"); and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property, that could cause the Property, or any part thereof to be designated as "border zone property" under the provisions of California Health and Safety Code Sections 25220, et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Hazardous Materials Laws. The County shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the Developer.

Remedial Action. Without the County's prior written consent, which shall not be unreasonably withheld, during the Term the Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 10.6 below, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the County) the County, the Board of Supervisors, the County's officers, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer or any other person or entity (other than any indemnified party) to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development on or after the date of conveyance of the Property to the Developer; (2) the presence in, on or under the Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Development to the extent it arises on or after the date of conveyance of the Property to the Developer; or (3) any activity carried on or undertaken on the Development, subsequent to the conveyance of the Property to the Developer, and whether by the Developer or any successor in title or any employees, agents, contractors or subcontractors of the Developer or any successor in title, or any third persons (other than any indemnified party) at any time occupying or present on the Development, in connection with the handling, treatment, removal,

storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Development, unless resulting from the gross negligence or intentional misconduct of the party seeking indemnification. The foregoing indemnity shall further apply to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

(c) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information the County may have concerning the Development and/or the presence within the Development of any Hazardous Materials, whether the County obtained such information from the Developer or from its own investigations.

Section 4.19 Insurance Requirements.

(a) Required Coverage. The Developer shall maintain and keep in force, at the Developer's sole cost and expense, the following insurance applicable to the Development:

To the extent required by law, Worker's Compensation insurance, including Employer's Liability coverage, with limits not less than required by applicable law.

Comprehensive or Commercial General Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Developer does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required and both parties to this Agreement shall initial this provision signifying same. Property insurance covering the Development covering all risks of loss, including flood, if the Property is located in a flood zone, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County.

(b) Contractor's Insurance. The Developer shall cause any general contractor or agent working on the Development under direct contract with the Developer (including, but not limited to, the Developer's architect) to maintain insurance of the types and in at least the minimum amounts described in subsections (a)(1), (a)(2), and (a)(3) above, and shall require that such insurance shall meet all of the general requirements of subsection (c) below. Subcontractors working on the Development under indirect contract with the Developer shall be required to maintain the insurance described in subsections (a)(1), (a)(2) and (a)(3) above. Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and

agents pursuant to this subsection shall name as additional insureds the County, the Board of Supervisors, the County's officers, agents, and employees.

(c) General Requirements. The required insurance shall be provided under an occurrence form, and the Developer shall maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

Comprehensive General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as additional insureds the County and its board members, officers, agents, and employees. All policies and bonds shall contain (a) the agreement of the insurer to give the County at least thirty (30) days' notice prior to cancellation (including, without limitation, for nonpayment of premium) or any material change in said policies; (b) an agreement that such policies are primary and noncontributing with any insurance that may be carried by the County; (c) a provision that no act or omission of the Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the County and its authorized parties in connection with any loss or damage thereby insured against.

(d) Certificates of Insurance. Upon the County's request at any time during the Term of this Agreement, the Developer shall provide certificates of insurance, in form and with insurers reasonably acceptable to the County, evidencing compliance with the requirements of this Section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the County as additional insured, if requested by the County.

Section 4.20 Certificate of Completion.

Within thirty (30) days after completion of the construction of the Building Improvements, in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the Building Improvements (including the dates for beginning and completing construction of the Building Improvements), the Director shall provide an instrument so certifying the completion of the construction of the Building Improvements (the "Certificate of Completion"). A form of the Certificate of Completion is attached hereto as Exhibit G. The Certificate of Completion shall be conclusive determination that the covenants in this Agreement with respect to the obligations of the Developer to construct the Building Improvements on the Property have been met. The certification shall be in such form as will enable the Certificate of Completion to be recorded among the official records of Alameda County. Upon the issuance of the Certificate of Completion, this Agreement shall terminate (other than any provision that explicitly survives termination); provided, however, such Certificate of Completion shall not constitute evidence of compliance with the requirements of Section 5.6 or satisfaction of any obligation of the Developer to any holder of a deed of trust securing money loaned to finance the Building Improvements, shall not be deemed a notice of completion under the California Civil Code, nor a certificate of occupancy and shall neither hinder nor convey any rights to occupy any portion of the Building Improvements.

Section 4.21 Estoppel Certificate.

Within ten (10) days after the written request of the Developer, the County shall issue to the Developer an estoppel certificate regarding this Agreement stating: (i) whether this Agreement is in full force and effect, enforceable according to its terms and there is then currently in existence no uncured default by the Developer, or (ii) stating that a Developer Event of Default exists, and the actions necessary to cure such default (if any). Such estoppel certificate may be relied on by third parties.

ARTICLE 5. ASSIGNMENT AND TRANSFERS

Section 5.1 Definitions.

As used in this Article, the term "Transfer" means:

- (a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Development or any part thereof or any interest therein or any contract or agreement to do any of the same; or
- (b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any Controlling interest in Developer or any contract or agreement to do any of the same; or
- (c) Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer; or
- (d) The leasing of part or all of the Property or the Building Improvements thereon; provided, however, the leasing pursuant to Section 2.8 of this Agreement, in accordance with the terms and conditions of this Agreement, shall not be deemed a "Transfer" for purposes of this Article.

Section 5.2 Purpose of Restrictions on Transfer.

This Agreement is entered into solely for the purpose of development and operation of the Development and its subsequent use in accordance with the terms hereof. The Developer recognizes that the qualifications and identity of the Developer are of particular concern to the County, in view of:

- (a) The importance of the development of the Property to the general welfare of the community; and
- (b) The reliance by the County upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property and upon the continuing interest which the Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the County in the development of the Property; and

- (c) The fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in Control of the Developer or the degree thereof is for practical purposes a transfer or disposition of the Property; and
- (d) The fact that the Property is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with the Agreement; and
- (e) The importance to the County and the community of the standards of use, operation and maintenance of the Property; and
- (f) The Developer further recognizes that it is because of such qualifications and identity that the County is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 5.3 Prohibited Transfers.

The limitations on Transfers set forth in this Section shall apply only until the issuance of the Certificate of Completion. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the County (which shall not be unreasonably withheld, delayed, or conditioned).

Any Transfer made in contravention of this Section shall be void and shall be deemed to be a Developer Event of Default under this Agreement whether or not the Developer knew of or participated in such Transfer.

Section 5.4 Permitted Transfers.

Notwithstanding the provisions of Section 5.3, the following Transfers shall be permitted and are hereby approved by the County:

- (a) Any Transfer creating a Security Financing Interest permitted pursuant to the approved Financing Plan;
- (b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under Article 8; provided, however, any subsequent Transfer by the holder of the Security Financing Interest, including, but not limited to, the commencement of any legal proceeding for the appointment of a receiver, the Transfer of the fee interest in the Property, or otherwise, shall be subject to the requirements of Section 5.5 and Section 5.6.
- (c) Any Transfer to an entity Controlled by the Developer, provided that, (i) the Developer has submitted such entity's organizational documents to the County and the County has determined that such entity is Controlled by the Developer, and (ii) upon such Transfer, the transferee, by an instrument in writing prepared by the County and in form recordable among the land records, shall

expressly assume the obligations of the Developer under this Agreement and agrees to be subject to the conditions and restrictions to which the Developer is subject arising during this Agreement.

