

EXCLUSIVE NEGOTIATING AGREEMENT

401 Broadway or 430 Broadway

THIS EXCLUSIVE NEGOTIATING AGREEMENT (the "Agreement") is entered into as of the date this Agreement is executed by the County, as shown on the signature page hereof (the "Effective Date"), by and between the County of Alameda, a body corporate and politic and a subdivision of the State (the "County"), and _____
[Development Team should either name the single entity that will be the master developer of the Property or if the Development Team proposes that different developers will develop the market rate and the affordable housing, each developer should be named] (the "Developer"), on the basis of the following purposes, intentions, and facts:

RECITALS

A. The County is the owner of that certain property located at **[401 Broadway/430 Broadway]**, Oakland, California (the "Property"). The County Board of Supervisors has determined, in accordance with Government Code Section 25539.4, that the Property can be used to provide housing affordable to persons and families of low and very low income.

B. The County issued a Request for Qualifications ("RFQ") followed by a Request for Proposals ("RFP") for qualified developers to lease from the County the Property in accordance with the terms of a long term ground lease, and to develop and operate on the Property the most housing units possible at the deepest levels of affordability given current and potential funding sources, in the most expedient manner consistent with Government Code Section 25539.4.

C. The Developer submitted a proposal to lease and develop the Property dated _____ (the "Proposal"), a copy of which is on file with the County. The Proposal includes the development of _____ units of housing of which _____ units are proposed to be affordable to persons and families of very low income and _____ units are proposed to be affordable to persons and families of low income (the "Project").

D. On the basis of the Proposal, the County has selected the Developer as the entity with which to negotiate to seek to execute a mutually acceptable Lease Disposition and Development Agreement ("LDDA") which will include, but not be limited to terms and conditions on (i) the lease of the Property from the County to the Developer; (ii) the Developer's development of the Project on the Property; and (iii) affordability and occupancy restrictions that will apply to the Project. The LDDA will include as an exhibit a ground lease ("Ground Lease") to be entered into by the Parties in accordance with the terms of the LDDA.

E. The purpose of this Agreement is to establish procedures and standards for the negotiation by the County and the Developer of the LDDA and the Ground Lease. As more fully set forth in Section 3.1, the parties acknowledge and agree that this Agreement in itself does not grant the Developer the right to acquire the Property, nor does it obligate the Developer

to any activities or costs to acquire the Property, other than the activities and costs necessary to discharge the Developer's obligations under this Agreement including the obligation to negotiate in good faith as contemplated by this Agreement.

NOW, THEREFORE, THE COUNTY AND THE DEVELOPER HEREBY AGREE AS FOLLOWS:

ARTICLE 1 EXCLUSIVE NEGOTIATIONS

Section 1.1 Good Faith Negotiations. The County and the Developer, acknowledging that time is of the essence, agree for the Negotiation Period set forth in Section 1.2 to negotiate diligently and in good faith to prepare and execute a LDDA, including a Ground Lease in the manner set forth in this Agreement. For purposes of this Agreement a lack of diligent, good faith negotiations on the part of the Developer will include the Developer's failure to meet the Performance Benchmarks set forth in the Performance Schedule.

The LDDA and Ground Lease shall contain terms acceptable to the County and the Developer, in the respective exercise by each of its sole discretion. The LDDA shall include, without limitation, the conditions precedent to the County and the Developer entering into the Ground Lease, physical and land title conditions of the Property at the conveyance of the leasehold interest, including environmental conditions, the proposed development schedule for the Project and other matters that may be identified by either party during the course of completing the negotiations of the LDDA. The Ground Lease shall include, without limitation, the term of the Ground Lease, the ground rent and any ongoing obligations with regards to the development and operation of the Property. The RFP and the Proposal shall serve as the guide in the negotiation of the LDDA and the Ground Lease, although the parties recognize that review of additional information and further discussion may lead to refinement of the issues and concepts set forth in the RFP and the Proposal. Prior to the negotiation of the LDDA and the Ground Lease, the County and the Developer shall negotiate a non-binding term sheet ("Term Sheet") setting forth the principal terms to be included in the LDDA and the Ground Lease as more fully described below. During the Negotiation Period, the County will negotiate solely with the Developer with respect to lease and development of the Property.

