

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF ALAMEDA, a California charter city

and

MidPen Housing Corporation, Alameda Point Collaborative, Building Futures With Women and  
Children, Operation Dignity

Alameda Point - Rebuilding the Existing Supportive Housing (RESHAP)

Dated as of \_\_\_\_\_, 2018

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE 1. TERM OF THE AGREEMENT .....	6
Section 1.1    Effective Date. ....	6
Section 1.2    Term. ....	6
Section 1.3    Extension of the Term.....	6
Section 1.4    Force Majeure. ....	7
Section 1.5    Milestone Schedule.....	7
ARTICLE 2. LAND PAYMENT .....	8
Section 2.1    Land Payment. ....	8
ARTICLE 3. FINANCING PLAN .....	8
Section 3.1    Financing Plan. ....	8
Section 3.2    Review of Financing Plan Updates By City. ....	9
Section 3.3    Quarterly Reports.....	10
ARTICLE 4. DISPOSITION OF PROPERTY AND ESCROW .....	11
Section 4.1    Opening Escrow.....	10
Section 4.2    Close of Escrow. ....	11
Section 4.3    Conditions Precedent to Closing.....	11
Section 4.4    Closing Deliverables.....	14
Section 4.5    Condition of Title.....	16
Section 4.6    Condition of the Property.....	17
Section 4.7    Costs of Escrow and Closing. ....	21
Section 4.8    Real Estate Commissions.....	23
Section 4.9    Survival.....	23
ARTICLE 5. CONSTRUCTION of the project .....	24
Section 5.1    Basic Obligations. ....	24
Section 5.2    Construction Pursuant to Approved Construction Documents.....	24
Section 5.3    Construction Permits and Approvals. ....	24
Section 5.4    Vertical Construction Contract. ....	25
Section 5.5    Construction Assurances To City. ....	26
Section 5.6    Subdivision Map.....	27
Section 5.7    Developer Responsibility for All Costs of the Project.....	27
Section 5.8    Local Workforce Development.....	27
Section 5.9    Project Stabilization Agreement. ....	28
Section 5.10    Compliance with Applicable Law. ....	28
Section 5.11    Entry by the City.....	28
Section 5.12    Progress Reports. ....	28

Section 5.13	Necessary Safeguards. ....	29
ARTICLE 6. AFFORDABLE HOUSING REQUIREMENTS.....		29
Section 6.1	Affordable Housing Obligations.....	29
Section 6.2	Project Affordable Housing Requirements.....	30
Section 6.3	Consistency with Palmer and Non-Applicability of Costa Hawkins.....	30
ARTICLE 7. ADDITIONAL DEVELOPER OBLIGATIONS.....		31
Section 7.1	Use and Occupancy.....	31
Section 7.2	Project CC&R's.....	31
Section 7.3	Prevailing Wages and Related Requirements.....	32
Section 7.4	Expansion, Reconstruction or Demolition.....	32
Section 7.5	Damage or Destruction. ....	32
Section 7.6	Mitigation Monitoring and Reporting Program.....	33
Section 7.7	Developer's Obligations Regarding Hazardous Materials.....	33
Section 7.8	Developer's Indemnification Obligations.....	33
Section 7.9	Developer's Insurance Obligations.....	33
Section 7.10	Taxes.....	33
Section 7.11	Non-Discrimination.....	33
Section 7.12	Applicability.....	33
Section 7.13	TDM Compliance Strategy.....	33
Section 7.14	Release of Existing Leases and Relocation of Residents.....	34
ARTICLE 8. CITY OBLIGATIONS .....		36
Section 8.1	Entitlements.....	36
Section 8.2	Permits and Approvals.....	36
Section 8.3	Backbone Infrastructure.....	36
Section 8.4	Estoppel Certificate of Completion.....	36
Section 8.5	City Representations.....	37
ARTICLE 9. ASSIGNMENT AND TRANSFERS.....		38
Section 9.1	Definition of Transfer.....	38
Section 9.2	Purpose of Restrictions on Transfer.....	38
Section 9.3	Prohibited Transfers.....	39
Section 9.4	Permitted Transfers.....	39
Section 9.5	Other Transfers In City's Sole Discretion.....	40
Section 9.6	Effectuation of Permitted or Otherwise Approved Transfers.....	40
ARTICLE 10. SECURITY FINANCING AND RIGHTS OF HOLDERS .....		41
Section 10.1	Security Financing Interests; Permitted and Prohibited Encumbrances.....	41
Section 10.2	Permitted Mortgagee Not Obligated to Construct.....	42
Section 10.3	Notice of Default and Right to Cure.....	42
Section 10.4	Failure of a Permitted Mortgagee to Complete the Project.....	42

Section 10.5	Right of City to Cure.....	43
Section 10.6	Right of City to Satisfy Other Liens. ....	43
Section 10.7	Permitted Mortgagee to be Notified. ....	43
Section 10.8	Modifications. ....	43
Section 10.9	Miscellaneous Provisions.....	43
ARTICLE 11. HAZARDOUS MATERIALS .....		47
Section 11.1	Obligations Regarding Hazardous Materials. ....	47
Section 11.2	Notification To City; City Participation. ....	48
Section 11.3	Developer's Hazardous Materials Indemnification.....	48
ARTICLE 12. INDEMNIFICATION.....		48
Section 12.1	General Indemnification. ....	48
Section 12.2	Hazardous Materials Indemnification.....	49
Section 12.3	No Limitations Based Upon Insurance. ....	49
ARTICLE 13. INSURANCE REQUIREMENTS.....		49
Section 13.1	Required Insurance Coverage. ....	49
Section 13.2	Comprehensive General Liability Insurance. ....	50
Section 13.3	Vehicle Liability Insurance.....	50
Section 13.4	Workers' Compensation Insurance. ....	50
Section 13.5	Property Insurance. ....	50
Section 13.6	Construction Contractor's Insurance. ....	50
Section 13.7	Pollution Liability Insurance Policy. ....	50
Section 13.8	General Insurance Requirements. ....	51
Section 13.9	Additional Requirements. ....	52
Section 13.10	Certificates of Insurance. ....	52
Section 13.11	Alternative Insurance Compliance.....	52
ARTICLE 14. DEFAULT AND REMEDIES.....		52
Section 14.1	Application of Remedies.....	53
Section 14.2	No Fault of Parties. ....	53
Section 14.3	Fault of City. ....	53
Section 14.4	Fault of Developer. ....	54
Section 14.5	Right of Reverter/Power of Termination. ....	57
Section 14.6	Option to Repurchase, Reenter and Repossess. ....	58
Section 14.7	Plans, Data and Approvals.....	59
Section 14.8	Survival.....	59
Section 14.9	Rights and Remedies Cumulative.....	59
ARTICLE 15. GENERAL PROVISIONS .....		59
Section 15.1	Notices, Demands and Communications. ....	59
Section 15.2	Non-Liability of Officials, Employees and Agents. ....	61

Section 15.3	Time of the Essence .....	61
Section 15.4	Title of Parts and Sections. ....	61
Section 15.5	Applicable Law; Interpretation. ....	61
Section 15.6	Severability. ....	61
Section 15.7	Legal Actions. ....	61
Section 15.8	Binding Upon Successors; Covenants to Run With Land. ....	61
Section 15.9	Parties Not Co-Venturers. ....	61
Section 15.10	Provisions Not Merged With Quitclaim Deed. ....	62
Section 15.11	Entire Understanding of the Parties. ....	62
Section 15.12	Approvals. ....	62
Section 15.13	Authority of Developer. ....	62
Section 15.14	Amendments. ....	63
Section 15.15	Multiple Originals; Counterparts. ....	63
Section 15.16	Operating Memoranda. ....	63
ARTICLE 16. DEFINITIONS AND EXHIBITS .....		63
Section 16.1	Definitions.....	63
Section 16.2	Exhibits. ....	69

## DISPOSITION AND DEVELOPMENT AGREEMENT

### FOR ALAMEDA POINT - REBUILDING THE EXISTING SUPPORTIVE HOUSING (RESHAP)

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**" or "**DDA**") is entered into as of \_\_\_\_\_, 2018 ("**Effective Date**") by and between the City of Alameda, a California charter city (the "**City**"), and MidPen Housing Corporation, a California nonprofit public benefit corporation ("**MidPen**"), Alameda Point Collaborative, a California nonprofit public benefit corporation ("**APC**"), Building Futures With Women and Children, a California nonprofit public benefit corporation ("**Building Futures**"), and Operation Dignity, a California nonprofit public benefit corporation ("**Operation Dignity**"). Each of APC, Building Futures and Operation Dignity is referred to herein as a "**Collaborating Partner**", and collectively, "**Collaborating Partners**". MidPen and the Collaborating Partners are referred to herein as the "**Developer**". MidPen and each of the Collaborating Partners are expected to form limited partnerships to which certain development obligations will be assigned in which the managing general partner is a limited liability company in which (1) MidPen or an affiliate in which MidPen has a Controlling Interest is a member/manager and (2) one or more of the Collaborating Partners or an affiliate in which the Collaborating Partner has a Controlling Interest is also a member/manager, which limited partnerships are identified herein as "**Developer Affiliates**." The City and the Developer are sometimes collectively referred to in this Agreement as the "**Parties**," and individually as a "**Party**." The Parties have entered into this Agreement with reference to the following facts:

#### RECITALS

A. This Agreement refers to and utilizes certain capitalized terms that are defined in Section 16.1 of this Agreement. The Parties intend to refer to those definitions in connection with their use in this Agreement.

B. The Naval Air Station Alameda and the Fleet and Industrial Supply Center, Alameda Annex and Facility ("**NAS Alameda**"), which encompasses the Naval facilities and grounds comprising the western end of the City of Alameda and consists of approximately 1,546 acres of real property, together with the buildings, improvements and related other tangible personal property located thereon and all rights, easements and appurtenances thereto, was decommissioned by the United States Department of the Navy (the "**Navy**") in 1993 and closed in 1997.

C. In 1996 the Alameda Reuse and Redevelopment Authority (the "**ARRA**"), of which the City is a member, the Local Reuse Authority under federal base closure law, approved the NAS Alameda Community Reuse Plan (the "**Reuse Plan**"), as amended in 1997, to establish a plan for the reuse and redevelopment of the property at the former NAS Alameda, a portion of which (west of Main Street) is commonly referred to as Alameda Point. The Reuse Plan set forth specific policy and planning goals and objectives with regards to the disposition and use of property at the NAS Alameda, which are being implemented under this DDA.

D. In 2003 the City adopted a General Plan Amendment for Alameda Point, which added Chapter 9 (Alameda Point) to the General Plan, in order to implement the community's vision for the reuse of Alameda Point consistent with the goals of the Reuse Plan and other City of Alameda policy documents.

E. The United States, acting by and through the Navy, approved the ARRA's Economic Development Conveyance Application and subsequently executed that certain Memorandum of Agreement between ARRA and the Navy for the No-Cost Economic Development Conveyance of Portions of the Former NAS Alameda, as such subsequently amended (the "**EDC Agreement**").

F. By operation of California State law, the Community Improvement Commission, a member of the ARRA joint powers authority, ceased to exist on February 1, 2012. Accordingly, the ARRA, by Resolution No 55, dated January 31, 2012, authorized the ARRA Executive Director to assign to the City all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement, subject to (i) the City accepting such Assignment; (ii) Department of Defense designation of the City as the local reuse authority for NAS Alameda; and (iii) execution of documents with the Navy necessary to implement the City as successor to ARRA.

G. Pursuant to City of Alameda Resolution No. 14654, dated February 7, 2012, the City authorized the City Manager to accept the Assignment of all of ARRA's rights, assets, obligations, responsibilities, duties and contracts, including the EDC Agreement, subject to the Department of Defense designating the City as the local reuse authority for NAS Alameda and the Navy executing documents necessary to implement the City as successor to ARRA.

H. By letter dated April 4, 2012, the Department of Defense and the Department of the Navy designated the City as the local reuse authority for NAS Alameda, and accepted the City as the successor to ARRA.