Section 5.5 Effectuation of Certain Permitted Transfers.

No Transfer of this Agreement permitted pursuant to Section 5.4 shall be effective unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing prepared by the County and in form recordable among the land records, shall expressly assume the obligations of the Developer under this Agreement and agree to be subject to the conditions and restrictions to which the Developer is subject arising during this Agreement, to the fullest extent that such obligations are applicable to the particular portion of, or interest in, the Development conveyed in such Transfer. Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest shall have been acquired by, through or under a Security Financing Interest shall not be required to give to County such written assumption until such holder or other person is in possession of the Property or entitled to possession thereof pursuant to enforcement of the Security Financing Interest.

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

Section 5.6 Other Transfers with County Consent.

The County may, in its sole discretion, which approval shall not be unreasonably withheld, approve in writing other Transfers as requested by the Developer. In connection with such request, there shall be submitted to the County for review all instruments and other legal documents proposed to affect any such Transfer. If a requested Transfer is approved by the County such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the County within thirty (30) days after receipt by the County of Developer's request for approval of a Transfer. If a requested Transfer is not approved or disapproved by the County within such thirty (30) day period, then such Transfer shall be deemed approved. Upon such approval, if granted (or deemed granted), the transferee, by an instrument in writing prepared by the County and in form recordable among the land records, shall expressly assume the obligations of the Developer under this Agreement and agree to be subject to the conditions and restrictions to which the Developer is subject arising during this Agreement, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer.

ARTICLE 6. DEFAULT AND REMEDIES

Section 6.1 General Applicability.

The provisions of this Article shall govern the Parties' remedies for breach or failure of this Agreement.

Section 6.2 No Fault of Parties.

The following events constitute a basis for a party to terminate this Agreement without the fault of the other:

- (a) The Developer does not approve of the Property in accordance with Section 2.1.
- (b) The Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to the County's obligation to execute the County Grant Deed set forth in this Agreement by no later than the dates set forth in the Schedule of Performance.

Upon the happening of any of the above-described events, and at the election of either party, this Agreement may be terminated by written notice to the other party. After termination, the Deposit (if made) shall be returned to the Developer, and neither party shall have any rights against or liability to the other under this Agreement, except that the waiver and indemnification provisions set forth herein shall survive such termination and remain in full force and effect.

Section 6.3 Fault of County.

Except as to events constituting a basis for termination under Section 6.2, the following events each constitute a County Event of Default, after the expiration of applicable notice and cure periods, and a basis for the Developer to take action against the County:

- (a) The County, without good cause, fails to convey the Property to the Developer within the time and in the manner set forth in this Agreement and the Developer is otherwise entitled by this Agreement to such conveyance; or
- (b) The County breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the Developer shall first notify the County in writing of its purported breach or failure, giving the County forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the County does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the County fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than ninety (90) days, then the Developer shall be afforded all of its rights at law or in equity, including without limitation: (1) terminating in writing this Agreement and recovering the Deposit (provided, however, that the waiver and indemnification provisions set forth herein shall survive such termination); and (2) prosecuting an action for specific performance.

Section 6.4 Fault of Developer.

Except as to events constituting a basis for termination under Section 6.2, the following events each constitute a Developer Event of Default, only after expiration of applicable notice and cure periods, and a basis for the County to take action against the Developer:

- (a) The Developer fails to exercise good faith and diligent efforts to satisfy, within the time set forth in the Schedule of Performance, one or more of the conditions precedent to the County's obligation to convey the Property to the Developer; or
- (b) The Developer refuses to execute the County Grant Deed within the time set forth in the Schedule of Performance and under the terms set forth in Article 4 despite the County's fulfillment of its obligations under this Agreement; or
- (c) The Developer constructs or attempts to construct the Improvements or otherwise redevelop the Property in violation of Article 4; or
- (d) The Developer has not satisfied all preconditions set forth in this Agreement to commencement of construction of the Improvements by the date set forth in the Schedule of Performance, or fails to commence or complete construction of the Improvements, as evidenced by the issuance of the Certificate of Completion, within the times set forth in the Schedule of Performance, or abandons or suspends construction of the Improvements prior to completion of all construction for a period of thirty (30) days after written notice by the County of such abandonment or suspension; unless prior to the County's exercise of its remedies pursuant to Developer Default under this Section 6.4(d), the Developer has satisfied the precondition, commenced or completed construction, or renewed construction after a suspension; or
- (e) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 5; or
- (f) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted by the Developer to the County pursuant to this Agreement proves to have been incorrect in any material and adverse respect when made; or
- (g) A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (i) as well; or the Developer shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive; or
- (h) The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall

apply under this subsection (i) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution; or

(i) The Developer shall have voluntarily suspended its business or, if the Developer is a partnership, the partnership shall have been dissolved or terminated; or

(j) The Developer breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the County shall first notify the Developer in writing of its purported breach, failure or act above described, giving the Developer in writing forty-five (45) days from receipt of such notice to cure, or, if cure cannot be accomplished within said forty-five (45) days, to commence to cure such breach, failure, or act. In the event the Developer fails to cure within said forty-five (45) days, or if such breach is of a nature that it cannot be cured within forty-five (45) days, Developer fails to commence to cure within said forty-five (45) days and diligently complete such cure within a reasonable time thereafter but in no event later than ninety (90) days, then the County shall be afforded all of its rights at law or in equity by taking any or all of the following remedies:

(k) **Liquidated Damages Prior to Closing.** IN THE EVENT THAT THE ESCROW AND THIS TRANSACTION FAIL TO CLOSE, AS A RESULT OF A DEVELOPER EVENT OF DEFAULT, AS DEFINED IN THIS AGREEMENT, PRIOR TO THE CLOSING, THE COUNTY AND THE DEVELOPER AGREE THAT THE COUNTY WILL SUSTAIN DAMAGES, AND THAT COUNTY'S ACTUAL DAMAGES WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO DETERMINE. THE PARTIES THEREFORE AGREE THAT IN THE EVENT THAT ESCROW AND THIS TRANSACTION FAIL TO CLOSE AS A RESULT OF A DEVELOPER EVENT OF DEFAULT, AND THE COUNTY IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER, THE COUNTY, AS THE COUNTY'S SOLE AND EXCLUSIVE REMEDY, SHALL BE ENTITLED TO THE DEPOSIT AS LIQUIDATED DAMAGES AND AS CONSIDERATION FOR ENTERING INTO THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE RESULTING DAMAGES WILL BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ASCERTAIN, AND THEREFORE, THE PARTIES AGREE AFTER NEGOTIATION BETWEEN THEM THAT RETENTION OF THE DEPOSIT, AS LIQUIDATED DAMAGES, WILL BE AN APPROPRIATE FORM OF COMPENSATION TO THE COUNTY. BY PLACING THEIR INITIALS IN THE SPACE BELOW, BOTH PARTIES AGREE TO THE LIQUIDATED DAMAGES SET FORTH ABOVE. IN THE EVENT ESCROW FAILS TO CLOSE AS A RESULT OF THE DEVELOPER EVENT OF DEFAULT AND THE COUNTY IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER, THEN (A) FOLLOWING THE COUNTY'S RECEIPT OF THE DEPOSIT, THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE DEVELOPER AND COUNTY HEREUNDER AND THE ESCROW CREATED HEREBY SHALL TERMINATE (EXCEPT THOSE PROVISIONS SPECIFIED TO SURVIVE THE TERMINATION OF THIS AGREEMENT), AND (B) THE TITLE COMPANY SHALL, AND IS HEREBY AUTHORIZED AND INSTRUCTED TO, RETURN PROMPTLY TO THE DEVELOPER AND THE COUNTY ALL DOCUMENTS AND INSTRUMENTS TO

THE PARTIES WHO DEPOSITED THE SAME. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE COUNTY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. THE COUNTY HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. THE COUNTY AND THE DEVELOPER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION, AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

COUNTY'S INITIALS:

DEVELOPER'S INITIALS:

Termination of this Agreement by written notice to the Developer; provided, however, that the County's remedies pursuant to this Agreement and the waiver and indemnification provisions of this Agreement shall survive such termination;

Prosecuting an action for damages, injunctive relief, or specific performance; and/or

Any of the remedies specified in Article 7.

Section 6.5 Right to Cure at Developer's Expense.

The County shall have the right to cure any monetary default by the Developer under any Security Financing Interest. The Developer agrees to reimburse the County for any funds advanced by the County to cure a monetary default by the Developer upon demand therefor, together with interest thereon at the lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by law from the date of expenditure until the date of reimbursement.

Section 6.6 Construction Plans.

If this Agreement is terminated pursuant to Section 6.2 or Section 6.4, or if such termination is pursuant to Section 6.2, within 10 days after the Developer receives the Deposit, then the Developer shall promptly deliver to the County, within ten (10) days of such termination, copies of all plans and specifications for the Development, all permits and approvals obtained in connection with the Development, and all applications for permits and approvals not yet obtained but needed in connection with the Development (collectively, the "Section 6.6 Documents"). The delivery of the Section 6.6 Documents shall be accompanied by an assignment, in form reasonably satisfactory to the County, of the Developer's right, title and interest in the Section 6.6 Documents; provided however, that any use of the Section 6.6 Documents by the County or any other person shall be without liability of any kind to the Developer and without any representation or warranty of the Developer or its employees, as to the quality, validity, or usability of the Section 6.6 Documents.

Section 6.7 Remedies Cumulative.

Except where a remedy is stated herein as the sole remedy, no right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 7. RIGHT OF REVERTER AND OPTION TO PURCHASE

Section 7.1 Right of Reverter.

If this Agreement is terminated pursuant to Section 6.4(e)-(j) inclusive and Developer has not cured such default pursuant to any cure right provided herein, and such termination occurs after the Closing but prior to issuance of the Certificate of Completion for the Improvements, then the County shall have the right to reenter and take possession of the Property and all improvements thereon, and to revest in the County the estate of Developer in the Property upon written notice to the Developer of the exercise of such right by the County. The Developer hereby agrees to execute such documents as reasonably necessary to cause the Developer's interest in the Property to revert and revest in the County.

Upon revesting in the County of title to the Property, or any portion thereof, the County shall promptly use its best efforts to resell the revested portion of the Property consistent with its obligations under state law. The County may also determine, in its sole discretion, to complete the construction of all or any of the Improvements, prior to the sale of the Property. Upon sale, the proceeds shall be applied as follows:

- (a) First, to reimburse the County for any reasonable costs it incurs in managing or selling the Property, or in connection with the completion of the construction of the Improvements, including but not limited to amounts to discharge, or to prevent liens or encumbrances arising from any acts or omissions of Developer;
- (b) Second, to the Developer in the amount of the reasonable costs expended by the Developer in acquiring the Property and undertaking the construction of the Improvements on the Property;
- (c) Any balance to the County.

The right of reverter contained in this Section shall be set forth in the County Grant Deed.

Section 7.2 Option to Repurchase, Reenter and Repossess.

(a)The County shall have the additional right at its option to repurchase, reenter and take possession of the Property, with all improvements thereon, if after conveyance of title to the Property, and prior to the issuance of the Certificate of Completion for the Improvements, there is a Developer Event of Default pursuant to Section 6.4 with respect to the construction of the Improvements or portion thereof, unless prior to the County's exercise of its remedies pursuant to Developer Default under this Section 6.4(d), the Developer has satisfied the precondition, commenced or completed construction, or renewed construction after a suspension

(b)To exercise its right to repurchase, reenter and take possession, the County shall pay to the Developer in cash an amount equal to the Purchase Price paid to the County. Upon vesting in the County of title to all or a portion of the Property, the County shall promptly use its best efforts to resell it, subject to a requirement that the Property be developed in accordance with this Agreement. Upon any resale of the Property or portion thereof by the County, the County shall apply such sale proceeds as follows:

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

Any gains or income withdrawn or made by the Developer from the Property or the improvements thereon; less

The value of any unpaid liens or encumbrances on the Property which the County assumes or takes subject to said encumbrances.

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

Section 7.3 Rights of Mortgagees.

Any rights of the County under Section 7.1 or Section 7.2, above, shall not defeat, limit or render invalid: (i) any lease or Security Financing Interest permitted by this Agreement or otherwise consented to by the County in writing, or (ii) any rights provided for in this Agreement for the protection of the holder(s) of Security Financing Interest(s) in the Property. To the extent required by the holder of a Security Financing Interest, payments required to be made by the County to the Developer pursuant to Section 7.1 or 7.2 above may be made directly to the holder of a Security Financing Interest. In such event, the County shall deliver such funds directly to the holder of a Security Financing Interest, and such payment by the County shall be deemed to satisfy the County's obligations to pay funds to the Developer under Section 7.1 or Section 7.2.

ARTICLE 8. SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 8.1 No Encumbrances Except for Development Purposes.

Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Developer's fee interest in the Property but only for the purpose of securing loans approved by the County pursuant to the approved Financing Plan. Mortgages, deeds of trust, or other reasonable security instruments

securing loans approved by the County pursuant to the approved Financing Plan, or otherwise approved by the County, are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 8.2 Holder Not Obligated to Construct.