Section 1.2 Negotiation Period. The negotiating period (the "Negotiation Period") shall commence on the Effective Date and shall expire one (1) year thereafter. The County Administrator may, in her sole discretion, agree to extend the Phase 2 Negotiation Period for up to an additional one hundred eighty (180) days, if the County Administrator determines that the Developer has met all of its obligations pursuant to this Agreement and that the Parties are making sufficient progress toward the negotiation of a mutually acceptable LDDA and Ground Lease. An extension shall be effective only if evidenced by an amendment executed by authorized representatives of the County and the Developer and the Developer pays the increased Good Faith Deposit as set forth in Section 1.3 below. Any further extensions shall be subject to approval of the Board of Supervisors.

The Developer acknowledges that time is of the essence to the County in negotiation of a LDDA and the Ground Lease. Accordingly, it is essential to the County that the parties negotiate in good faith and, if the parties do not succeed in timely negotiating a Term Sheet, LDDA and Ground Lease, that this Agreement expire as specified herein.

Section 1.3 Good Faith Deposit. As a condition of submitting the Proposal, the Developer deposited with the County Twenty-Five Thousand Dollars (\$25,000). Within five (5) days of the Execution Date, the Developer shall deposit with the County an additional Twenty-Five Thousand Dollars (\$25,000) to increase the total amount on deposit to Fifty Thousand Dollars (\$50,000) (the "Good Faith Deposit") to ensure that the Developer will negotiate in good faith and perform all of the Developer's obligations under this Agreement. The Good Faith Deposit, including any Extension Deposit, shall be non-refundable, except as set forth in Section 3.7 below. Failure of the Developer to deposit the additional \$25,000 within five (5) days of the Execution Date shall result in immediate termination of this Agreement. The County shall use the Good Faith Deposit to pay its actual reasonable out-of-pocket expenses incurred in carrying out its obligations under this Agreement, including, but not limited to the staff and legal costs incurred by the County in connection with the negotiation, drafting and consideration of the Term Sheet, LDDA and the Ground Lease, costs associated with financial and pro forma review and analysis, consultant costs and other costs incurred ("County Expenses").

As a condition to the extension of the Negotiation Term pursuant to Section 1.2 above, the Developer shall be obligated to increase the Good Faith Deposit by depositing with the County an additional Twenty Five Thousand Dollars (\$25,000) ("Extension Deposit"), which amount will be used in accordance with the provisions of this Section 1.3 related to the Good Faith Deposit. No such extension of the Negotiation Period shall be effective until the County has received the Extension Deposit.

Section 1.4 Identity of Developer. The legal status of the Developer, its office address, and designated representatives to negotiate the LDDA and Ground Lease are as set forth in Exhibit B attached to this Agreement and incorporated herein by this reference.

ARTICLE 2 NEGOTIATION PROCESS AND RESPONSIBILITIES

Section 2.1 General Process.

(a) Negotiations Based on Proposal. The negotiations hereunder shall be based on a development concept generally as set forth in the RFP and the Proposal. During the Negotiation Period, the Developer may continue to develop the conceptual design and architecture of the Project, may continue to conduct marketing and feasibility analysis, and shall perform such other tasks as are reasonably necessary and appropriate to fulfill its obligation to negotiate in good faith with the County toward initially a mutually acceptable Term Sheet and ultimately an LDDA and Ground Lease.

(b) Reports, Studies, and Related Documents. The Developer shall provide the County with copies of all reports, studies, analyses, and similar documents in draft form, but

excluding confidential or proprietary information and communications with the Developer's legal counsel, prepared or commissioned by the Developer with respect to this Agreement and the lease and development of the Property, promptly upon their completion. The Developer shall not be deemed to make any representation to the County regarding the accuracy, completeness, methodology or current status of any such reports, studies or analysis, nor shall the Developer assume any liability with respect to any matter or information referred to or contained in such reports, nor shall the County have any claim against the Developer or any consultant of the Developer arising out of the contents of such reports.

While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer acknowledges that the County will need sufficient, detailed information about the proposed lease and development of the Property (including, without limitation, financial information) to make informed decisions about the content and approval of the LDDA and Ground Lease.