I. In June 2012, the City Council directed City staff, upon acquisition of major portions of Alameda Point, to complete the necessary Environmental Impact Report ("**EIR**"), General Plan amendments, Zoning Ordinance amendments, including the creation of the Alameda Point District (Alameda Municipal Code 30-4.24), and a Master Infrastructure Plan ("**MIP**") (collectively, the "**Planning Documents**") required to implement the Reuse Plan in compliance with the California Environmental Quality Act ("**CEQA**"), the City of Alameda General Plan and the Reuse Plan.

J. On June 6, 2013, the Navy transferred approximately 1,379 acres, including 509 acres of land and 870 acres of submerged land, at the Alameda Point property pursuant to the EDC Agreement.

K. On February 4, 2014, the City Council approved the Planning Documents, which included approval of a mixed-use, transit-oriented development consistent with the Reuse Plan and General Plan and consists of the rehabilitation, reuse and new construction of approximately 5.5 million square feet of commercial and workplace facilities for approximately 8,900 jobs; maritime and water related recreation uses in and adjacent to the Seaplane Lagoon, including a

new ferry terminal; rehabilitation and new construction of 1,425 residential units for a wide variety of household types for approximately 3,240 residents. This DDA is intended to implement certain goals and policies described in the approved Planning Documents with respect to the Property.

L. The Planning Documents require all new development at Alameda Point to comply with the Transportation Demand Management Plan for Alameda Point ("**TDM Plan**"), which was approved by the City Council on May 20, 2014. The TDM Plan outlines a plan for mitigating traffic impacts from new development during peak hours and supporting the creation of a transit-oriented development at Alameda Point including the formation of a Transportation Management Association and the establishment of fees or special taxes on developed property to pay the costs of implementation of the TDM Plan. The Developer has prepared and upon approval of the DDA, City will have approved a TDM Compliance Strategy for the Property, as attached hereto as Exhibit J. Through this DDA and as a condition of development, each Developer Affiliate shall be required to implement the terms of the approved TDM Compliance Strategy.

M. The amended Zoning Ordinance for Alameda Point required that a specific plan be adopted for the Main Street Neighborhood zoning sub-district. In conformance with the Zoning Ordinance, the City Council adopted the Main Street Neighborhood specific plan on March 21, 2017 ("**Main Street Neighborhood Plan**"). This DDA is intended to implement the goals and policies described in the Main Street Neighborhood Plan.

N. The City is the fee title owner of that certain portion of Alameda Point consisting of 9.7 acres, of which 9.1 acres are developable, and bounded by West Midway, Main Street, and Orion Parkway, as more particularly described in Exhibit A and shown on the map of the Property attached hereto as Exhibit B (the "**Property**").

O. The City currently leases certain property located within Alameda Point consisting of 34 acres to individual members of the Collaborating Partners pursuant to the terms of long term legally binding agreements ("**Existing Leases**") for 200 housing units and administrative offices in existing former Navy structures ("**Existing Structures**"), In addition to the Existing Leases, the City currently leases to APC certain property located within Alameda Point for the Ploughshares Nursery and The Farm, which leases are intended to remain in effect and unchanged by this Agreement. The Existing Leases were entered into pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 which requires that reasonable accommodations be made on closing military bases to meet the needs of the homeless and sets forth procedures and standards describing how such accommodations are to be made.

P. In accordance with this Agreement and the Main Street Neighborhood Plan, the City and the Developer plan to consolidate the existing 200 housing units and administrative offices currently located in the Existing Structures on the 34-acre leaseholds created by the Existing Leases within a 9.7-acre campus comprising the Property upon which partnerships formed with MidPen and a Collaborating Partner will own, construct and operate new affordable housing consisting of 267 affordable housing units and up to 40,000 square feet of community-serving commercial spaces while releasing the property subject to the Existing Leases for development consistent with the Main Street Neighborhood Plan.

Q. The Developer's plan for the Property includes the replacement of the 200 existing affordable housing units currently being provided pursuant to the Existing Leases with 200 newly constructed supportive affordable housing as well as the construction of an additional 67 newly constructed supportive affordable housing units in a cohesive new development. The City and the Developer acknowledge that replacement of the Existing Structures with the Project as contemplated in this Agreement meets the goals of the Base Closure Community Redevelopment and Homeless Assistance Act and the terms of the Existing Leases related to the provision of affordable housing meeting the needs of the homeless.

R. On December 15, 2015, pursuant to City Council authorization, the City and the Developer entered into the Exclusive Negotiations Agreement (the "**ENA**") for purposes of negotiating this Agreement.

S. The Developer understands and agrees that any proposed Project (defined below) must be consistent with the Planning Documents, the TDM Plan, the TDM Compliance Strategy, and the Main Street Neighborhood Plan, among other regulatory and policy documents, and that this DDA is entered into in furtherance of and is intended to implement the goals and policies contemplated by previously approved policy documents.

T. Pursuant to the terms of this Agreement, the City will convey and provide other specified rights to the Property to Developer Affiliates, and the Developer Affiliates will develop and construct a high quality, affordable supportive housing project that will serve extremely low-income and low-income residents by providing housing and supportive services that will help to break the cycle of homelessness and establish stability and opportunity in the lives of residents and create a cohesive, pedestrian-friendly, and inviting community. The Developer proposes to develop the following specified improvements consistent with the Main Street Neighborhood Plan and the Planning Documents (collectively, the "**Project**");

1. Two-Hundred (200) replacement residential units in newly constructed buildings replacing the 200 units currently located in the Existing Structures (the "**Replacement Units**");

2. Sixty-Seven (67) new residential units in newly constructed buildings ("**New Residential Units**" and with the Replacement Units, collectively, the "**Residential Units**");

3. Approximately 40,000 square feet of permitted and conditionally permitted community serving commercial spaces ("**Commercial Space**"); and

4. Potentially a replacement of the existing Midway Shelter with up to fifty-four (54) emergency beds for BFWC in newly constructed buildings ("**Emergency Shelter**").

The Developer intends to implement the Project in up to four (4) separate phases (each a "**Phase**"). Each Phase is more particularly described in the Phasing Plan attached as Exhibit C.

U. In accordance with the terms of the Agreement and as consideration for the City conveying the Property, the Collaborating Partners shall be obligated to release the Existing

Leases from the Existing Structures and all encumbrances on the Existing Structures as set forth in this Agreement and the Release Agreement attached hereto.

V. The City and the Developer understand that as a condition to development of the Project on the Property certain backbone infrastructure and site improvements must be constructed, consisting of demolition, geotechnical mitigation, rough grading, certified building pads, construction of backbone streets and utilities stubbed to the Property consistent with the MIP (collectively, the “**Backbone Infrastructure**” and more specifically described in Exhibit D) prior to conveyance of the Property to Developer Affiliates. The Parties intend that the Backbone Infrastructure will be developed by developers of the property adjacent to the Property, including certain portions of property subject to one or more of the Existing Leases, as part of the development of market rate housing consistent with the Main Street Neighborhood Plan. The Parties intend that for this Agreement to be included as an exhibit for reference in the disposition and development agreement with the developer of the adjacent property.

W. The New Residential Units are being constructed in compliance with the Renewed Hope Settlement Agreement with the units to be affordable to very low and low income households. The New Residential Units are being constructed in exchange for the developers of the property adjacent to the Property paying for and installing the Backbone Infrastructure and as such are intended to serve as the inclusionary units required for the development of the adjacent property under the City's Inclusionary Housing Ordinance, as well as the affordable housing units required pursuant to any density bonus waiver obtained by the developers of the adjacent property.

X. This Agreement provides for the City's conveyance of the following rights to the Property to the Developer Affiliates:

1. The conveyance of fee simple ownership of the Property in phases to Developer Affiliates;
2. The conveyance of a temporary construction easements or encroachments permits to portions of the Property or the adjacent property necessary for the construction of the Project (the "ROE Property").

Y. This Agreement provides for the Collaborating Partners to terminate the Existing Leases in accordance with the terms of this Agreement and the Release Agreement and to deliver the property covered by the Existing Leases to the City free and clear of any encumbrances.

Z. Through this Agreement, the City is imposing occupancy and affordability restrictions on the Project in compliance with the Renewed Hope Settlement Agreement and the City's Inclusionary Housing Ordinance.

AA. On September 25, 2017, the Planning Board approved the Development Plan (the "**Development Plan**"). The EIR requires the implementation of certain CEQA mitigation measures through the Mitigation Monitoring and Reporting Program, attached hereto as Exhibit E (the "**MMR Program**"). The City as the "lead agency" has determined that no further environmental review under CEQA is required based on CEQA Guidelines Section 15182 and 15183 and has made the required CEQA findings in connection with the EIR that has served as

the environmental documentation under CEQA for the City's consideration of approval of this Agreement and the Project.

BB. The Property is affected by certain Hazardous Materials, which are addressed in several Sections of this Agreement, in the MMR Program and in the Site Management Plan.

CC. Pursuant to Government Code Section 65402, the City's Planning Board has made the findings of General Plan conformance with respect to the Development Agreement.

DD. Construction of the Project will substantially improve the physical conditions of the Property and the City in accordance with the purposes and goals set forth in the Reuse Plan, the City's General Plan, the Main Street Neighborhood Plan, and the Planning Documents. This Agreement is declaratory of the policy goals and objectives of the various policy documents previously considered and adopted governing the development and disposition of property at the NAS Alameda. The execution and implementation of this DDA is an administrative action, in that it pursues plans and policies that have previously been adopted by the various public agencies with regards to the development of the NAS Alameda generally, and the Property in particular.

EE. MidPen and the Collaborating Partners have represented that they have the necessary experience, skill, and ability to carry out their respective commitments contained in this Agreement.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the City and the Developer agree as follows:

**ARTICLE 1.**  
**TERM OF THE AGREEMENT**

Section 1.1 Effective Date. The Effective Date of this Agreement is stated in the first paragraph of this Agreement and represents that date which is thirty (30) days after the date the Ordinance approving this Agreement is adopted by the City Council. This Agreement shall be executed by the City within ten (10) days after the Effective Date and a DDA Memorandum substantially in the form attached as Exhibit F (the "**Memorandum**") will be recorded in the public records with the Alameda County Recorder (the "**Official Records**") against the Property owned by the City as of the Effective Date.

Section 1.2 Term. This Agreement shall commence on the Effective Date and end on the earliest of: (a) \_\_\_\_\_, 2028 (the "**Expiration Date**") which is ten (10) years from the Effective Date; (b) the date of any termination of this Agreement in accordance with the provisions hereof; or (c) the date of issuance by the City of the final Estoppel Certificate of Completion for the last Phase of Vertical Improvements ("**Term**").

Section 1.3 Extension of the Term. Except as a result of the express extension rights set forth in this Section 1.3, the Term of this Agreement shall not extend beyond the Expiration Date, unless and until the City Council, in its sole discretion, approves such an extension amending the Agreement to provide for a term beyond the initial Term.

(a) In the event that the Backbone Infrastructure has not been completed by the Outside Date set forth in the Milestone Schedule and there is no existing Developer Event of Default under this Agreement, the Term of this Agreement shall be automatically extended by the number of months of delay in the completion of the Backbone Infrastructure to account for the delay in the completion of the Backbone Infrastructure, provided, however, no such extension shall exceed a total of five (5) years. By way of example, if the Outside Date for the completion of the Backbone Infrastructure in the Milestone Schedule is June 2022 but the actual projected completion date for the Backbone Infrastructure is extended to January 2024, the Term of this Agreement will be extended by 19 months to account for the delay in the completion of the Backbone Infrastructure. Nothing in this Section 1.3 shall be construed to limit the scope or duration of those obligations that expressly survive the expiration or termination of this Agreement.

(b) The City Manager may grant extensions of the Term in addition to any extension pursuant to Section 1.3(a) in the event that MidPen and the Collaborating Partners demonstrate to the City Manager's satisfaction that they are making progress toward Completion of the Vertical Improvements, provided, however, any such extension shall not be for longer than one (1) year and cumulatively any such extensions granted by the City Manager pursuant to this section shall not exceed five (5) years. Any such extension granted pursuant to this Section shall be memorialized in an Operating Memorandum in accordance with Section 15.16.