Except as set forth in Section 9.3, the holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete the Improvements or to guarantee such construction or completion of the Improvements. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or the Improvements provided for or authorized by this Agreement, or to effectuate a Transfer except as set forth in Article 6.

Section 8.3 Notice of Default and Right to Cure.

Whenever the County pursuant to its rights set forth in Article 7 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the County shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer's fee interest in the Property, or any portion thereof, a copy of such notice or demand. Each such holder shall (insofar as the rights of the County are concerned) have the right, but not the obligation, at its option, within the applicable cure period set forth in Section 7.4, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing all of the Developer's duties and obligations to the County relating to the Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the County, and in a form recordable among the land records (the "Security Financing Interest Assignment"). Pursuant to the Security Financing Interest Assignment, the holder in that event must agree to complete the construction of the Improvements in the manner provided in this Agreement, and submit evidence satisfactory to the County that it has the qualification and financial responsibility necessary to perform such obligations. Any such holder properly completing the Improvements pursuant to this Section and the Security Financing Interest Assignment shall assume all obligations set forth herein affecting such Parcel, and shall be entitled, upon written request made to the County, to a Certificate of Completion from the County.

Section 8.4 Failure of Holder to Complete Improvements.

In any case where three (3) months after the execution of the Security Financing Assignment, the holder of record of any Security Financing Interest, having first exercised its option to construct the Improvements, pursuant to the Security Financing Interest Assignment described in Section 9.3, has not proceeded diligently with construction of the Improvements, then such failure shall constitute a

Developer Event of Default pursuant to Section 7.4, and the County shall be afforded those rights against such holder it would otherwise have against Developer under this Agreement.

Section 8.5 Right of County to Cure.

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

Section 8.6 Right of County to Satisfy Other Liens.

After the conveyance of the fee interest in the Property or any portion thereof and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the fee interest in the Property or any portion thereof, the County shall have the right to satisfy any such lien or encumbrances; 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 therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 8.7 Holder to be Notified.

The provisions of this Article shall be incorporated into the relevant deed of trust or mortgage evidencing each Security Financing Interest to the extent deemed necessary by, and in form and substance reasonably satisfactorily to the County, or shall be acknowledged by the holder of a Security Financing Interest prior to its coming into any security right or interest in the Property.

ARTICLE 9.
GENERAL PROVISIONS

Section 9.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the County and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, by reputable overnight delivery service, or delivered personally, to the principal office of the County and the Developer as follows:

County: County of Alameda
c/o Community Development Agency -
Economic & Civic Development
224 West Winton Avenue, Room 110

Hayward, CA 94544
Attention: Director

With a copy to: County of Alameda
c/o Office of County Counsel
1221 Oak Street, Suite 450
Oakland, CA 94612
Attention: County Counsel

Developer: Castro Valley Marketplace, LLC
349 Main Street, Suite 205
Pleasanton, CA 94566
Attention: Craig Semmelmeier

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section.

Section 9.2 Non-Liability of County Officials, Employees and Agents.

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

Section 9.3 Forced Delay.

All of the duties and obligations of each Party, as set forth in this Agreement, are subject to the terms of this Section. The performance by either Party hereunder shall not be deemed to be in default, and all relevant time periods for performance hereunder or in the Schedule of Performance will be extended, where delays or defaults are due to war; insurrection; strikes or labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement, including with respect to CEQA and/or Applicable Land Use Approvals); adverse weather conditions (provided that such claim is documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse impact on the Party's ability to satisfy its obligation hereunder); acts, or the failure to act, of the other Party (including but not limited to the act or failure to act of the Director in accordance with the provisions of this Agreement), acts or failure to act of any Governmental Authority (other than the acts or failure to act of the County in its capacity as the seller of the Property pursuant to this Agreement); or any other causes (other than Developer's inability to obtain financing for the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the date the Party seeking the extension first discovered the cause and such extension of time is not reasonably rejected in writing by the other Party within ten (10) days after receipt of the notice. If more than ten (10) days is required to obtain Director's approval pursuant to any of Sections 2.4, 2.5, or 2.10

of this Agreement, and approval is ultimately granted pursuant to such sections, timeframes in Exhibit B that are measured from the Effective Date shall be extended by the cumulative amount of time in excess of such ten (10) days that was required to obtain such approval pursuant to such sections. Times of performance under this Agreement may also be extended in writing by the County and the Developer.

Section 9.4 Provision Not Merged with County Grant Deed.

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

Section 9.5 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

(d)

PREDISPOSITION REQUIREMENTS

a. Right of Entry; Due Diligence Period.

- i. Right to Enter the Property. On, or about, the Execution Date, the Successor Agency has granted, or shall grant, the Developer a right of entry onto the Property pursuant to a separate license agreement between the Successor Agency and the Developer (the "Initial License Agreement"). Provided that: (i) there is no uncured material event of default by the Developer under the Initial License Agreement (beyond any applicable notice and cure provisions set forth in the Initial License Agreement), and (ii) the Developer has delivered evidence of the insurance in accordance with Section 6.6(a)(1)-(3), as of the Effective Date, the County grants the Developer a right of entry onto the Property to inspect and conduct such studies of the Property as the Developer, in its sole discretion, may desire for a period of one hundred fifty (150) days following the Effective Date (the "Due Diligence Period"). On or before the expiration of the Due Diligence Period, the Developer shall give written notice to the Director as to whether the Developer approves or disapproves of the Property, in the Developer's sole and absolute discretion. The Developer's failure to provide notice to the Director on or before the expiration of the Due Diligence Period shall be deemed disapproval of the Property. In the event the Developer approves of the Property, prior to the expiration of the Due Diligence Period, then the Parties shall proceed to the Closing subject to the requirements of this Agreement (including, but not limited to the Developer's satisfaction of all the Developer's conditions precedent to the Closing, and the County's satisfaction of all of the County's conditions precedent to the Closing). In

the event the Developer disapproves of the Property, or is deemed to have disapproved of the Property, prior to the expiration of the Due Diligence Period, then the Developer shall deliver a copy of all non-proprietary third-party reports and test results of the Property conducted on behalf of the Developer during the Due Diligence Period (unless such documents were previously delivered to the Successor Agency pursuant to the Initial License Agreement), and upon such delivery, the Deposit (if made) shall be returned to the Developer, this Agreement shall be terminated, and shall be of no further force or effect (except for any provision that explicitly survives termination). In such event, the Parties shall, upon the request of either Party and at no cost to either Party, execute such document(s) as may be reasonably necessary to evidence such termination. The Developer makes no representation or warranty, of any nature whatsoever, regarding the content and/or accuracy of any reports or other materials provided to the County pursuant to this Section.