The Developer acknowledges that the County is subject to the California Public Records Act ("Act"). The Act generally provides that written documents retained by the County are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the Act. The Developer acknowledges that the County will make information regarding the Project, the Property, the Proposal and this Agreement available to the public upon request as required by the Act. However, in order to successfully negotiate the LDDA and the Ground Lease, the parties believe that there will be specific documents that may be sensitive or contain proprietary information that they will want to exchange in order to review and understand the transaction. The Developer shall designate as "Confidential" any information which the Developer provides to the County which the Developer desires to keep confidential and a statement as to why the request is consistent with the provisions of the Act. The County shall not be bound by the Developer's designation of records as "Confidential" or the reasoning therefore provided by the Developer, except as contained herein with respect for the procedure for the Developer filing a reverse-Public Records Act action.

If a request for disclosure of any information designated as "Confidential" by the Developer is made under the Act, the County shall timely notify the Developer in writing of the request to permit the Developer at its discretion and sole cost to file a reverse-Public Records Act action. If the Developer decides to file a reverse-Public Records Act action, it shall inform the County in writing of this intention within 10 days of the date of the request for disclosure of the specific Confidential documents that will be the subject of the action, and the date by which it shall file the action. The County shall withhold any such Confidential documents identified by the Developer until the date identified in writing by the Developer, and upon the filing of the Developer's action shall continue to withhold those Confidential documents until a final decision is made by the Court with respect to disclosure, or the action is abandoned. If the Developer does not timely inform the County of its intention to file a reverse-Public Records Act action, does not file the reverse-Public Records Act action by the date indicated in its written notice to the County, or abandons the reverse-Public Records Act action prior to judgment, the County shall be free to disclose the Confidential documents at issue in accordance with its obligations under the Act, and shall be held harmless from any claims from the Developer regarding said disclosure. If a legal action is filed against the County seeking to compel disclosure of any

information that the Developer has requested remain confidential, the County shall give prompt notice of the filing of such action to the Developer and the Developer shall defend and indemnify the County from all costs and expenses of such defense, including reasonable attorneys' fees of the County or attorneys' fees awarded by a court arising out of such action except to the extent liability arises solely out of the County's exercise of its sole discretion to disclose or not disclose records.

(c) Quarterly Reports. The Developer shall prepare and submit to the County no later than the first day of each quarter during the Negotiation Period a meaningful summary of activities undertaken during the previous quarter to achieve each Performance Benchmark set forth in the Performance Schedule attached as Exhibit C. The first quarterly report shall be for the period from _____, 20__ to _____, 20__ and all subsequent reports will include the three months since the last report.

Section 2.3 Developer Due Diligence.

During the Negotiation Period the Developer shall undertake such due diligence as is necessary to determine the suitability of the Property for the Project as set forth below and within the times set forth in the Performance Schedule attached as Exhibit C:

(a) Due Diligence. During the Negotiation Period and within the time set forth in the Performance Schedule, the Developer shall conduct due diligence activities it deems necessary to provide the Developer with sufficient information to determine the feasibility of developing a Project on the Property. The Developer's due diligence activities may include but are not limited to a physical survey of the Property and all buildings and facilities located on the Property. The County shall provide the Developer all requested information regarding the Property in the County's possession in a timely fashion. The Developer shall be responsible for the costs of all such studies, surveys and investigations. If the Developer fails to provide notice to the County that it is infeasible to develop the Project on the Property or that the Property is physically inadequate for the development of the Project by the date set forth in the Performance Schedule, this condition shall be deemed satisfied and this Agreement will remain in effect.

Developer acknowledges and recognizes that regardless of the results of Developer's investigations of the Property or the buildings and facilities located on the Property, the Property will be leased to the Developer "As Is, Where Is, And With All Faults."

(b) Title Adequacy Determination. The County has provided the Developer with a Preliminary Title Report dated _____, Order No. _____(the "Title Report") on the Property. If the Developer objects to any exception appearing on the Title Report or should any title exception arise after the date of the Title Report, the Developer may object to such exception, provided such objection is made to the County in writing on or before 5 P.M. on the thirtieth (30th) day following the Effective Date, or if the exception is a new exception arising after the date of the Title Report, within fifteen (15) days of receipt of notice of such new exception. If the Developer objects to any exception to title, the County, within fifteen (15) days of receipt of the Developer's objection shall notify the Developer in writing whether the County elects to (i) cause the exception to be removed of record, (ii) obtain a commitment from the title company for an appropriate endorsement to the policy of title insurance to be issued to the