Section 1.4 Force Majeure. In addition to the extensions set forth in Section 1.3, either Party has the right to extend the applicable Milestone Schedule (and all subsequent Milestone Schedule dates) by Force Majeure. Force Majeure shall mean delay caused by any of the following: strikes, lock-outs or other labor disturbances; one or more acts of a public enemy; war; riot; sabotage; blockade; freight embargo; floods; earthquakes; fires; unusually severe weather; quarantine restrictions; lack of transportation; court order; delays resulting from changes in any applicable laws, rules, regulations, ordinances or codes; delays resulting from Hazardous Material Delay; litigation that enjoins construction or other work on the Project or any portion thereof, causes a lender to refuse to fund, disburse or accelerate payment on a loan, or prevents or suspends construction work on the Project except to the extent caused by the Party claiming an extension and provided further that the Party subject to such litigation is actively mounting a defense to such litigation; inability to secure necessary labor, materials or tools (provided that the Party claiming Force Majeure has taken reasonable action to obtain such materials or substitute materials on a timely basis); a development moratorium, as defined in section 66452.6(f) of the California Government Code; and any other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform that prevents the Party claiming an extension of time from performing its obligations under this Agreement.

The extension of time for force majeure events shall be from the time the Party claiming the extension provides written notice to the other Party in accordance with Section 15.1 of the event that gave rise to such period of delay which notice shall specify the Milestone Dates that are being extended. The extension of time shall continue until the date that the cause for the extension no longer exists or is no longer applicable at which time the applicable Milestone Dates (and all subsequent Milestone Schedule dates affected by the force majeure event) will be

adjusted to account for the extension period, provided however no Party may request or claim extensions pursuant to this Section 1.4 for a cumulative period in excess of five (5) years.

Section 1.5 Milestone Schedule. During the Term, MidPen, the Collaborating Partners, and the City will each be required to perform certain tasks and to fulfill certain obligations as set forth in this Agreement, the Exhibits and other implementing documents. A schedule of the deadlines for performance of various conditions and requirements under this Agreement is set forth in the Milestone Schedule attached as Exhibit G. Major Milestone Dates shall be the Outside Phase Closing Dates, the dates for commencement and completion of relocation of the residents of the Existing Structures and the Commencement and completion of Construction of each Phase. Major Milestone Dates may be (a) extended pursuant to Sections 1.3 or 1.4 or (b) modified by an amendment to this Agreement approved by the Developer and the City in accordance with Section 15.16. All deadlines set forth in the Milestone Schedule that are not considered Major Milestone Dates are considered "**Progress Milestone Dates**." The Parties shall make commercially reasonable efforts to meet the Progress Milestone Dates but failure to meet a Progress Milestone Date shall not be considered an Event of Default pursuant to Sections 14.3 and 14.4 unless, as a result of such failure, it would be impossible for a Major Milestone Date (as such date may be extended pursuant to Sections 1.3 or 1.4) to be met. If a Party fails to meet a Progress Milestone Date, either Party can require the other Party to meet and confer regarding the impact to the Milestone Schedule of such failure with the goal of the Parties reaching mutual agreement on adjustments to the Progress Milestone Dates in the Milestone Schedule. Any Party receiving a request to meet and confer shall participate in the meet and confer within thirty (30) days of receipt of notice from the other Party.

## **ARTICLE 2.** **LAND PAYMENT**

Section 2.1 Land Payment. In accordance with the terms of this Agreement, the City will convey to the Developer Affiliate the Property or applicable portion thereof improved with the Backbone Infrastructure in exchange for the Collaborating Partners terminating the Existing Leases, relocating at their own costs the current occupants of the Existing Structures subject to the covenants and conditions in this Agreement and removing any encumbrances, on the property subject to the Existing Leases. The City has determined that the Collaborating Partners' release of their rights and claims under the Existing Leases as well as the Developer's agreement to meet the requirements contained in the 2001 Renewed Hope Settlement Agreement and meet the Inclusionary Housing Ordinance requirements for the Main Street Neighborhood with the City equals or exceeds the value of the Property to be conveyed to the Developer Affiliates. The Developer and the City have determined that the Property is to be conveyed pursuant to this Agreement for One Dollar (\$1.00) (the "**Land Payment**") for each Phase

## **ARTICLE 3.** **FINANCING AND PHASING PLAN**

Section 3.1 Financing Plan. MidPen has submitted to the City a financing plan for the Project ("**Project Financing Plan**" dated February 14, 2018 which Project Financing Plan shall be updated when each Phase Update is submitted to the City pursuant to this Section 3.1. The

City shall use good faith efforts to assist Developer in submission of funding applications for each Phase.

(a) Phase Update. MidPen shall submit to the City an update to the Project Financing Plan with respect to each Phase (each "**Phase Update**") for the City's review and approval pursuant to Section 3.2 prior to the applicable date in the Milestone Schedule that contains the following documents and information, which shall be included as an update to the corresponding information for the applicable Phase that was previously included in the Project Financing Plan:

(1) A breakdown of the number of Affordable Units to be developed and rented within the Phase including the number of Affordable Units to be rented to Very Low Income Households, Extremely Low Income Households and Low Income Households.

(2) An updated "sources and uses" breakdown of the costs of constructing the Phase, and an updated operating proforma for the Phase. Such updated sources and uses breakdown and operating proforma shall reflect MidPen's then current expectations for funding sources and development costs.

(3) Copies of funding commitments for any financing source, including loans and grants, in amounts sufficient to demonstrate that the Phase is financially feasible and copies of any funding commitments for all other financing required to develop and operate the Phase. If at the time of submission of the Phase Update, MidPen does not have commitments from all sources of financing, the Phase Update shall include information on MidPen's actions to obtain such financing commitments and MidPen's estimate of the likelihood of receiving such financing commitments.

(4) A Tax Credit Reservation from TCAC and a letter of intent from an investor for equity funding for the Phase in an amount that when combined with the other sources of financing committed to the Phase demonstrates that the Phase is financially feasible, or if MidPen has not applied for tax credits at the time of submission, the Phase Update shall include MidPen's projected date for submitting an application for tax credits, the requirements for submitting an application that is likely to score sufficient points to receive a Tax Credit Reservation and MidPen's estimation of the feasibility of meeting those requirements within the time frame set out in the Phase Update.

(5) Any other information reasonably requested by the City that would assist the City in determining that MidPen and each applicable Developer Affiliate has the financial capability to pay all costs of constructing the Phase and operating the Phase

(6) An update to the Project Financing Plan for the balance of the Project. The update to the Project Financing Plan shall include the level of detail included in the original Project Financing Plan.

Section 3.2 Review of Financing Plan Updates By City. Upon receipt by the City of the proposed Phase Update, the City Manager shall either approve or disapprove in writing the submitted plan or update within thirty (30) days from the date the City Manager receives the proposed plan or update. If the proposed plan or update is not approved by the City Manager,

then the City Manager shall notify MidPen in writing of the reasons for disapproval and the required revisions to the previously submitted plan or update. MidPen shall thereafter submit a revised plan or update within thirty (30) days of the notification of disapproval. The City Manager shall either approve or disapprove in writing the submitted revised Phase Update within thirty (30) days of the date such revised plan or update is received by the City. The City Manager shall approve the initial or revised plan or update if (i) it contains the elements described in the definition of the Phase Update as applicable, contained in Section 3.1 above, (ii) demonstrates sufficient funding to pay the total development costs of the Project or Phase, as applicable and all other applicable obligations of the Developer under this Agreement. If the City disapproves the revised proposed Phase Update, this Agreement may be terminated pursuant to Article 14. If, at the time of submission of the Phase Update, the Developer does not have commitments for all financing required to pay for the costs of constructing the Phase and a Tax Credit Reservation, the City Manager, in his or her sole discretion, may conditionally approve the Phase Update, in which event, the City's conditional approval will require that MidPen submit amendments to the Phase Update demonstrating progress on obtaining the necessary financing within time frames to be determined by the City based on information provided by MidPen in the submitted Phase Update. The City shall not be obligated to convey the applicable portion of the Property to a Developer Affiliate until the City has unconditionally approved a Phase Update.

(a) MidPen shall submit any material revision to an approved Phase Update to the City Manager for his/her review and approval. Any proposed revised Phase Update shall be considered and approved or disapproved by the City Manager in the same manner and according to the same timeframe set forth above for the initial plan or update. Until a revised plan or update is approved by the City Manager, the previously approved Project Financing Plan or Phase Update shall govern the financing.

Section 3.3 Quarterly Reports. In addition to the Phase Update required above, MidPen shall on a quarterly basis submit to the City for its review a progress report on funding applications for the development of the Project.

Section 3.4 Phasing Plan. Attached as Exhibit C is the parties' initial Phasing Plan for the Project. Development of the Project is dependent upon the construction of the Backbone Infrastructure by the developers of the adjacent property within the Main Street Neighborhood Plan area. MidPen shall provide the City with an updated Phasing Plan within the time set forth in the Milestone Schedule once the City has entered into an Exclusive Negotiating Rights Agreement with the market rate developer of the adjacent property ("**Market Rate Developer**"). The City shall provide MidPen with updates on the proposed development schedule for the adjacent property during the negotiating period with the market rate developer with the intent that the updated Phasing Plan and the development schedule for the market rate development are consistent. Upon receipt by the City of the updated Phasing Plan, the City Manager shall either approve or disapprove in writing the submitted Phasing Plan within thirty (30) days from the date the City Manager receives the proposed Phasing Plan. If the proposed Phasing Plan is not approved by the City Manager, then the City Manager shall notify MidPen in writing of the reasons for disapproval and the required revisions to the previously submitted Phasing Plan. MidPen shall thereafter submit a revised Phasing Plan within thirty (30) days of the notification of disapproval. The City Manager shall either approve or disapprove in writing the submitted revised Phasing Plan within thirty (30) days of the date such revised plan or update is received

by the City. Notwithstanding the above approval process, MidPen must receive approval of the updated Phasing Plan within the time set forth in the Milestone Schedule.

**ARTICLE 4.**  
**DISPOSITION OF PROPERTY AND ESCROW**

Section 4.1 Opening Escrow. The Closing of any Phase shall be completed through Escrow and the applicable Parties shall execute and deliver to the Escrow Holder joint written instructions that are consistent with this Agreement.

Section 4.2 Close of Escrow. Subject to the satisfaction of the applicable conditions precedent set forth in Sections 4.3(a) and (b) and any extensions pursuant to Section 1.3 or 1.4 above, escrow shall close no later than thirty (30) calendar days after all conditions precedent to the applicable Closing set forth in Section 4.3 have been met, provided however, in all events the transfer of the portion of the Property applicable to each Phase ("**Transfer Property**") to the Developer Affiliate must occur no later than the Outside Phase Closing Date set forth in the Milestone Schedule (each, an "**Outside Phase Closing Date**") (each such, the "**Closing Date**").

On the applicable Closing Date, the City shall: convey to the applicable Developer Affiliate the applicable portions of the Property pursuant to a Quitclaim Deed substantially in the form of Exhibit H.

Section 4.3 Conditions Precedent to Closing.