As of the Effective Date, the County shall provide the Developer (and the Developer's employees and agents) the right to enter upon all portions of the Property for the purposes of conducting soils tests, engineering studies, seismic and geologic studies, inspections and testing for Hazardous Materials, and underground storage tanks, investigation of applicable zoning and other land use regulations, analysis of economic feasibility and other studies related to the Developer's use of the Property and the condition of the Property. Any preliminary work by the Developer, or any party acting on behalf of the Developer, shall be undertaken only after securing the applicable insurance set forth in Section 6.6 and all necessary permits from the appropriate Governmental Authorities.

- ii. Right to Market. In addition, as of the Effective Date, the County grants the Developer the right to market the Building to prospective tenants, by taking any, or all, of the following actions: hiring a real estate broker(s), placing commercially reasonable signs or other marketing materials on or about the Building (subject to Applicable Laws, collectively, the "Marketing Materials"), entering the Property and showing the Building to prospective tenants (or other users), potential lenders, and potential investors, and negotiating agreements with prospective users. Such right granted herein shall automatically terminate upon a Developer Event of Default or upon termination of this Agreement, and upon such termination, the Developer shall, or shall cause, the prompt removal of any personal property, including, but not limited to Marketing Materials located at the Property. As between the Developer and the County, the Developer shall be solely obligated for all costs and expenses incurred by the Developer in connection with the right granted herein, and at the sole risk of the Developer.
- iii. Limitation on Developer's Rights. The rights granted to the Developer as set forth above shall be subject to, and limited by, any temporary lease, or other similar agreement for the short-term use and occupancy of the Building, between the County (or the Successor Agency, as applicable) and a third-party, which may be entered into prior to the Effective Date; provided,

however, the County shall have the obligation to cause such temporary use to be terminated prior to the Closing.

- iv. Indemnity; Obligation to Restore. The Developer shall indemnify, defend (with counsel reasonably selected by the County and which counsel shall be reasonably approved by Developer and Developer's insurance company, if applicable) and hold the County harmless from any claims, losses, liabilities and damages arising out of the activities of the Developer, or any party acting on behalf of the Developer, as set forth in this Section, excluding therefrom any claims, losses, liabilities and damages caused by: (i) the negligence or willful misconduct of the County (or any third-party occupant or user of the Property), or (ii) the mere discovery by the Developer of a pre-existing condition on, or about, the Property. In addition, in the event that the Developer, or any party acting on behalf of the Developer, causes any damage to any portion of the Property or the Building, the Developer shall promptly restore the damaged portion of the Property (or the Building, as applicable) as nearly as possible to the physical condition existing immediately prior to the Developer's entry onto the Property, but in no event to a condition that exceeds the condition prior to Developer's entry. The Developer's failure to promptly restore the Property shall constitute a Developer Event of Default as set forth in Section 8.4. The obligations set forth in this subsection shall survive the termination of this Agreement. Upon request of either Party, the Parties shall execute, or take such other actions as may be necessary, to enter into an agreement in substantially the same form and content of the Initial License Agreement to govern the Developer's right to enter the Property as of the Effective Date.
- v. Delivery of Documents. As of the Effective Date and until the Closing, the Developer shall have the right to review, and make copies of all documents regarding the Development within the Director's possession, including, but not limited to the Hazardous Materials Reports (the "Due Diligence Documents"). The Director shall make available to the Developer the Due Diligence Documents at such times as mutually acceptable to the Parties.

Section 9.6 General Indemnification.

The Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the County) the County, the Board of Supervisors, the County's officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of: (i) the Developer's non-performance under this Agreement, or any other agreement executed pursuant to this Agreement, (ii) acts or omissions of Developer or any of Developer's contractors, subcontractors, or persons claiming under any of the aforesaid, (iii) the Developer's ownership, construction, use and operation of the Development except to the extent caused by the County's willful misconduct or gross negligence, or (iv) the Developer's breach of this Agreement. The provisions of this section shall survive expiration of the Term or any other termination of this Agreement, and shall remain in full force and effect.

Section 9.7 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 9.8 No Brokers.

Each Party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee except as agreed to in writing by the County and Developer. The Developer shall be solely responsible for any commission, or other payment or consideration, due to Developer Broker in connection with the Developer's acquisition of the Property. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the Party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified Party's choice, and hold the indemnified Party harmless from all expense, loss, damage and claims, including the indemnified Party's attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section shall survive expiration of the Term or any other termination of this Agreement, and shall remain in full force and effect.

Section 9.9 Severability.

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

Section 9.10 Legal Actions.

In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of Alameda.

Section 9.11 Binding Upon Successors.

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by any of the Parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Throughout the Term, the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. However, on the termination of this Agreement, such covenants and restrictions shall expire. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless

of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the County expressly releases the Property from the requirements of this Agreement.

Section 9.12 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 9.13 Time of the Essence.

All references in this Agreement to time limitations, including those in the Schedule of Performance, shall mean such time limitations as they may be extended pursuant to the terms of this Agreement including, without limitation, Section 10.3. In all matters under this Agreement, the Parties agree that time is of the essence, but subject to all express extension, notice and cure rights in this Agreement.

Section 9.14 Waiver of Terms and Conditions.

No waiver of any default or breach by the Developer hereunder shall be implied from any omission by the County to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the County to or of any act by the Developer requiring further consent or approval, shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement nor shall it invalidate any act done pursuant to notice of default, or prejudice the County in the exercise of any right, power, or remedy hereunder or under this Agreement, unless in the exercise of any such right, power, or remedy all obligations of the Developer to the County are paid and discharged in full.

Section 9.15 Action by the County; Developer Acknowledgement.

Except as may be otherwise specifically provided in this Agreement, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the County is required or permitted under this Agreement, including, but not limited to the rights set forth in Article 3, such action may be given, made, or taken by the Director, or by any person who shall have been designated in writing to the Developer. Any such action by the Director shall be in writing; provided, however, in no event shall the approval by the Director under any provision of this Agreement be unreasonably withheld, delayed or conditioned by the Director. Throughout the Term, in granting any approval set forth in this Agreement, the Director shall act in good faith and in a commercially reasonable manner. The Developer acknowledges that any Director approval or consent provided pursuant to this Agreement shall not constitute any approval by, or otherwise limit in any way the discretion or authority of the County in its capacity as a Governmental Authority. The Developer further acknowledges that nothing in this Agreement (including any approval by the Director) shall limit, waive, or otherwise impair the authority and discretion of: (i)

the County's Planning Department in connection with the review and approval of any use, or proposed use, of the Property, (ii) the County's Public Works Department in connection with the issuance of a building permit, or (iii) any other Governmental Authority, including, but not limited to any other office or department of the County acting in its capacity as a Governmental Authority.

Section 9.16 Representations and Warranties of the Developer.

The Developer hereby represents and warrants to the County as follows:

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

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, and the other documents to be executed and delivered pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

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

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limited the right of contracting parties generally).

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

(f) Compliance With Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the

fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Improvements.