Developer, insuring against the objectionable exception, or (iii) terminate this Agreement unless the Developer elects to take title subject to such exception. If the County fails to respond to the Developer, such failure shall constitute the County's election to terminate this Agreement unless the Developer elects to take title subject to such exception. If the County's elects not to remove any exception objected to by the Developer, the Developer may, within fifteen (15) days of receipt of the County's notice, elect to terminate this Agreement. If any Party elects to terminate this Agreement pursuant to this Section 2.3(b), no Party shall thereafter have any obligations to or rights against the others hereunder. If the Developer fails to provide any notification to the County regarding this matter prior to expiration of the time period set forth herein, the condition set forth in this Section 2.3(b) shall be deemed satisfied, this Agreement shall continue in effect, and the condition of title at closing under any executed DDA and Ground Lease shall be as set forth in the Title Report.

Section 2.4 Developer Obligations;

During the Negotiation Period, the Developer shall be responsible for completing the following tasks within the time set forth in the Performance Schedule attached as Exhibit C:

(a) Community Engagement Plan. Within the time set forth in the Performance Schedule the Developer shall submit to the County for its approval, a community engagement plan ("Community Engagement Plan") that includes the Developer's proposed plan for conducting outreach to community groups and stakeholders in the vicinity of the Project to educate the public with respect to the Project and seek input from the public with respect to the Project. The County shall approve or disapprove the Community Engagement Plan within thirty (30) days of receipt. If the County disapproves the Community Engagement Plan the County shall provide specific reasons for its disapproval. If the County disapproves the Community Engagement Plan, the Developer shall submit a revised Community Engagement Plan to the County within thirty (30) days of such disapproval and the submission and approvals periods set forth herein shall continue until the County approves the Community Engagement Plan, provided, however, if the County fails to approve a Community Engagement Plan after the second resubmission, the County may, in its discretion, elect to terminate this Agreement. Once the Community Engagement Plan is approved, the Developer shall be responsible for implementing the Community Engagement Plan during the Negotiation Period.

(b) Financing Plan. Within the time set forth in the Performance Schedule, the Developer shall provide to the County for its approval a financing plan ("Financing Plan") for the proposed development on the Property that will include proposed financing for all components of the development, identification of all proposed sources of subsidies for the housing affordable to very low and low income households, any proposed public financing and an analysis of the proposed development's competitiveness for such subsidy sources. The Financing Plan shall also include an operating pro forma including cash flows for all components of the Project and showing the Developer's proposed ground rent with sufficient detail for the County to evaluate the ground rent proposal. The Developer shall update the Financing Plan periodically to reflect changes to the Project during the entitlement process, information from the Developer's due diligence review of the Property, the results of market studies and other information. The County shall approve or disapprove the Financing Plan within thirty (30) days

of receipt. If the County disapproves the Financing Plan the County shall provide a detailed explanation of the reasons for such disapproval.

(c) Entitlements. During the Negotiation Period and within the time set forth in the Performance Schedule, the Developer, at its sole cost, shall be responsible for obtaining all land use entitlements and other governmental approvals from the City of Oakland and other entities as may be necessary for the Developer's contemplated development on the Property. The County shall cooperate with the Developer's efforts to obtain such entitlement and shall sign necessary applications or other consents to applications, provided however, the County shall not be obligated to incur any costs associated with such cooperation.

Prior to submitting any applications to the City of Oakland or other governmental entities, the Developer shall submit to the County the design and architecture of Project, including the conceptual plans, elevations, the exterior design and layout and any other information that the Developer intends to submit as part of its entitlement application. In the exercise of its reasonable discretion, the County shall respond to the Developer's written request for approval of conceptual plans within twenty (20) business days of the Developer's request therefor or the items submitted for approval shall be deemed approved. If the County disapproves of the items submitted, it shall specifically state the reasons for such disapproval. The Developer shall not submit any applications for entitlements until the County has approved the conceptual plans and application materials.

The Developer shall provide to the County, for its approval, any changes to the Project during the entitlement process and the Developer shall not agree to any such changes unless previously approved by the County.