(a) Conditions Precedent to the City's Obligation. The obligation of the City to consummate the transactions hereunder shall be subject to the fulfillment on or before the applicable Outside Phase Closing Date (as such date may be extended pursuant to this Agreement) of the following applicable conditions, any or all of which may be waived by the City in its sole discretion:

(1) The Developer Affiliate has submitted to the City and the City Manager has approved the organizational documents for the Developer Affiliate intending to take title to the applicable Phase;

(2) The applicable Developer and the Developer Affiliate shall have executed an assignment and assumption of this Agreement whereby the Developer Affiliate assumes all of the obligations in this Agreement applicable to the applicable Phase, in a form approved by the City Attorney;

(3) The Developer Affiliate shall have obtained binding commitments for the necessary financing (including debt and tax credit equity) for the applicable Phase, consistent with the approved Financing Plan and the construction financing providers are prepared to close simultaneously with the Closing on the Transfer Property;

(4) There are no uncured Developer Events of Default;

(5) The DDA Memorandum shall have been recorded against the applicable Phase;

(6) The Developer Affiliate or MidPen has timely submitted to the City and the City has reviewed and approved all of the submittals required under this Agreement for the applicable Phase, including but not limited to, the approval of the applicable Phase Update to be submitted prior to the Closing Date. The Developer Affiliate or MidPen shall have submitted to the City within the time set forth in the Milestone Schedule, evidence in the form reasonably satisfactory to the City Manager that any conditions to the release or expenditure of funds described in the applicable approved Phase Update Financing Plan have been met or will be met at the Closing on any Phase and that such funds will be available at the Closing for the construction of the applicable Phase. Such satisfactory evidence may consist of letters from the funding sources identified in the approved Phase Update Financing Plan stating that the applicable funds, in the amounts called for in the approved Phase Update Financing Plan, will be available to the Developer Affiliate for the construction of the applicable Phase at the time of Closing or such later time as called for in the Phase Update Financing Plan. Only upon delivery of such evidence in form satisfactory to the City Manager shall this condition be deemed met;

(7) A Final Map for the applicable Phase has been approved and recorded;

(8) The Developer shall have submitted to the City and the City Manager shall have approved covenants, conditions and restrictions governing the use of the common area of the Property for the benefit of all of the owners and occupants of the Property ("**Project CC&Rs**");

(9) The Developer Affiliate or MidPen shall have submitted to the City and the City Manager shall have approved the Vertical Improvement Completion Assurances for the applicable Phase;

(10) The Developer Affiliate or MidPen has submitted all certificates of insurance in form reasonably satisfactory to the City Risk Manager demonstrating compliance with the insurance requirements in Article 13;

(11) The Developer Affiliate or MidPen shall have obtained all Supplemental Approvals required under Section 5.3, including the payment of the required building permit fees for the applicable phase; and

(12) Each of the Collaborating Partners shall have executed the Release Agreement substantially in the form attached hereto and shall have obtained releases for any encumbrances on the Collaborating Partner's Existing Structures or the leasehold created by the Existing Lease ("**Encumbrance Releases**"), which Release Agreement and Encumbrance Releases may be deposited in escrow along with escrow instructions signed by both the City and the applicable Collaborating Partner regarding the timing of the recordation of the Release Agreement and Encumbrance Release.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by the City prior to the applicable Outside Closing Date (as such date may be extended pursuant to this

Agreement), the City may declare a Developer Event of Default and the City shall have the rights and remedies set forth in Sections 14.2 or 14.4, as applicable.

(b) Conditions Precedent to the Developer Affiliate's Obligation. The obligation of the applicable Developer Affiliate to consummate the transactions hereunder shall be subject to the fulfillment on or before the applicable Outside Phase Closing Date (as such date may be extended pursuant to this Agreement) of the following applicable conditions, any or all of which may be waived by the applicable Developer Affiliate in its sole discretion:

(1) Such Developer Affiliate shall have obtained binding commitments for the necessary financing (including debt and tax credit equity) for the applicable Phase, consistent with the approved Financing Plan;

(2) The Backbone Infrastructure necessary to serve the Phase pursuant to Section 8.3 of this Agreement has been completed;

(3) The Regional Water Quality Control Board and the Navy have either approved development of the applicable Phase in accordance with this Agreement or a No Further Action (“NFA”) Letter has been issued for the applicable Phase allowing development of the Phase in accordance with this Agreement and the Developer Affiliate has agreed to implement any conditions contained in the Regional Water Quality Control Board and the Navy's approval or the NFA necessary to allow development of the Phase in accordance with this Agreement;

(4) The DDA Memorandum shall have been recorded against the applicable Phase;

(5) Such Developer Affiliate shall have received confirmation from the Escrow Holder that the Escrow Holder is irrevocably committed (upon payment of the applicable premium and the Close of Escrow) to issue the applicable Title Policy to such Developer Affiliate in the form required by Section 4.7;

(6) There has been no material adverse change in the physical condition of the Phase that would render the Phase unsuitable for the development of the Phase pursuant to the Project Approvals in the time period between Effective Date and the applicable Closing Date;

(7) There shall have been no enacted or proposed building or utility hook-up moratoria, ordinances, laws or regulations, which were not existing as of the Effective Date and that would prohibit or materially delay or hinder the issuance of building permits or certificates of occupancy for units within the Project;

(8) There is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the applicable Phase or the development of the applicable Phase pursuant to the Project Approvals, or that adversely affects the City's ability to perform its obligations under this Agreement;

(9) All of the representations and warranties of the City contained in this Agreement shall be true and correct in all material respects as of the date of Closing;

(10) There are no uncured City Events of Default;

(11) The City has provided such Developer Affiliate with the right of entries, encroachment permits and/or temporary construction easements reasonably necessary to construct any off-site improvements allocated to the applicable Phase (the "**Off-Site Rights of Entry**");

(12) The Development Agreement and the Project Approvals shall be in full force and effect and not subject to administrative appeal, legal challenge or referendum; and

(13) The completion of any environmental review required by HUD pursuant to NEPA necessary as a result of any federal funds used for the development of the Project.

If one or more of the foregoing conditions precedent is not satisfied or waived in writing by the applicable Developer Affiliate prior to the applicable Outside Closing Date (as the same may be extended pursuant to the terms of this Agreement), the Developer Affiliate shall have the rights and remedies set forth in Sections 14.2 or 14.3, as applicable.

#### Section 4.4 Closing Deliverables.

(a) City Deliverables. At least one (1) business day prior to the Closing Date for each Phase, the City shall deliver the following to Escrow Holder:

(1) a duly executed and notarized original Quitclaim Deed conveying the applicable Phase Transfer Property to the Developer Affiliate in the form substantially similar to Exhibit I attached hereto;

(2) a duly executed and notarized original of the City Regulatory Agreement in the form substantially similar to Exhibit K attached hereto;

(3) if applicable, a duly executed original of all required Off-Site Rights of Entry;

(4) two (2) duly executed original counterparts of the general assignment conveying any interest in the intangible property applicable to such Phase Transfer Property in the form substantially similar to Exhibit L (the "**General Assignment**");

(5) if applicable, a duly executed bill of sale for the personal property applicable to the applicable Phase Transfer Property in the form substantially similar to Exhibit M (the "**Bill of Sale**");

(6) a duly executed and notarized original of the notice of the City's release of environmental claims set forth in Section 4.6(h) below in substantially the form substantially similar to Exhibit O-1 (the "**Notice of City Release of Environmental Claims**");

(7) a FIRPTA certificate and a CA Real Estate Withholding Certificate, each duly executed by the City;

(8) such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of the City;

(9) an executed closing statement reasonably acceptable to the City;

(10) if applicable executed escrow instructions providing directions to the Escrow Holder regarding the recordation of the Release Agreement and Encumbrance Releases; and

(11) such affidavits and other documents that are consistent with this Agreement and which are reasonably required by the Escrow Holder.

(b) Developer Affiliate Deliverables. At least one (1) business day prior to the Closing Date for each Phase, the applicable Developer Affiliate shall deliver to Escrow Holder:

(1) a duly executed and notarized original Quitclaim Deed conveying the applicable Phase Transfer Property to the Developer Affiliate in the form substantially similar to Exhibit I attached hereto

(2) a duly executed Release Agreement (Exhibit Q);

(3) all fully executed and acknowledged Encumbrance Releases necessary to remove any encumbrances on property leased pursuant to an Existing Lease to the Collaborating Partner that is a member of the Developer Affiliate;

(4) if applicable, executed escrow instructions providing directions to the Escrow Holder regarding the recordation of the Release Agreement and Encumbrance Releases;

(5) a duly executed and notarized City Regulatory Agreement in the form substantially similar to Exhibit K attached hereto;

(6) a duly executed and notarized Project CC&Rs;

(7) two (2) duly executed original counterparts of the General Assignment (Exhibit L);

(8) a duly executed and notarized original of the notice of the Developer's release of environmental claims set forth in Section 4.6(f) below in substantially the

form substantially similar to Exhibit O-2 (the "**Notice of Developer Release of Environmental Claims**");

(9) duly executed Vertical Improvement Completion Assurances;

(10) such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of the Developer Affiliate;

(11) an executed closing statement reasonably acceptable to the Developer Affiliate; and

(12) such affidavits and other documents that are consistent with this Agreement and which are and reasonably required by the Escrow Holder.

Section 4.5 Condition of Title. The City may convey each Phase of the Transfer Property to the applicable Developer Affiliate pursuant to a metes and bounds legal description approved by the City and the applicable Developer Affiliate in accordance with the provisions of Government Code Section 66426.5.

(a) "**Permitted Exceptions**" means the following liens, encumbrances, clouds and conditions, rights of occupancy or possession, as they may relate to the Property:

(1) applicable building and zoning laws and regulations;

(2) the provisions of this Agreement as evidenced by the DDA

Memorandum;

(3) the provisions of the applicable Quitclaim Deed;

(4) the provisions of the quitclaim deed conveying the applicable portion of the Property from the Navy to the City provided such provisions are consistent with and not more onerous than the terms contained in the quitclaim deeds listed on Exhibit O.

(5) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Quitclaim Deed, including but not limited to the TDM Special Tax Lien;

(6) the Site Management Plan related to hazardous materials as long as the terms of the Site Management Plans are consistent with and not more onerous than the Site Management Plan listed on Exhibit P;

(7) the terms of any Covenant to Restrict Use of Property Environmental Restrictions applicable to the Transfer Property (the "**CRUP**") provided that the terms of the applicable CRUP are consistent with and not more onerous than the terms of the CRUPs listed on Exhibit P;

(8) the terms of the Declaration of Covenants, Conditions and Restrictions Providing for Reciprocal Easement, Joint Use and Maintenance dated June 28, 2017, as such Declaration may be amended from time to time ("**Master CC&Rs**");

(9) liens, encumbrances, clouds and conditions, rights of occupancy or possession shown as exceptions in the Preliminary Title Report including but not limited to exceptions, covenants, conditions and restrictions imposed by the Navy, the State of California or any other regulatory entity. Upon receipt of the Preliminary Title Report, the applicable Developer Affiliate, MidPen and the City shall cooperate to remove any exceptions that are unacceptable to the applicable Developer Affiliate, provided however, the City shall not be obligated to incur any costs related to the removal of any such exceptions and the applicable Developer Affiliate or MidPen shall not deem any exceptions that are consistent with the Permitted Exceptions set forth in this Section 4.5(a) unacceptable;

(10) any other matters approved by the applicable Developer Affiliate.

#### Section 4.6 Condition of the Property.

(a) Disclosure. In fulfillment of the requirements of Health and Safety Code Section 25359.7(a), the City has provided MidPen and the Collaborating Partners with copies of the documents in its possession related to hazardous materials affecting the Property (the "**Hazardous Materials Documents**") as set forth in Exhibit N. To the best of the City's knowledge, the Hazardous Materials Documents depict the condition of the Property with respect to the matters covered in such documents as of the date of such documents and as of the Effective Date. The City 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, except for the express representations contained herein.

(b) Developer Investigation. The Developer and its agents have had the right and adequate opportunity to enter onto the Property for the purpose of taking materials samples and performing tests necessary to evaluate the development potential of the Property and to undertake tests related to the existence of Hazardous Materials on the Property.

(c) "As is" Purchase. Except for the representations and warranties and covenants of the City contained in this Agreement, the Developer specifically acknowledges and agrees that the City is selling and each Developer Affiliate is buying the Property on an "**as is with all faults**" basis, and that the Developer Affiliate is not relying on any representations or warranties of any kind whatsoever, express or implied, from the City as to any matters concerning the Property, including without limitation: (1) 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); (2) the quality, nature, adequacy, and physical condition of soils, geology and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities serving the Property; (4) 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; (5) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property; (6) 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; (7) the presence or absence of Hazardous Materials on, under or about the Property or the adjoining or neighboring property; and (8) the condition of title to the Property.

(d) No Warranties by City and No Reliance by Developer. Except for the representations and warranties and covenants of the City contained in this Agreement,

(1) the Developer affirms that the Developer has not relied on the skill or judgment of the City or any of its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents or volunteers to select or furnish the Property for any particular purpose,

(2) that the City makes no warranty that the Property is fit for any particular purpose,

(3) 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 made 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);

(4) as of the Closing of each Phase and with respect to that Phase only, the Developer Affiliate acquiring that Phase 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.

Without limiting the generality of the foregoing provisions of this subsection 4.6(d), except for the representations and warranties and covenants of the City contained in this Agreement, the Developer specifically acknowledges and agrees that as between the Developer and the City, the City shall have no responsibility for the suitability of the Property for the development of the Project.