(h) Title to Property. Upon the recordation of the County Grant Deed, the Developer will have good and marketable title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the County, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the County or approved in writing by the County.

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

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

Section 9.17 Complete Understanding of the Parties.

This Agreement and the attached exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement (including but not limited to Civil Code Section 1654 as may be amended from time to time).

Section 9.18 Operating Memoranda; Implementation Agreements.

(a) The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement, including, but not limited to, the dates set forth in the Schedule of Performance. If and when, from time to time, the Parties find that refinements or adjustments are desirable (including, but not limited, adjustments to the Schedule of Performance), such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements approved by the

Parties which, after execution shall be attached to this Agreement as addenda and become a part hereof.

(b) Operating memoranda or implementation agreements may be executed on the County's behalf by the Director, or his or her designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Agreement, including but not limited to amendments or modifications to the Purchase Price (or the terms for the payment of the Purchase Price), shall be processed as an amendment of this Agreement in accordance with Section 11.18 and must be approved by the Board of Supervisors, in accordance with Applicable laws.

Section 9.19 Amendments.

The Parties can amend this Agreement only by means of a writing signed by both Parties, following approval by the Board of Supervisors, in accordance with Applicable Laws.

Section 9.20 Multiple Originals; Counterparts.

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

Section 9.21 Director's Approval

The Director may approve revisions to the Agreement following execution of the Agreement and prior to the close of escrow, provided the revisions are in compliance with the Castro Valley Business District Specific Plan and do not substantially change the scope of development.

Section 9.22 Use of Property Prior to Close of Escrow

The Developer may use the property upon execution of the Agreement and prior to the close of escrow for interim uses, such as special events and activities for the community, particularly events and activities to showcase future potential tenants and build public awareness of the planned development.

Section 9.23 Attorneys' Fees

In the event any legal action is commenced to interpret or to enforce the terms of this Agreement, to pursue any remedy as a result of any breach of this Agreement, or arising out of this Agreement or the rights and obligations of the Parties hereunder the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees, expenses, and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Agreement).

IN WITNESS WHEREOF, the County and the Developer have executed this Agreement on, or as of, the Execution Date.

DEVELOPER:

_____, a _____

By: _____

Name: _____

Its: _____

COUNTY:

COUNTY OF ALAMEDA, a political subdivision of the State of California

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

By: _____
County Counsel

NOTE: **Parties must initial Section 6.4**
 Developer must initial Section 3.6

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 3 IN BLOCK "A", AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP OF "CASTRO VALLEY GARDENS", FILED JANUARY 13, 1914, IN BOOK 28 OF MAPS, PAGE 57, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY. EXCEPTING THEREFROM, THAT PORTION THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWESTERN CORNER OF SAID LOT 3; AND RUNNING THENCE ALONG THE SOUTHERN LINE OF SAID LOT 3, NORTH 88° 39' EAST, 163.53 FEET TO THE EASTERN LINE OF SAID LOT 3; THENCE ALONG THE LAST NAMED LINE, NORTH 1° 21' WEST, 237 FEET; THENCE SOUTH 88° 38' WEST, 38.53 FEET; THENCE NORTH 1° 21' WEST, 3 FEET; THENCE SOUTH 88° 39' WEST, 125 FEET TO SAID WESTERN LINE OF SAID LOT 3; AND THENCE ALONG THE LAST NAMED LINE,

SOUTH 1° 21' EAST, 240 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION THEREOF WHICH LIES WITHIN THE LINES OF THE LAND DESCRIBED IN THE DEED FROM THOMAS LITCH AND EVA LITCH, HIS WIFE, TO THE STATE OF CALIFORNIA, DATED AUGUST 13, 1930, RECORDED SEPTEMBER 23, 1930, IN BOOK 2426 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 344, INSTRUMENT NO. (AA/57760).

APN: 084A-0040-018-04

EXHIBIT B

FINANCIAL PROPOSAL

The total project cost is \$7.9 million.

A detailed project budget will be attached in the final draft DDA.

DRAFT

EXHIBIT C

FORM OF COUNTY GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Alameda County Community Development Agency
Economic and Civic Development Department
224 West Winton Avenue, Room 110
Hayward, CA 94544
Attention: Director

No fee for recording pursuant to
Government Code Section 27383

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged, the County of Alameda, a political subdivision of the State of California (the "Grantor") hereby grants to _____, a _____ (the "Grantee"), the real property (the "Property") more particularly described in Exhibit A attached hereto and incorporated into this grant deed (this "Grant Deed") by this reference, and all existing improvements existing on the Property.

1. The Property is conveyed subject to the Disposition and Development Agreement entered into by and between Grantor and Grantee dated as of _____, 2017 (the "Agreement" or the "DDA"). Capitalized terms used, but not defined, in this Grant Deed, shall have the meaning set forth in the DDA.

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that the Grantee and such successors and assigns shall promptly begin and diligently prosecute completion of the Improvements on the Property in accordance with the DDA (the "Improvements"), and that such Improvements shall be commenced and completed within the times provided in the DDA.

Promptly after completion of the Improvements, in accordance with the provisions of the DDA, the Grantor will furnish the Grantee with the Certificate of Completion as more particularly described in Section 4.5 of the DDA. Such Certificate of Completion by the Grantor shall be a conclusive determination of the satisfaction and termination of the agreements and covenants in the DDA and in this Grant Deed with respect to the obligations of the Grantee and its successors and assigns to rehabilitate the Improvements and the dates for the beginning and completion of such Improvements.

3. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction of the Improvements and thereafter during the Term of the DDA, the Grantee shall devote the Property only to the uses specified in the DDA.

4. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction of the Improvements and thereafter, the Grantee shall operate and maintain the Property thereon in compliance with all requirements for operation and maintenance set forth in the DDA.

5. The Grantee covenants and agrees, for itself and its successors and assigns that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sexual orientation, sex, marital status, national origin or ancestry 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 and the Improvements thereon.

For such time as required by any Applicable Law, all deeds, leases or contracts made relative to the Property, Improvements thereon or any part thereof, shall contain or be subject to substantially the following non-discrimination clauses:

(a) In Deeds:

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

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

(b) In Leases:

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

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

(c) In Contracts:

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

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

6. The Grantee represents and agrees that the Property will be used for the purposes of timely Improvements as set forth in the DDA. The Grantee further recognizes that in view of the following factors, the qualifications of the Grantee are of particular concern to the community and the Grantor:

(a) The importance of Improvements on the Property to the general welfare of the community; and

(b) The fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Grantee or the degree thereof is for practical purposes a transfer or disposition of the Property.

The Grantee further recognizes that it is because of such qualifications and identity that the Grantor has entered into the DDA and has conveyed the Property to the Grantee.

For the reasons stated above, the Grantee covenants, for itself and its successors and assigns, that, during the Term of the DDA, there shall be no Transfer in violation of the DDA.

No voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under this Grant Deed or the DDA except as expressly set forth in this Grant Deed or the DDA.

7. The covenants contained in this Grant Deed shall remain in effect for the period set forth in the DDA.

8. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust, or other financing or security instrument permitted by the DDA. However, any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise.

9. The covenants contained in this Grant Deed shall be, without regard to technical classification or designation, legal or otherwise specifically provided in this Grant Deed, to the fullest extent permitted by law and equity, binding for the benefit and in favor of and enforceable by the Grantor, its successor 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. In the event of any breach of any of such covenants, the Grantor and such aforementioned parties 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 property 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.

10. The Grantor shall have the right, at its option, to reenter and take possession of the Property, or any portion thereof, with all Improvements thereon, and revert in the Grantor the estate conveyed to the Grantee, if the DDA is terminated pursuant to Section 8.4 of the DDA

prior to recordation of the Certificate of Completion. Upon revesting in the Grantor of title to the Property, the Grantor shall promptly use its best efforts to resell the Property consistent with its obligations under state law. Upon sale the proceeds shall be applied as follows:

- (a) First, to reimburse the Grantor, for any reasonable costs it incurs in managing or selling the Property, or in connection with the completion of the rehabilitation of the Improvements, including but not limited to amounts to discharge, or to prevent liens or encumbrances arising from any acts or omissions of Grantee;
- (b) Second, to the Grantee in the amount of the reasonable costs expended by Grantee in acquiring the Property and undertaking the rehabilitation of the Building; and
- (c) Any balance to be retained by the Grantor.

In the event the proceeds from the sale of the Property by the Grantor are not sufficient to reimburse the Grantor for all of the costs incurred by the Grantor, as set forth in subsection (a), above, then, the Grantor acknowledges that it shall have no further, or additional, claim against the Grantee for such unreimbursed costs. Such right to reenter, repossession and revest shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

- (a) Any mortgage, deed of trust or other security instrument permitted by the DDA; and
- (b) Any rights or interest provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments.

The Grantor shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section, including also the right to execute and record or file with the Recorder of the County of Alameda a written declaration of the termination of all rights and title of the Grantee, and its successors in interest and assigns, in the Property, and the revesting of title thereto in the Grantor. Any delay by the Grantor in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that Grantor should not be constrained so as to avoid the risk of being deprived of or limited to the exercise of the remedy provided in this Section because of concepts of waiver, laches, or others), nor shall any waiver in fact made by the Grantor with respect to any specific default by the Grantee, its successors and assigns, be considered or treated as a waiver of the rights of the Grantor with respect to any other defaults by the Grantee, its successors and assigns, or with respect to the particular default except to the extent specifically waived. The Grantor's interest in the Property, as set forth in this Section, shall be a "power of termination" as defined in California Civil Code Section 885.010.

11. If the Agreement is terminated pursuant to Section 8.4 thereof following the Close of Escrow and prior to the issuance of the Certificate of Completion for the Improvements, then the

Grantor may at its option, in addition to other rights granted in the Agreement, repurchase, reenter and take possession of the Property as set forth in the Agreement

12. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed or to subject the Property to additional covenants, easements, or other restrictions. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and not to include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property.

13. As more particularly set forth in the DDA, the Grantee agrees to use the Property for the specific purpose of developing and operating the Improvements as set forth in the DDA and the Applicable Land Use Approvals.

14. In the event there is a conflict between the provisions of this Grant Deed and the DDA, it is the intent of the parties hereto and their successors in interest that the DDA shall control.

15. This Grant Deed may be executed and recorded in two or more counterparts, each of which shall be considered for all purposes a fully binding agreement between the parties.

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EXHIBIT D

SCHEDULE OF PERFORMANCE

	Item	Required On or Before
<i>Design</i>		
1	Developer submittal of Conceptual Development Drawings	Ninety (90) days after Effective Date
2	Director's approval of Conceptual Development Drawings	Ten (10) days after Developer submittal of Conceptual Development Drawings
<i>Permitting</i>		
3	Developer submittal of applications for Applicable Land Use Approvals	Three (3) months after the Effective Date
4	Developer application for Building Permit	One hundred twenty (120) days after Developer obtains Applicable Land Use Approvals
5	Developer seeks issuance of Building Permit	Ten (10) months after the Effective Date
<i>Financing</i>		
6	Developer's submittal of Financing Plan	Four (4) months after the Effective Date
7	Director's Approval of Financing Plan	Ten (10) days after submittal of Financing Plan
8	Developer submittal of evidence of pre-leasing commitments	Four (4) months after the Effective Date
9	Closing	Ten (10) months after the Effective Date
<i>Construction</i>		
10	Developer's submittal of Construction Contract	Twelve (12) months after the Effective Date
11	Director's approval of Construction Contract	Ten (10) days after submittal of Construction Contract
12	Developer or general contractor(s) obtainment of labor and material bond and performance bond	Thirty (30) days after Director's approval of Construction Contract
13	Developer's furnishment of evidence of insurance coverage	Thirty (30) days after Director's approval of Construction Contract
14	Commencement of Construction	Ninety (90) days after Closing
15	Completion of the Building Improvements	Nine (9) months after Closing

EXHIBIT E

FORM OF MEMORANDUM OF DDA

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

County of Alameda
c/o Department of Economic and
Civic Development
224 West Winton Avenue, Room 110
Hayward, CA 94544
Attention: Director

No fee for recording pursuant
To Government Code Section 27383

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memorandum of DDA") is made as of _____, 201__, by and between the County of Alameda, a political subdivision of the State of California (the "County") , and _____, a _____ (the "Developer"), to confirm that the County and the Developer have entered into that certain Disposition, and Development Agreement dated as of _____, 2017 (the "DDA"). The DDA imposes certain conditions (including but not limited to, construction requirements, operating covenants, and transfer restrictions) on the real property described in Exhibit A attached hereto and incorporated herein. The DDA is a public document and may be reviewed at the County's office set forth above.

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IN WITNESS WHEREOF, the parties have caused this Memorandum of DDA to be duly executed as of the date first above written.

COUNTY:

COUNTY OF ALAMEDA, a political subdivision of the State of California

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

By: _____
County Counsel

DEVELOPER:

_____, a

By: _____

Name: _____

Its: _____

Signatures must be Notarized

EXHIBIT F

SCOPE OF DEVELOPMENT

The Project property, located at 3295 Castro Valley Boulevard, Castro Valley, in unincorporated Alameda County, encompasses approximately 44,900 square feet. The Developer is proposing a Project of approximately 25,000 square feet of usable space* for a “department store of food”, utilizing the ground floor, second floor mezzanine, and basement, as well as use of the adjacent paseo for outdoor dining.