(d) Environmental Documents. The Developer shall be responsible, at its sole cost, for preparation of any environmental documents required under the California Environmental Quality Act for (i) County approval of the LDDA and Ground Lease and (ii) approval of the Project to proceed. The County shall determine the appropriate environmental review required for approval of the LDDA and Ground Lease and shall cooperate with the Developer in preparing environmental documents for which the Developer is responsible (if any) by supplying available technical data and other available information concerning the Property. The Developer shall be solely responsible for all costs associated with preparing any environmental documents necessary for the County's approval of the LDDA and Ground Lease. The determination of the adequacy of the environmental review shall be in the sole discretion of the County.

2.5 Term Sheet. During the Negotiation Period and within the time set forth in the Performance Schedule, the Developer and the County will negotiate the Term Sheet for the Project that is consistent with the Developer's Proposal as such Proposal is refined in accordance with this Agreement. The Term Sheet shall include the fundamental terms that will serve as a basis for the negotiation of the LDDA and the Ground Lease, including, but not limited to, the term of the Ground Lease, the proposed ground rent, the basic elements of the Project, the community benefits package to be included with the Project and a viable financial plan for the Project. Once the Developer and the County staff have negotiated the Term Sheet, the Term Sheet shall be presented to the Board of Supervisors for its approval, which may approve or

disapprove the Term Sheet in its sole discretion. If the Board of Supervisors approves the Term Sheet it shall inform the negotiation of the LDDA and the Ground Lease. If the Board of Supervisors disapproves the Term Sheet, either Party may terminate this Agreement, in which event no Party shall thereafter have any obligations to or rights against the others hereunder, except for those provisions that survive termination.

2.6 Right of Entry.

During the Negotiation Period, the County grants to the Developer and the Developer's agents the right to enter upon the Property, subject to the terms and conditions of this Section 2.6, for the sole and exclusive purpose of conducting studies and investigations that will assist the Developer in negotiating a LDDA and Ground Lease and performing its obligations hereunder. Such entry shall be made only during regular business hours and upon not less than two (2) business days' advance telephonic or email notice to Stuart Cook ("County's Authorized Representative"). The Developer shall not interfere with any existing the County operations or departments occupying the Property during any inspection or investigation of the Property and the Developer's access to certain portion of the existing buildings may be limited due to the current uses of the Property. The Developer shall be responsible for obtaining any permits necessary for any studies or investigations to be conducted. Prior to conducting any destructive testing or any environmental testing involving drilling or borings, the Developer shall provide the County's Authorized Representative with written notification of the scope of such testing for the County's Authorized Representative's approval in his reasonable discretion. The Developer shall bear all costs of such studies and investigations and shall be responsible for restoring the Property to its original condition after completion of such studies and investigations. The Developer shall be responsible for repairing any damage to the Property caused by such investigations.

Prior to exercise of the right of entry granted in this Section 2.6, the Developer shall provide the County with satisfactory evidence, in the form of a certificate of insurance, that the Developer's agents who obtain access to the Property are insured under comprehensive general liability and automobile liability insurance policy or policies terminable only after ten (10) days' advance written notice to the County, each policy to be in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury and property damage. Each insurance policy shall name the County as an additional insured and shall contain a waiver of any right of subrogation against the County.

The Developer shall protect, indemnify and defend (with counsel reasonably acceptable to the County) and hold harmless the County, and its respective board members, officers, employees, and agents (collectively the "Indemnified Parties") against, and hold the Indemnified Parties and the Property harmless from and against, any and all costs, expenses (including, without limitation, attorneys' fees), damages, claims, liabilities, liens (including, without limitation, mechanics liens) encumbrances and charges arising out of or in any way related to any entry by the Developer or the Developer's agents upon the Property, unless such matters arise from the sole and active negligence or willful misconduct of the County or other Indemnified Party. The foregoing obligation of the Developer shall survive the expiration of this Agreement.

The provisions of this Section 2.6 to the contrary notwithstanding, the Developer shall not conduct any biological investigations or studies or any invasive investigation, inspection, or test on the Property without prior written notice to the County's Authorized Representative of the proposed investigation, study, inspection or test (including, with respect to any hazardous substances invasive testing, a written plan for such testing) and the County's Authorized Representative's approval thereof, which will not be unreasonably withheld, conditioned or delayed and will be deemed given if the County's Authorized Representative has not given its approval or reasonable disapproval in writing within twenty (20) business days after receipt of the Developer's notice of the proposed investigation, study, inspection or test (and any required written plan). Additionally, the Developer shall provide to the County for the County's review and approval (which approval will not be unreasonably withheld, conditioned or delayed) copies of drafts of any reports prepared in connection with any such activities prior to the reports becoming final and submitted to third parties (including governmental agencies). The County's failure to disapprove of any draft report within twenty (20) business days of the County's receipt will conclusively be deemed approval by the County of the draft report in question.