(e) Acknowledgment. The Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section 4.6 are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; (2) the disclaimers and other agreements set forth in this Section 4.6 are an integral part of this Agreement; and (3) the City would not have agreed to sell the Property (or any Phase thereof) to the Developer or Developer Affiliate without the disclaimers and other agreements set forth in this Section 4.6. Nothing set forth in this Section 4.6 is intended to affect Developer's or Developer Affiliate's remedies in the event of a default by City in the payment and/or performance of its obligations under this Agreement.

(f) Developer's Release of the City. Effective as of the Closing Date for each Phase and solely with respect to the portion of the Property included in such Phase, the

Developer and each of them, on behalf of itself and anyone claiming by, through or under the Developer (including, without limitation, any successor owner of the applicable Phase) hereby waives its right to recover from and fully and irrevocably releases the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns (the "**City Released Parties**") from any and all actions, causes of action, claims, costs, damages, demands, judgments, liability, losses, orders, requirements, responsibility and expenses of any type or kind (collectively "**Claims**") that the Developer may have or hereafter acquire against any of the City Released Parties arising from or related to:

(1) Claims Related to the Applicable Phase; (A) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the applicable Phase or any improvements thereon, or its suitability for any purpose whatsoever; (B) any presence of Hazardous Materials that were existing at, on, or under the applicable Phase as of the Phase Closing Date and; and (C) any information furnished by the City Released Parties related to the applicable Phase under or in connection with this Agreement.

(2) Claims for Incidental Migration: the Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date from any portion of the NAS Alameda property acquired by the City to the applicable Phase, whether such Incidental Migration occurs prior to or after the applicable Phase Closing Date.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the City Released Parties in any way from, or be deemed a waiver of any Claims by the Developer (or anyone claiming by, through or under the Developer, including, without limitation, any successor owner of the applicable Phase) with respect to (i) any fraud or intentional concealment or willful misconduct committed by any of the City Released Parties, (ii) any premises liability or bodily injury claims accruing prior to the applicable Phase Closing Date to the extent such claims are not based on the acts of the Developer, its partners or any of their respective agents, employees, contractors, consultants, officers, directors, affiliates, members, shareholders, partners or other representatives (the "**Developer Parties**"); (iii) any violation of law by any of the City Released Parties prior to the applicable Phase Closing Date; (iv) any breach by the City of any of the City's representations, warranties or covenants expressly set forth in this Agreement; or (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by the City Parties at, on, under or otherwise affecting the applicable Phase or (vi) any claim that is actually accepted as an insured claim under any pollution legal liability policy maintained by the City (collectively, the "**Excluded Developer Claims**").

(g) Scope of Release. The release set forth in subsection 4.6(f) 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 City 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 Claims 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 City Released Parties from any such unknown Claims. 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: \_\_\_\_\_

(h) City's Release of the Developer. Effective as of the Closing Date for each Phase and solely with respect to the applicable Phase, the City, on behalf of itself and anyone claiming by, through or under the City (including, without limitation, any successor owner of any portion of NAS Alameda Property acquired by the City, whether prior to or after the applicable Phase Closing Date), hereby waives its right to recover from and fully and irrevocably releases the Developer, its partners and their respective partners, members, shareholders, managers, directors, officers, employees, attorneys, agents, and successors and assigns (the "**Developer Released Parties**") from any and all Claims that the City may have or hereafter acquire against any of the Developer Released Parties arising from or related to the Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date from the applicable Phase to any portion of the NAS Alameda Property acquired by the City, whether such Incidental Migration occurs prior to or after the applicable Phase Closing Date.

Notwithstanding the foregoing provisions of this Section or anything to the contrary herein, nothing herein shall negate, limit, release, or discharge the Developer Released Parties in any way from, or be deemed a waiver of any Claims by the City (or anyone claiming by through or under the City, including, but not limited to, any successor owner of the applicable Phase) with respect to: (i) any fraud or intentional concealment or willful misconduct committed by any of the Developer Released Parties, (ii) any premises liability or bodily injury claims accruing after the applicable Phase Closing Date to the extent such claims are not based on the acts of the City, its elected and appointed officials, board members, commissioners, officers, employees, attorneys, agents, volunteers and their successors and assigns; (iii) any violation of law by any of the Developer Released Parties after the applicable Phase Closing Date; (iv) a breach of the Developer's obligations under this Agreement or any other agreement between the City and the Developer, a Collaborating Partner, or MidPen or their assignees; (v) the release (including negligent exacerbation but excluding Incidental Migration) of Hazardous Materials by any of the Developer Released Parties at, on, under or otherwise affecting the applicable Phase or any other portion of the NAS Alameda Property acquired by the City, which release first occurs after the applicable Phase Closing Date; or (vi) any claim that is actually accepted as an insured claim under the Pollution Liability Insurance Policy maintained by the Developer.

(i) Scope of Release. The release set forth in subsection 4.6(h) includes claims of which the City is presently unaware or which the City does not presently suspect to exist which, if known by the City, would materially affect the City's release of the Developer Released Parties. The City 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 City agrees, represents and warrants that the City realizes and acknowledges that factual matters now unknown to the City may have given or may hereafter give rise to Claims which are presently unknown, unanticipated and unsuspected, and the City 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 City nevertheless hereby intends to release, discharge and acquit the Developer Released Parties from any such unknown Claims. Accordingly, the City, on behalf of itself and anyone claiming by, through or under the City, hereby assumes the above-mentioned risks and hereby expressly waives any right the City and anyone claiming by, through or under the City, 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."**

City's Initials: \_\_\_\_\_

(j) Effective as of the Closing Date for each Phase and solely with respect to the portion of the Property included in such Phase, the City specifically acknowledges and agrees that, as between the Developer and the City, in the event of any Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date from the applicable Phase to any portion of the NAS Alameda Property acquired by the City, whether such Incidental Migration occurs prior to or after the applicable Closing Date, the Developer shall not be responsible for any required remediation of any such Hazardous Materials at any portion of the NAS Alameda Property acquired by the City.

(k) Effective as of the Closing Date for each Phase and solely with respect to the portion of the Property included in such Phase, the Developer specifically acknowledges and agrees, that as between the Developer and the City, in the event of any Incidental Migration of Hazardous Materials that existed as of the applicable Closing Date from property owned by the City to the applicable Phase, which such Incidental Migration occurs prior to or after the applicable Closing Date, the City shall not be responsible for any required remediation of any such Hazardous Materials at any portion of the applicable Phase.

(l) The City hereby agrees that nothing in this Section 4.6 shall release the City from its obligations under this Agreement.

Section 4.7 Costs of Escrow and Closing.

(a) All expenses that are required to be prorated including but not limited to non-delinquent ad valorem taxes, if any, for each Phase of the Property being transferred and the

lien of any bond or assessment related to each Phase of the Property being transferred shall be prorated as of the applicable Closing Date.

(1) Basis of Proration. If taxes and assessments due and payable have not been paid before Closing, the City shall be charged at Closing an amount equal to that portion of such taxes and assessments which relates to the period before Closing and the Developer Affiliate shall pay the taxes and assessments prior to their becoming delinquent. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation fixed as of the most recent date. The Developer Affiliate shall pay all supplemental taxes resulting from the change in ownership and reassessment occurring as of the applicable Closing Date.

(2) Initial Use of Estimates; True Up Based on Final Amounts. Any expense amount which cannot be ascertained with certainty as of the applicable Closing shall be prorated on the basis of the Parties' reasonable estimates of such amount. Once the previously estimated amounts have been finalized, the Parties shall prorate these new amounts pursuant to this Agreement and each party shall pay any amount due to a third party within ten (10) business days after receipt of the final amount. If either Party has overpaid an amount based on the prior estimate, the other Party shall reimburse the overpaying party within ten (10) business days after receipt of the final amount.

(3) The provisions of this Section shall survive the applicable Closing and shall not merge with the applicable Quitclaim Deed.

(b) Transaction and Closing Costs. The Developer Affiliate shall pay the premium for an ALTA Owner's Policy (Form 1970) insuring the Developer Affiliate's interest in the Property subject only to the Permitted Exceptions and such other exceptions as may be caused by Developer Affiliate (such as the lien of a Security Financing Interest) (collectively the "**Title Policies**") (including title endorsements) in excess thereof. All other costs of escrow (including, without limitation, any Escrow Holder's fee, costs of title company document preparation, recording fees, and transfer tax) shall be paid by the Developer Affiliate. These costs borne by the Developer Affiliate shall be in addition to the Land Payment.

(c) Closing Procedures. When all of the funds, documents and other items required by Section 4.4 for the applicable Phase Closing have been timely deposited into Escrow, Escrow Holder shall Close Escrow as follows:

(1) Record the following documents in the Official Records in the following order (collectively, the "**Recording Documents**"):

- (A) the Quitclaim Deed;
- (B) the City Regulatory Agreement;
- (C) The Project CC&Rs;
- (D) the Notice of City Release of Environmental Claims; and

- (E) the Notice of Developer Release of Environmental Claims.
- (2) Issue the Title Policy to the Developer Affiliate;
- (3) Pro rate taxes, assessments and other charges pursuant to Section 4.7 and pay the applicable charges from the applicable funds deposited by the City or the Developer Affiliate;
- (4) Pay the Closing Costs from the applicable funds deposited by the Developer Affiliate;
- (5) Deliver the following to the City: conformed copies of the Recording Documents, an original of the General Assignment, and the Vertical Improvement Completion Assurances, and
- (6) Deliver the following items to the Developer: conformed copies of the Recording Documents, an original of the General Assignment, the original Bill of Sale, the original Title Policy, and the Off-Site Rights of Entry.

In addition to the above, the Escrow Holder shall record the Release Agreement and the Encumbrance Releases in accordance with escrow instructions signed by City and the Developer Affiliate and deposited with the Escrow Holder prior to the Closing.

If Escrow Holder is unable to simultaneously perform all of the instructions set forth above, Escrow Holder shall notify the Parties and retain all funds and documents pending receipt of further instructions jointly issued by Parties.

Section 4.8 Real Estate Commissions. Each Party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission or third-party finder's fees in connection with the transaction contemplated by this Agreement. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The Parties' respective obligations to indemnify defend and hold harmless under this Section 4.8 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

Section 4.9 Survival. The terms and conditions in Article 4 shall expressly survive the Closing, shall not merge with the provisions of the Quitclaim Deed or any other closing documents and shall be deemed to be incorporated by reference into the Quitclaim Deed. 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.

**ARTICLE 5.**  
**CONSTRUCTION OF THE PROJECT**

Section 5.1 Basic Obligations. From and after the Closing on each Phase, the applicable Developer Affiliate shall cause construction of the Vertical Improvements in each Phase in accordance with the terms of this Agreement, the approved Development Plan, the Planning Documents, the TDM Plan and the TDM Compliance Strategy, the Main Street Neighborhood Plan, the Project Approvals, and any additional applicable approvals, including compliance with the MMR Program related to or required in connection with such construction. The applicable Developer Affiliate shall cause commencement and completion of construction of the Vertical Improvements within each Phase within the times set forth in the Milestone Schedule and consistent with the terms of the approved Phasing Plan. The applicable Developer Affiliate shall be responsible for all costs associated with the Vertical Improvements for each Phase.

Section 5.2 Construction Pursuant to Approved Construction Documents. The applicable Developer Affiliate shall cause construction of the Vertical Improvements in each Phase in accordance with the applicable Approved Construction Documents (or modifications thereto processed and approved by the City in accordance with applicable City ordinances, rules and regulations), and the terms and conditions of all City and other governmental approvals. Nothing in this section shall preclude or modify the Developer Affiliate's obligation to obtain any required City approval of changes in the Approved Construction Documents in accordance with applicable City ordinances, rules and regulations.

Section 5.3 Construction Permits and Approvals.