The Project components will include two primary anchor tenants as described below:

- Anchor Retail & Restaurant —ground-floor retail space, anchored by the approximately 6,000 square foot Castro Valley Natural Foods, an organic specialty grocery store with fresh produce, beauty and health products, a delicatessen, and a variety of natural food products. Castro Valley Natural Foods will use the basement for product storage. Operated by the owners of the Blind Tiger restaurant, a restaurant and bar will occupy 4,000 square feet of the basement, featuring tapas plates and cocktails.

Other proposed uses include:

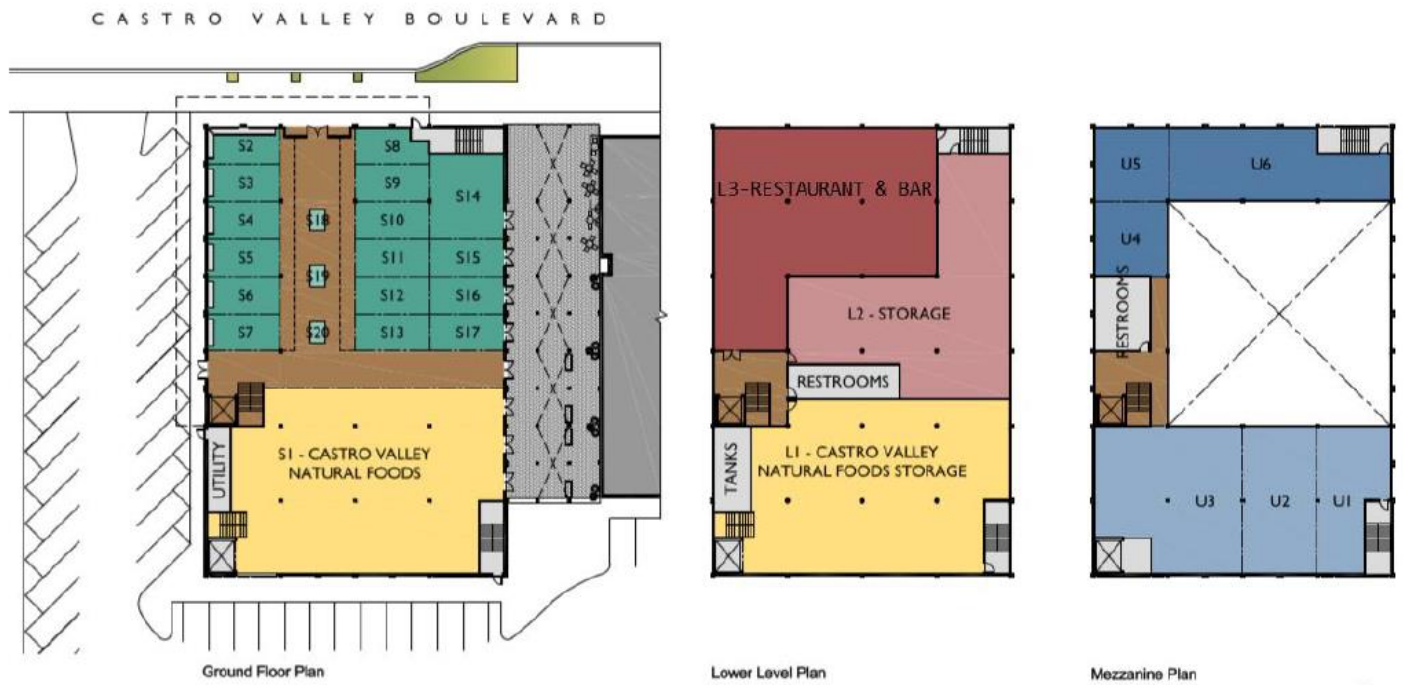
- Bakery, a tap room, and a variety of food vendors that could include coffee, fish, meat, poultry, wine bar and shop, sushi, and a florist.
- Mezzanine level: various uses that could include a cooking school, commissary facility, and a yoga/pilates studio.

Parking will be provided in the Shared Parking Lot.

* While the Project will utilize the entire 40,000 square foot Building, a maximum of 25,000 square feet will be available for leasable, customer-serving space to comply with the Shared Parking Agreement. Any space that is non-customer serving (e.g., storage space, hallways, utility closets, etc.) is not counted in the 25,000 maximum square footage.

Conceptual drawings of the project are attached as Exhibit F1.

EXHIBIT F1



Proposed Plans

3295 Castro Valley Boulevard

September 6, 2017

0 30'



1

EXHIBIT G

FORM OF CERTIFICATE OF COMPLETION

Recording Requested By
And When Recorded Mail To:

County of Alameda
c/o Department of Economic and
Civic Development
224 West Winton Avenue, Room 110
Hayward, CA 94544
Attention: Director

No fee for recording pursuant to
Government Code Section 27383

CERTIFICATE OF COMPLETION

(3295 Castro Valley Boulevard, Castro Valley, Alameda County, CA)

This Certificate of Completion is provided pursuant to Section 4.20 of that certain Disposition and Development Agreement (the "Agreement") by and between the County of Alameda, a political subdivision of the State of California (the "County"), and Castro Valley Marketplace LLC, a California limited liability company, (the "Developer"), dated as of _____, 201_. The County certifies that the Developer has met all of its obligations under the Agreement, and more specifically referenced in Section 4.20 thereof to.

The Agreement is evidenced by that certain Memorandum of Disposition and Development Agreement dated as of _____, 201_, and recorded against the Property in the official records of Alameda County on _____, 201_, as document number _____. This Certificate of Completion: (1) shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a deed of trust securing money loaned to finance the rehabilitation of the Property or any part thereof; (2) shall not constitute evidence of compliance with the prevailing wage requirements of California Labor Code Sections 1720 et seq. (to the extent applicable as set forth in Section 4.7 of the Agreement); and (3) is not, nor shall be deemed to be, either a notice of completion under the California Civil Code or a certificate of occupancy.

This Certificate of Completion shall not have any effect on the Term of the Agreement (other than to establish the date on which the Term shall expire, which date shall be twenty (20) years following the date of the recordation of this Certificate of Completion). In accordance with Section 4.20 of the Agreement, this Certificate of Completion terminates the following provisions of the Agreement: Article 5 except for Sections 5.5,

and 5.6; Section 7.2 and Section 7.3; provided, however all other duties, rights, remedies and controls of the County or the Developer, as the case might be, with respect to the rights and requirements under the Agreement not listed above, shall continue for the Term of the Agreement or as otherwise specified therein. Nothing in this Certificate shall be deemed to waive, limit, or impair any indemnification obligation that survives the termination of the Agreement.

Capitalized terms used, but not defined, in this Certificate of Completion shall have the meaning set forth in the Agreement.

Executed as of this _____ day of _____, 20__.

COUNTY OF ALAMEDA, a political subdivision of the
State of California

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

By: _____

County Counsel

SIGNATURE MUST BE NOTARIZED

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public,
personally appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public