Section 2.7 County Cooperation. The County shall reasonably cooperate in providing the Developer with information in the County's possession relevant to development of the Property.

ARTICLE 3 GENERAL PROVISIONS

Section 3.1 Limitation on Effect of Agreement. This Agreement shall not obligate either the County or the Developer to enter into an LDDA or Ground Lease or to enter into any other agreement. By execution of this Agreement, the County is not committing itself to or agreeing to undertake disposition of any property. Execution of this Agreement by the County is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent County action the final discretion and approval regarding the execution of an LDDA and Ground Lease and all proceedings and decisions in connection therewith. Any LDDA and Ground Lease resulting from negotiations pursuant to this Agreement shall become effective only if and after such LDDA and Ground Lease have been considered and approved by the County Board of Supervisors following conduct of all legally required procedures. No agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into an LDDA or Ground Lease, nor shall any such documents, actions or communications constitute any oral or implied agreement by either Party to enter into any other agreement. The Parties acknowledge that the final form of any agreement governing the development of the Property may contain matters not covered in this Agreement, and the provisions herein are not intended to exclude or preclude any other issues that may arise during negotiations.

Section 3.2 Compliance with CEQA. Without limiting the generality of Section 3.1, the Developer expressly acknowledges that any agreement resulting from the negotiations contemplated hereby shall become effective only if the agreement is approved by the County Board of Supervisors following compliance with all applicable notice and hearing requirements and compliance with all other requirements of law, including without limitation, the

requirements of the California Environmental Quality Act (“CEQA”). The Parties acknowledge that the Project described in the Proposal is preliminary in nature and shall be described in further detail in the LDDA to be negotiated during the Negotiation Period. Without limiting the foregoing, the Parties acknowledge that the County retains discretion to (i) modify the proposed development as the County may, in its discretion, determine to be necessary to comply with CEQA, (ii) select other feasible alternatives and/or impose mitigation measures to avoid or minimize significant environmental impacts; (iii) balance the benefits of the proposed development against any significant environmental impacts prior to taking final action, if such impacts cannot otherwise be avoided; and/or (iv) determine not to proceed with the proposed development of the Property.

Section 3.3 Notices. Each notice, request, demand, instruction or other document required or permitted to be given hereunder ("Notice") shall be in writing and shall be delivered personally (including messenger or courier service with evidence of receipt) or sent by depositing the same with the United States Postal Service, certified or registered mail, return receipt requested, with proper postage prepaid, addressed to the parties at the respective addresses set forth below and marked to the designated individual's attention. Each Notice shall be effective upon being so deposited, but the time period in which a response to any such Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof. Rejection or other refusal by the addressee to accept or the inability of any messenger, courier or the United States Postal Service to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. Either party shall have the right from time to time to change the address to which a Notice to it shall be sent to another address in the continental United States (but not a post office box) by giving Notice to the other party of the changed address at least ten (10) days prior to such changes.

If to the County: County of Alameda
Attention: Stuart Cook
224 West Winton #110
Hayward, CA 94544

With copies to: County of Alameda
Community Development Agency
224 West Winton
Hayward, CA 94544
Attn: Director

County of Alameda
County Counsel
1221 Oak Street, Suite 450
Oakland, CA 94612
Attn:

If to the Developer: To the address specified in Exhibit B

Section 3.4 Developer's Financial Capacity. The Developer has submitted to the County evidence of its ability to finance development of the Property pursuant to the Proposal. The Developer represents and warrants that such evidence is accurate and does not omit any material information as of the date of this Agreement. The Developer acknowledges that the County has relied on such evidence in selecting the Developer to enter into this Agreement, and in negotiating the terms of the LDDA and Ground Lease. The Developer shall maintain full disclosure to the County of its methods of financing to be used in the development of the Property, and shall promptly advise the County of any material adverse change in the Developer's financial status or ability to finance development of the Property.