(a) Supplemental Approvals. As a condition precedent to the conveyance of any Phase of the Property, MidPen or the applicable Developer Affiliate shall apply to the City and other applicable governmental entities for, and shall diligently pursue procurement of the Supplemental Approvals for the applicable Phase. MidPen or the applicable Developer Affiliate shall apply for the first Supplemental Approval for each Phase no later than the date set forth in the Milestone Schedule and shall continue to submit applications for additional Supplemental Approvals as necessary to ensure receipt of all of the Supplemental Approvals for each Phase by the date set forth in the Milestone Schedule. The City and MidPen shall coordinate the preparation and submission of any Tentative Maps or Final Maps for the Property with the developer of the adjacent property, to ensure that the appropriate level of mapping is in place before the installation of the Backbone Infrastructure. The City shall cooperate with MidPen on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals. The City, in its capacity as the property owner and not in its regulatory capacity, (i) will sign any application for a Tentative or Final Map if such application is filed while the City owns any property subject to the Map; and (ii) sign any Tentative Map or Final Map as the owner of the property subject to the Map once such Map is approved in accordance with the City's standard process for approval of Subdivision Maps.

(b) Evidence of Approvals. Within the time set forth in the Milestone Schedule, MidPen or the applicable Developer Affiliate shall submit to the City evidence that all

Supplemental Approvals necessary for commencement of construction of Vertical Improvements in the Phase in accordance with this Agreement have been obtained.

(c) Only upon delivery of such evidence in form reasonably satisfactory to the City shall the conditions of this Section 5.3 be deemed met. If such evidence is not delivered within the time specified in the Milestone Schedule, this Agreement may be terminated pursuant to Article 14.2 or 14.4, as applicable.

Section 5.4 Vertical Construction Contract.

(a) As a condition precedent to Closing and within the time set forth in the Milestone Schedule, the Developer Affiliate for the applicable Phase shall submit to the City the proposed construction contract with the General Contractor for the construction of such Vertical Improvements (the "**Vertical Improvement Construction Contracts**"). Each proposed Vertical Improvement Construction Contract shall:

(1) Specify a guaranteed maximum price or be another type of construction contract in which the pricing mechanism provides reasonable assurance that the total construction cost under the Vertical Improvement Construction Contract will be an amount not exceeding the construction cost set forth in the approved Sub-Phase Update to the Financing Plan including contingency amounts;

(2) Meeting the requirements of Section 5.8; and

(3) Otherwise be in a form consistent with the terms of this Agreement with respect to construction of the applicable Vertical Improvements and shall deliver written verification that the executed Vertical Improvement Construction Contract complies with this Agreement.

(b) The City Manager shall either approve or disapprove the submitted Vertical Improvement Construction Contract within fifteen (15) Business Days from the date the City receives the Vertical Improvement Construction Contract. If the proposed Vertical Improvement Construction Contract is not approved by the City Manager, then the City Manager shall notify the applicable Developer Affiliate in writing of the reasons for disapproval and the required revisions to the previously submitted Vertical Improvement Construction Contract. The applicable Developer Affiliate shall thereafter submit a revised Vertical Improvement Construction Contract within ten (10) Business Days of the notification of disapproval. The City Manager shall either approve or disapprove the submitted revised Vertical Improvement Construction Contract within ten (10) days of the date such revised Vertical Improvement Construction Contract is received by the City. The City Manager shall approve an initial or revised Vertical Improvement Construction Contract if it meets the standards set forth in subsection (a) of this Section 5.4 and is with a licensed and experienced General Contractor.

(c) If the Vertical Improvement Construction Contract is not approved by the time set forth in the Milestone Schedule, this Agreement may be terminated pursuant to Article 14.2 or 14.4, as applicable.

(d) Following the City Manager's approval of a Vertical Improvement Construction Contract pursuant to this Section 5.4, the applicable Developer Affiliate may, without City approval, make changes to such Construction Contract that are consistent with, and do not cause the Construction Contract to be out of compliance with, this Agreement; provided, however, that the applicable Developer Affiliate shall first provide the City with notice, clearly indicating the nature of the proposed changes, not less than five (5) business days before the applicable Developer Affiliate enters into an instrument effectuating such changes. The applicable Developer Affiliate shall not make any changes to a Vertical Improvement Construction Contract previously approved by the City Manager pursuant to this Section 5.4 that would cause the Construction Contract to be out of material compliance with this Agreement without the prior written consent of the City.

#### Section 5.5 Construction Assurances To City.

(a) As a condition precedent to the Closing for each Phase and within the time set forth in the Milestone Schedule, the applicable Developer Affiliate shall provide for the benefit of the City assurances of completion of construction of such Phase Vertical Improvements, including but not limited to payment bonds, performance bonds, or other construction related surety bonds or completion guaranties (the "**Vertical Improvement Completion Assurances**") (i) in an amount, with the terms and conditions, and from the providers comparable to those contained in any Completion Assurances that the Developer Affiliate provides to its equity investors or debt providers of financing for the Vertical Improvements under the approved Phase Update to the Financing Plan, or (ii) if no such completion assurances are provided pursuant to clause (i), as otherwise approved by the City.

(b) The City Manager shall either approve or disapprove the submitted proposed Vertical Improvement Completion Assurances, if any, within fifteen (15) Business Days from the date the City receives the Vertical Improvement Completion Assurances. The City shall not withhold, delay or condition its approval of a completion guaranty issued by affiliates of the Developer Affiliate that have, in the aggregate, a demonstrable net worth equal to twenty five percent (25%) of the hard construction costs of the applicable Vertical Improvements (as demonstrated by the applicable Phase Update to the Financing Plan). If the proposed Vertical Improvement Completion Assurances are not approved by the City Manager, then the City Manager shall notify the Developer Affiliate in writing of the reasons for disapproval and the required revisions to the previously submitted Vertical Improvement Completion Assurances. The Developer Affiliate shall thereafter submit revised proposed Vertical Improvement Completion Assurances within fifteen (15) Business Days of the notification of disapproval. The City Manager shall either approve or disapprove the submitted revised Vertical Improvement Completion Assurances within fifteen (15) Business Days of the date such revised Vertical Improvement Completion Assurance are received by the City. The City Manager shall approve the initial or revised Vertical Improvement Completion Assurances if they meet the standards set forth in this Section 5.5.

(c) If the Vertical Improvement Completion Assurances are not approved by the City Manager by the time set forth in the Milestone Schedule, this Agreement may be terminated pursuant to Section 14.2 or 14.4, as applicable. Only upon City Manager's approval of the Completion Assurances shall this condition be deemed met.

Section 5.6 Subdivision Map. As a condition precedent to the conveyance of any Phase of the Property a Final Map for the applicable Phase to be conveyed must be recorded. MidPen and the City will coordinate the applications for any Tentative Map and Final Map with the developer of the adjacent property as part of the installation of the Backbone Infrastructure. MidPen agrees to cooperate with the adjacent property developers to expeditiously complete the mapping process.

Section 5.7 Developer Affiliate's Responsibility for All Costs of the Applicable Phase of the Project. As between the City and each Developer Affiliate, each Developer Affiliate shall be solely responsible for all pre-development costs and expenses and all development costs and expenses related to the development of the Vertical Improvements for the applicable Phase of the Project. In the event the costs of developing the Vertical Improvements exceed the Developer Affiliate's estimates of such costs, the applicable Developer Affiliate shall nonetheless be responsible to complete, at its expense the development of the Vertical Improvements in accordance with and subject to the terms of this Agreement.

Section 5.8 Local Workforce Development.

(a) The Parties hereby agree (i) to a goal that residents of the City of Alameda, and Alameda County ("**Local Residents**"), will perform up to twenty-five percent (25%) of all construction job hours worked on the Project, if such workers are available, capable and willing to work (the "**Local Hire Goal**") and (ii) that participants in the Alameda Point Collaborative Program will be referred to the apprentice programs of the union(s) and establish a goal that such participants will perform fifteen percent (15%) of all apprentice construction job hours worked on the Project as such referrals are available, capable/qualified and willing to work (the "**Apprentice Goal**"). All participants that will be referred to the contractors to meet this requirement will have gone through a pre-apprenticeship program that meets the Multi-Craft Core Curriculum as established by the National Building Trades. Each Developer Affiliate shall use good faith efforts to achieve the Local Hire Goal and Apprentice Goal. A Developer Affiliate shall be conclusively deemed to have satisfied its obligations under this Section 5.8 if it either:

(1) Demonstrates to the City's reasonable satisfaction that Local Residents have actually worked twenty five percent (25%) of the construction job hours on the Project and that Alameda Point Collaborative Program referrals have actually worked fifteen percent (15%) of all apprentice construction job hours worked on the Project (If the Local Resident is also a High School graduate of the Alameda Unified School District, hours worked by such Local Resident will count double); or

(2) Demonstrates to the City's reasonable satisfaction that the Developer Affiliate has:

(A) Included a requirement in each Construction Contract requiring the General Contractor and all subcontractors to use good faith efforts to achieve the Local Hire Goal and Apprentice Goal, which good faith efforts shall include, (1) when permitted, implementing union hiring hall procedures that request residents from the City of Alameda, and

if those are not available, then request residents from Alameda County on a priority basis and (2) requesting qualified referrals from the Alameda Point Collaborative Program; and

(B) Included a requirement in each Construction Contract requiring the General Contractor and all subcontractors to submit quarterly reports to the City which include, (1) estimates of the total Project construction job hours and total apprentice hours to be performed by the contractor, (2) total Project construction job hours actually worked by Local Residents, (3) total Project apprentice hours worked by referrals from the Alameda Point Collaborative Program, (4) copies of their certified payroll reporting forms for the reporting period and (5) a summary of the contractors good faith efforts to meet the Local Hire Goal and Apprentice Goal.

(b) Each Developer Affiliate's compliance with this Section 5.8 shall be separately calculated/assessed.

Section 5.9 Project Stabilization Agreement. Each Developer Affiliates shall comply with the City's Project Stabilization Agreement or negotiate in good faith a Project Stabilization Agreement with the Building Trades for each Phase of the Project.

Section 5.10 Compliance with Applicable Law. Each Developer Affiliate shall cause all work performed in connection with construction of the Project to be performed in compliance with: (1) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies; and (2) all rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the applicable Developer Affiliate shall be responsible for the procurement and maintenance thereof, as may be required of the Developer Affiliate and all entities engaged in work on the Property.

Section 5.11 Entry by the City. Each Developer Affiliate shall permit the City, through its officers, agents, or employees, to enter the Property at all reasonable times upon reasonable notice to inspect the work of construction of the Project to determine that such work is in conformity with the Approved Construction Documents or to inspect the Property for compliance with this Agreement. The City is under no obligation to: (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection, except that the City shall inform the Developer of any information it obtains or discovers during inspection that could reasonably foreseeably affect rights or obligations of a Party under this Agreement. The Developer Affiliate shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 5.12 Progress Reports. Until such time as the final Phase of the Project is entitled to issuance of an Estoppel Certificate of Completion, MidPen shall provide the City with quarterly progress reports, or more frequently as reasonably requested by the City, regarding the status of the construction of the Project improvements.

Section 5.13 Necessary Safeguards. Each Developer Affiliate shall or shall cause its Contractors to erect and properly maintain at all times, all reasonable and necessary safeguards for the protection of workers and the public.

**ARTICLE 6.**  
**AFFORDABLE HOUSING REQUIREMENTS**

Section 6.1 Affordable Housing Obligations. The redevelopment of the Property is subject to the requirement under the Renewed Hope Settlement Agreement, the Inclusionary Housing Ordinance and the Density Bonus Regulations as further set forth below:

(a) Renewed Hope Settlement Agreement. Under the Renewed Hope Settlement Agreement twenty-five percent (25%) of all newly constructed housing units at Alameda Point must be made permanently Affordable as follows: (1) ten percent (10%) of all Residential Units shall be made permanently Affordable to Very Low Income Households and Low Income Household (households with incomes at or below 80% of median income); and (2) the remaining fifteen (15%) of all Residential Units shall be made permanently Affordable to Very Low Income Households, Low Income Households and Moderate Income Households under the criteria set forth in Health and Safety Code Section 33413(b)(2). Developer has provided to the City a letter from Renewed Hope stating that the New Residential Units meet the requirements of the Renewed Hope Settlement Agreement with respect to the Main Street Neighborhood Plan.

(b) Inclusionary Housing Ordinance. Under AMC 30-16-4 at least fifteen percent (15%) of the total units in the Project must be “inclusionary units” restricted for occupancy by Very Low Income Households, Low Income Households and Moderate Households Income Households. Specifically, the Inclusionary Ordinance requires that: (1) four percent (4%) of the units be restricted to occupancy by Very Low Income Households; (2) four percent (4%) of the units must be restricted to occupancy by Low Income Households; and (3) seven percent (7%) of the units must be restricted to occupancy by Moderate Income Households. For purposes of the Inclusionary Housing Ordinance, the project is defined as the entirety of the Main Street Neighborhood Plan and the Affordable Housing Units will satisfy the Inclusionary Housing obligation of the market rate units developed within the Main Street Neighborhood Plan Area. The Project will satisfy the Inclusionary Housing Ordinance requirements for units restricted to occupancy by Very Low Income Households and Low Income Households but the Inclusionary Housing Ordinance requirements for units restricted to Moderate Income Households will be satisfied by the developers of the adjacent properties to be developed with market rate uses.

(c) Density Bonus Regulations. The City and the Developer expect that the Market Rate Developer will complete and submit to the City an application for a development plan for the South of West Midway Area that includes a Density Bonus Application under the City’s Density Bonus Regulations, which development plan will supersede and replace the RESHAP Development Plan. In consideration for the waiver, if granted, Developer is expected to agree to make at least ten percent (10%) of the total units in the Project affordable to Moderate Income Households.

Section 6.2 Project Affordable Housing Requirements.

(a) The Project will include a mix of transitional housing and permanent rental housing units restricted to households with gross incomes not to exceed between 30% and 60% of the Area Median Income (AMI).

(b) Eligibility for the Alameda Point Collaborative and Building Futures With Women and Children units at the Project will be restricted to households who initially meet the Department of Housing and Urban Development's definition of Homelessness as defined in the Homeless Emergency Assistance and Rapid Transition to Housing Act. Eligibility for Operation Dignity units will be restricted to formerly homeless and/or currently homeless veterans, and users of other homeless or transitional housing programs currently administered at the Dignity Commons housing site.

(c) To ensure that all Affordable Housing Units constructed as part of the Project are permanently available to and occupied by income eligible households at an Affordable Housing Cost in compliance with this Agreement, the applicable Developer Affiliate hereby agrees to execute and record in the public records with the Alameda County Recorder (the "Official Records"): (1) a City Regulatory Agreement in substantially the form attached as Exhibit K restricting Very Low Income Homes and the Low Income Homes at the time of conveyance of any Phase of the Transfer Property to the applicable Developer Affiliate. The City Regulatory Agreement shall be recorded against title to the applicable Phase subject only to such liens, encumbrances and other exceptions to title approved in writing and in advance by the City. The parties agree to meet and confer if the priority lien position of the City Regulatory Agreement interferes with the Developer's ability to obtain commercially reasonable debt financing. The applicable Developer Affiliate must demonstrate to the City's reasonable satisfaction that subordination of the City Regulatory Agreement is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Phase. To satisfy this requirement, the applicable Developer Affiliate must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the senior debt is necessary to provide adequate construction and/or permanent financing to ensure the viability of the Phase and adequate financing for the Phase would not be available without the proposed subordination.

(d) This City Regulatory Agreement required under this Section 6.2 shall satisfy the requirement for: (1) an "affordable housing agreement" ensuring the continuing affordability of housing pursuant to the Density Bonus Regulations as specified in AMC 30-17; and (2) an "affordable housing plan" ensuring the continuing affordability of housing constructed pursuant to the Inclusionary Housing Ordinance as specified AMC 30-16-10.

Section 6.3 Consistency with Palmer and Non-Applicability of Costa Hawkins.

(a) The Developer has or will submit an application for density bonus pursuant to the City's Density Bonus Regulations.

(b) The Parties understand and agree that the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 et seq.; the "Costa-Hawkins Act") does not and in

no way shall limit or otherwise affect the restriction of rental charges for the Affordable Housing Units developed pursuant to this Agreement and subject to the City Regulatory Agreement. This Agreement falls within an express exception to the Costa-Hawkins Act because the Agreement is a contract with a public entity in consideration for a direct financial contribution and other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the California Government Code. Accordingly, Developer, on behalf of itself and all of its successors and assigns, including all affiliates, successor and assigns, agrees not to challenge, and expressly waives, now and forever, any and all rights to challenge, Developer's obligations set forth in this Agreement related to Affordable Housing Units, under the Costa-Hawkins Act, as the same may be amended or supplanted from time to time. Developer shall include the following language, in substantially the following form, in all agreements it enters into with Affiliates, successor or assigns transferring any obligations under this Agreement or any portion of the Property:

"The Disposition and Development Agreement by and between the City of Alameda and Developer, dated \_\_\_\_\_ and recorded \_\_\_\_\_, at \_\_\_\_\_ implements City of Alameda policies and includes regulatory concessions, incentives and significant public investment in the Project. These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of Developer and any successors and assigns, as contemplated by California Government Code Section 65915. In light of the City's authority under Government Code Section 53395.3 and in consideration of the direct financial contribution and other forms of public assistance described above, the Parties understand and agree that the Costa-Hawkins Act does not and shall not apply to the Affordable Housing Units as defined in the Disposition and Development Agreement developed at the Property."

The Parties understand and agree that the City would not be willing to enter into this Agreement, without the agreement and waivers as set forth in this Section 6.3.

## **ARTICLE 7.** **ADDITIONAL DEVELOPER OBLIGATIONS**

Section 7.1 Use and Occupancy. Each Developer Affiliate shall use, operate, and maintain, the portion of the Property transferred to such Developer Affiliate and the portion of the Project located on the Transfer Property in accordance with all requirements and standards of this Agreement, the approved Development Plan, the Planning Documents, the TDM Plan and the TDM Compliance Strategy and the Main Street Neighborhood Plan, the Supplemental Approvals, and City Regulatory Agreement, and all applicable federal, state and local laws and regulations.

Section 7.2 Project CC&R's. Prior to the Phase 1 Closing, the Developer shall obtain the City's approval of the Project CC&R's which (a) require each owner of any portion of the Property to maintain its applicable private improvements adjacent to and visible from the public right of way (building facades, signs, sound walls, fences, parking lots drive aisles and open space areas) as well as all common facilities including but not limited to streets and utilities not accepted for maintenance by the City in a first-class condition consistent with other mixed-use residential and commercial centers in the Oakland metropolitan area; (b) require that each owner

of any portion of the Property comply with the TDM Compliance Strategy; and (c) provide the City with the right to (i) enforce such provisions pursuant to the CC&R's and (ii) after applicable notice and right to cure, the right to perform such maintenance and receive a reimbursement of third party expenses. Such maintenance shall include, but not be limited to cleaning, painting, removal of graffiti, repair of vandalism, grounds care, prevention of the accumulation of abandoned property, inoperable vehicles, and waste material, and prevention of unenclosed storage areas.

Section 7.3 Prevailing Wages and Related Requirements. This Agreement has been prepared with the intention that the construction of the Project shall be subject to the requirement of payment of prevailing wages or related obligations set forth in Labor Code Section 1720 et seq., and Section 2-67 of the Alameda Municipal Code.

(a) Notwithstanding the foregoing, nothing in this Agreement constitutes a representation or warranty by the City regarding the applicability of the provision of Labor Code Section 1720 et seq., and/or Section 2-67 of the Alameda Municipal Code and the Developer Affiliates shall comply with any applicable laws, rules and regulations related to construction wages and other construction matters, if and to the extent applicable to any portion of the development of the Project.

(b) Each Developer Affiliate, with respect to its Phase only, shall indemnify, defend (with counsel reasonably acceptable to the City), and hold harmless the Indemnified Parties 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, the Developer Affiliate and the Contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code, and the implementing regulations of the DIR in connection with the construction of the Project and to comply with any other requirements related to public contracting. The Developer Affiliate's obligation to indemnify, defend and hold harmless under this Section 8.3(b) shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

Section 7.4 Expansion, Reconstruction or Demolition. No Developer Affiliates shall cause or permit any expansion, reconstruction, or demolition of its Phase of the Project without the prior written approval of the City in accordance with all applicable ordinances, rules and regulations.

Section 7.5 Damage or Destruction. The Developer Affiliates shall promptly notify the City of any Casualty with respect to its Phase occurring during the Term, and shall diligently seek to procure all insurance proceeds that may be available to compensate for such Casualty. Subject to the rights of Senior Permitted Mortgagees (as defined below), to the extent economically feasible as a result of the availability of insurance proceeds plus the applicable Developer Affiliate's deductible or self-insured retention (together with any additional funds the Developer Affiliate elects to provide for such purpose), the applicable Developer Affiliate shall promptly commence and diligently pursue restoration or replacement of the portion of the

Property and/or the Project that was damaged by such Casualty during the Term. Subject to the rights of Senior Permitted Mortgagees (as defined below) to the extent economically feasible as a result of the availability of insurance proceeds plus the Developer Affiliate's deductible or self-insured retention (together with any additional funds the Developer Affiliate elects to provide for such purpose), the restored or replaced property shall be at least equal in value, quality and use to the value, quality, and use of such damaged property immediately before the Casualty.

Section 7.6 Mitigation Monitoring and Reporting Program. Each Developer Affiliate shall comply with the MMR Program adopted by the City, attached hereto as Exhibit E, as that the MMR Program may be amended from time to time, and expressly incorporated with this Agreement by this reference.

Section 7.7 Developer Affiliate's Obligations Regarding Hazardous Materials. Each Developer Affiliate shall comply with its obligations regarding the management and disposal of Hazardous Materials as set forth in more detail in Article 11 of this Agreement.

Section 7.8 Developer Affiliate's Indemnification Obligations. Each Developer Affiliate shall comply with its indemnity obligations as set forth in more detail in Article 12 of this Agreement.

Section 7.9 Developer's Insurance Obligations. The Developer and each Developer Affiliate shall comply with its insurance obligations as set forth in more detail in Article 13 of this Agreement.

Section 7.10 Taxes. From and after each Phase Closing, the Developer Affiliate shall pay when due all real property taxes and assessments assessed and levied on the portions of the Property conveyed to the Developer Affiliate and the Project that are attributable to the period following the Closing and shall remove any levy or attachment made on such portion of the Property. Nothing contained herein shall prevent the Developer Affiliate from applying for and obtaining any property tax exemption available for the Affordable Housing Units.

Section 7.11 Non-Discrimination. Each Developer, as to itself only, covenants that such Developer shall not discriminate against or segregate any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property and the Project, nor shall such Developer or any person claiming under or through such Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or employees in the Property and the Project. The foregoing covenant shall run with the land and shall remain in effect in perpetuity.

Section 7.12 Applicability. Each Developer or Developer Affiliate, as applicable, shall comply with the provisions of this Article 7 for the applicable time period specified in the various Sections of this Article 7; or if no specified time period is set forth in a particular section, throughout the Term of this Agreement.

Section 7.13 TDM Compliance Strategy. Each Developer Affiliate, its assignees and successor shall at all times comply with the TDM Compliance Strategy approved by the City,

attached hereto as Exhibit J, as the TDM Compliance Strategy may be amended from time to time in compliance with the Alameda Point TDM Plan, including meeting the trip reduction goals in the TDM Plan. The Developer Affiliate's obligation to comply with the TDM Compliance Strategy shall include, but not be limited to, participating in the Transportation Management Association. The Developer agrees to cooperate with the City in forming and shall vote in favor of, a special tax district or financing district for any portion of the Property transferred to such Developer established for the purposes of complying with the TDM Plan and as part of the TDM Compliance Strategy as long as the annual tax lien for any such special tax district or financing district does not exceed at the time of formation twenty cents (\$.20) per square foot of commercial space annually and ninety dollars (\$90) per residential units annually. The Developer shall assure that if any portion of this Agreement is assigned to a Developer Affiliate and any portion of the Property is conveyed to a Developer Affiliate, the assignment documents will require that the Developer Affiliate vote in favor of the special tax district or financing district.

Section 7.14 Release of Existing Leases and Relocation of Residents. Each of the Collaborating Partners shall be obligated to release its Existing Lease and relocate any residents residing on the premises covered by such Existing Lease within the time frame set forth in the Milestone Schedule of Performance. Within the time set forth in the Milestone Schedule each of the Collaborating Partners shall provide the City with evidence that the County of Alameda has consented to the release of the Existing Leases. Following approval by the City of the Phasing Plan, and within the time set forth in the Milestone Schedule, each Collaborating Partner shall execute and deposit with Escrow a Release Agreement substantially in the form of Exhibit Q attached hereto, Encumbrance Releases in a form acceptable to the City from all holders of encumbrances on the property subject to the Existing Lease and escrow instructions signed by the City and the Collaborating Partner setting forth the instructions to Escrow Holder for recordation of the Release Agreement and the Encumbrance Releases, which date shall be consistent with the Milestone Schedule of Performance and the Phasing Plan.