Section 3.5 Real Estate Commissions. The County shall not be liable for any real estate commissions or brokerage fees, which may arise under this Agreement. The County represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer and the County each agrees to indemnify, protect, defend, and hold harmless the other from any claim by any broker, agency or finder retained, or allegedly retained, by the indemnifying party.

Section 3.6 Costs and Expenses. Each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement, except for the County Expenses to be funded with the Good Faith Deposit.

Section 3.7 Defaults and Remedies.

(a) Default. Failure by either party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. In addition, the failure of the Developer to meet any of the Performance Benchmarks by the date set forth in the Performance Schedule shall constitute a Developer event of default. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured ten (10) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by the County, the Developer's sole remedy shall be to terminate this Agreement, upon which termination the Developer shall be entitled to the return of the unexpended portion of the Good Faith Deposit. Following such termination and the return of the unexpended portion of the Good Faith Deposit, neither party shall have any further right, remedy or obligation under this Agreement; provided, however, that the Developer's indemnification obligation pursuant to Sections 2.6 and 3.5 shall survive such termination.

In the event of an uncured default by the Developer, the County's sole remedy shall be to terminate this Agreement and to retain the Good Faith Deposit. Following such termination, neither party shall have any right, remedy or obligation under this Agreement; provided,

however, that the Developer's indemnification obligation pursuant to Sections 2.6 and 3.5 shall survive such termination.

Except as expressly provided above, neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

The parties agree that, based upon the circumstances now existing, both known and unknown, it would be impractical or extremely difficult to establish the damages to the non-defaulting party by reason of a default by the defaulting party. Therefore, it would be reasonable at the termination of this Agreement pursuant to this subsection (b) to award the non-defaulting party "liquidated damages" equal to the Good Faith Deposit (or, where the Developer is the non-defaulting party, return of the unexpended portion of the Good Faith Deposit) as the sole and exclusive remedy of the non-defaulting party.

Section 3.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 3.9 Assignment. The Developer may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the County, which consent shall be granted or withheld in the County's sole discretion, and any such attempted transfer or assignment without the prior written consent of the County shall be void.

Section 3.10 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the County and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 3.11 Time. Time is of the essence of each and every provision of this Agreement in which time is a factor.

Section 3.12 No Agency, Joint Venture or Partnership. The County and the Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the County and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the County and the Developer.

Section 3.13 Interpretation of Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations, and agreements whether oral or written, except to the extent that the Proposal informs the negotiations contemplated in this Agreement. Any amendment to this Agreement, including an oral modification supported by new consideration, must be reduced to writing and signed by both parties before it will be effective. Both parties have had an equal opportunity to participate in the drafting of this Agreement. The usual construction of an agreement as to the drafting party shall not apply to this Agreement.

Section 3.14 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it. This Section shall survive the expiration or termination of this Agreement.

Section 3.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set opposite their signatures. The Effective Date of this Agreement shall be the date this Agreement is signed by the County.

"County"

_____, 202-

County of Alameda, a body corporate and politic and a subdivision of the State

By: _____

"Developer"

_____, 202_

By: _____

Title: _____

APPROVED AS TO FORM:

Donna Ziegler, County Counsel

By: _____

ATTEST:

Clerk, Board of Supervisors

EXHIBIT A

DESCRIPTION OF PROPERTY

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

EXHIBIT B

DEVELOPER INFORMATION

Name: _____

Legal Status: _____

Address: _____

Negotiating Representative(s):

**EXHIBIT C
PERFORMANCE SCHEDULE**

Performance Benchmark	Performance Date
1. Developer Due Diligence Activities (§2.3(a))	
2. Developer determines title adequacy (§2.3(b))	
3. Developer submits Community Engagement Plan to the County for approval (§2.4(a))	
4. The County approves or disapproves the Community Engagement Plan (§2.4(a)).	Within 30 days of submission
5. Developer submits Financing Plan to County (§2.4(b))	
6. County approves or disapproves of the Financing Plan (§2.4(b))	Within 30 days of submission
7. Board of Supervisors approves Term Sheet (§2.5)	
8. Developer shall submit concept plan and entitlement application materials to the County for its approval prior to submitting applications for entitlements (§2.4(c))	
9. County shall review and approve or disapprove design and architecture plans (§2.4(c))	Within 20 business days of submission
10. Developer obtains entitlements for the Project (§2.4(c))	
11. Developer obtains final CEQA review of Project (§2.4(d))	