Each of the Collaborating Partners shall submit or cause the Developer Affiliate in which the Collaborating Partner is a member to submit to the City a plan for relocation of the occupants of the property subject to that Collaborating Partner's Existing Lease that includes (i) proposed timing for the relocation of the occupants of the property; (ii) proposed temporary replacement housing for the occupants of the property; (iii) a budget for the costs of the temporary relocation as well as proposed financing for the temporary relocation; and (iv) a community outreach plan for the affected tenants. The City shall approve or disapprove the plan for relocation within thirty (30) days of receipt of the plan. In the event the City disapproves the relocation plan, the disapproval shall include specific reasons for the disapproval. If the City disapproves the relocation plan, the Collaborating Partner or Developer Affiliate, as applicable, shall submit a revised plan for relocation within thirty (30) days of receipt of the City's disapproval addressing the City's reasons for disapproval. The City shall have fifteen (15) days to review, approve or disapprove the plan for relocation. The approval by the City of a plan for relocation of the occupants of the property covered by the Existing Lease of a Collaborating Partner is a condition precedent to the conveyance of any portion of the Property to a Developer Affiliate in which the Collaborating Partner is a member or partner.

The City agrees to cooperate with the Collaborating Partner holding each Existing Lease to seek temporary relocation housing for any occupants of the Existing Structures that are required to be relocated, but each Collaborating Partner shall be solely responsible for the relocation of any occupants of the Existing Structures including the payment of any relocation benefits, at its sole costs and the City shall have no responsibility for the payment of any relocation benefits or the provision of relocation housing to the occupants of the Existing Structures. A Collaborating Partner may assign its obligations related to relocation of the occupants of the Existing Structures to a Developer Affiliate in accordance with the provisions of this Agreement related to assignments. Should the Collaborating Partner holding an Existing Lease need to relocate its occupants temporarily prior to the completion of the applicable Phase that will provide permanent relocation, the Collaborating Partner shall release its Existing Lease and the City and the Collaborating Partner or Developer Affiliate, as applicable, shall enter into a lease or license agreement for the temporary relocation site that terminates sixty (60) days after the certificate of occupancy is issued for the Applicable Developer Affiliate's Project. Each of the Collaborating Partners hereby agrees to indemnify, defend and hold harmless the City and its officers, its elected and appointed officials, board members, commissioners, employees, attorneys, agents and successor and assigns against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of such Collaborating Partner's performance or non-performance under this Agreement, including but not limited to, any relocation obligations to the tenants or occupants of the Existing Structures. This defense, hold harmless and indemnity obligation shall not extend to any claim arising solely from the City's gross negligence or willful misconduct. Each Collaborating Partner's obligation to indemnify, defend and hold harmless under this Section shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action. Failure of any Collaborating Partner to comply with this Section 7.14 shall be a Developer Event of Default and afford the City any and all remedies available to it pursuant to Article 14.

Section 7.15 Removal of Existing Leases for Buildings 92, 101, 613 and 607:  
Alameda Point Collaborative currently holds the Existing Leases on Buildings 92, 101, 613 and 607 which are used for commercial purposes. Alameda Point Collaborative shall be obligated to release its Existing Lease of Building 92 and Building 101 within \_\_\_\_ days of City's written request and deliver the Buildings to the City free of all tenancies, provided, however, if the City requests the release of the Existing Leases for Buildings 92 or 101 before the expiration of any subleases that Alameda Point Collaborative has entered into, the City and Alameda Point Collaborative shall work cooperatively to find alternative locations for the subtenants or make other arrangements for the subtenants. Alameda Point Collaborative shall release the Existing Leases for Buildings 613 and 607 to coincide with the release of Alameda Point Collaborative's Existing Leases on its residential property. Notwithstanding anything set forth above, the City shall not be responsible for any relocation benefits to which any subtenants of the commercial buildings may have under State or federal law and Alameda Point Collaborative shall indemnify, defend and hold harmless the City and its officers, its elected and appointed officials, board members, commissioners, employees, attorneys, agents and successor and assigns against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Alameda Point Collaborative's performance or non-performance under this Agreement, including but not limited to, any relocation obligations to the tenants or occupants of the commercial buildings. This defense, hold harmless and indemnity obligation shall not extend to any claim arising solely from the City's gross negligence or willful misconduct.

**ARTICLE 8.**  
**CITY OBLIGATIONS**

Section 8.1 Entitlements. The City shall, upon payment of all applicable fees by the Developer or a Developer Affiliate required by the Development Agreement, process the applications for the Supplemental Approvals for the Project in a timely fashion, and shall cooperate with the Developer or the Developer Affiliate in obtaining any approvals necessary from other governmental entities or public utilities provided, however, the City shall not be required to incur any additional costs other than those cost associated with processing of applications and permits within the City's standard processing procedures unless Developer or the applicable Developer Affiliate agrees to reimburse the City of any costs associated with expedited processing.

Section 8.2 Permits and Approvals.

(a) City Assistance. The City shall provide reasonable cooperation to the MidPen in processing MidPen's applications for City permits and approvals, and all other permits, approvals, and "will serve" letters necessary for construction of the Project.

(b) City Retains Discretion. The Developer acknowledges and agrees that execution of this Agreement by the City, and the City's approvals obtained pursuant to this Agreement are with regard to this Agreement only and do not constitute approval by the City in its typical regulatory or administrative capacity of any required permits, applications, allocations or maps, are not a substitute for the City's typical application, allocation, mapping, permitting, or approval process, and in no way limits the discretion of the City in the permit, applications, allocation, mapping or approval process. In addition to complying with the terms and conditions of this Agreement, Developer must comply with the City's and other government entities' regulatory and administrative processes.

Section 8.3 Backbone Infrastructure. As a condition precedent to the conveyance of any Phase of the Property, the City shall use commercially reasonable efforts to cause to be completed the Backbone Infrastructure in accordance with the MIP and the Main Street Neighborhood Plan. The City intends to release a Request for Qualifications for developers of the adjacent portions of the Main Street Neighborhood Plan which will include requirements to construct the Backbone Infrastructure. The City shall use all commercially reasonable efforts to release the Request for Proposals, select a developer or developers, negotiate a disposition and development agreement with the selected developer or developers and require the completion of the Backbone Infrastructure within the times set forth in the Milestone Schedule. The Developer agrees to cooperate with the City's efforts to obtain completion of the Backbone Infrastructure including potentially releasing its interest in certain of the Existing Leases prior to conveyance of a Phase of the Property in order to accommodate the development of the Backbone Infrastructure. The City shall perform its usual inspections prior to acceptance of the Backbone Infrastructure.

Section 8.4 Estoppel Certificate of Completion. Within ninety (90) days after receipt by the Developer Affiliate from the City of certificates of occupancy evidencing that: (a) building occupancy has been granted for all Residential Units for a Phase and/or (b) final

building shell approval has been granted for all portions of a building containing any portion of the Commercial Space, the City shall issue a certificate of completion for such building or improvements with respect to the Developer Affiliate's construction obligations pursuant to Article 5 of this Agreement with respect that particular Phase (an "**Estoppel Certificate of Completion**") in a form recordable in the Official Records of the County.

(a) Except as set forth in the following paragraph, an Estoppel Certificate of Completion shall constitute a conclusive determination that the covenants in this Agreement with respect to the obligations of Developer Affiliate to construct the applicable Phase have been met with regards to the Phase of the Project for which such estoppel certificate is being issued. Such certification shall not be deemed a notice of completion under the California Civil Code, nor shall it constitute evidence of compliance with or satisfaction of any obligation of the Developer Affiliate to any holder of deed of trust securing money loaned to finance the Project or any portion thereof.

(b) An Estoppel Certificate of Completion shall not constitute a conclusive determination of the satisfaction of the requirements of Section 7.3 with respect to payment of prevailing wages (if applicable) and related matters (since such determination is within the jurisdiction of the DIR and the California judicial system and not the City), and the applicable obligations of the Developer or Developer Affiliate to indemnify, defend and hold harmless set forth in this Agreement shall expressly survive issuance of an Estoppel Certificate of Completion.

Section 8.5 City Representations. The City acknowledges that the execution of this Agreement by the Developer is made in material reliance by the Developer on each and every one of the representations and warranties made by the City in this Section 8.5.

(a) Authority. The City has all requisite right, power and authority to enter into this Agreement and the documents and transactions contemplated herein and to carry out the obligations of this Agreement and the documents and transactions contemplated herein. The City has taken all necessary or appropriate actions, steps and company and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement. This Agreement is a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms. The representations and warranties of the City in the preceding sentence of this Section 8.5 are subject to and qualified by the effect of: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) the fact that equitable remedies, including rights of specific performance and injunction, may only be granted in the discretion of a court.

(b) No Actions. As of the Effective Date only, there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the Property or that adversely affects the City's ability to perform its obligations under this Agreement.

(c) Commitments to Third Parties. Except as (i) disclosed in the Preliminary Title Report and (ii) set forth in EDC Agreement and the Renewed Hope Settlement Agreement, the City has not made any commitment, agreement or representation to any government

authority, or any adjoining or surrounding property owner or any other third party, that would in any way be binding on the Developer or would interfere with the Developer's ability to develop and improve the Property into the Project.

(d) Hazardous Materials. To the best of the City's knowledge and except as disclosed herein, the City has received no written notice from any government authority regarding any, and, to the best of the City's knowledge, there are no, violations with respect to any law, statute, ordinance, rule, regulation, or administrative or judicial order or holding (each, a "**Law**"), whether or not appearing in any public records, with respect to the Property, which violations remain uncured as of the date hereof or on the Closing Date, or releases of Hazardous Materials that have occurred during the City's possession of the Property, excluding Incidental Migration. The City has not assumed by contract or law any liability, including any obligation for corrective action or to conduct remedial actions, of any other Person relating to Hazardous Materials. .

## **ARTICLE 9.** **ASSIGNMENT AND TRANSFERS**

Section 9.1 Definition of Transfer. As used in this Article 9, 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 this Agreement or of the Property and/or the Project or any part thereof or any interest therein (including, without limitation, any Phase) or of the improvements constructed thereon, or any contract or agreement to do any of the same which is not subject to an Estoppel Certificate of Compliance; 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 (defined below) in MidPen, any of the Collaborating Partners or any Developer Affiliate, or any contract or agreement to do any of the same. As used herein, the term "**Controlling Interest**" means (1) the ownership (direct or indirect) by one Person of more than twenty (20%) of the profits, capital, or equity interest of another Person; or (2) the power to direct the affairs or management of another person, whether by contract, other governing documents or operation of Law or otherwise, and Controlled and Controlling have correlative meanings. Common Control means that two persons are both Controlled by the same other person.

Section 9.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Project on the Property and subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Collaborating Partners and MidPen are of particular concern to the City, in view of:

(a) The importance of the redevelopment, use, operation and maintenance of the Project to the general welfare of the community.

(b) The fact that a change in ownership or control of the owner of the Property, or any other act resulting in a change in ownership of the parties in control of any of

the Collaborating Partners or MidPen, is for practical purposes a transfer or disposition of the Property and the Project.

(c) Restrictions on transfer are necessary in order to assure the achievement of the goals, objectives and public benefits of this Agreement. Developer agrees to and accepts the restrictions set forth in this Article 9 as reasonable and as a material inducement to City to enter into this Agreement. It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 9.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 9 shall apply with respect to any portion of the Property until issuance by the City of an Estoppel Certificate of Completion for such portion of the Property. 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 approval of the City pursuant to Section 9.5. Any Transfer made in contravention of this Section 9.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 9.4 Permitted Transfers. Notwithstanding the provisions of Section 9.3, the following Transfers shall be permitted (subject to satisfaction of all applicable conditions to such Transfer):

(a) Any Transfer creating a Security Financing Interest consistent with the Financing Plan, or Phase Update , as applicable, approved by the City pursuant to Section 3.2 (as demonstrated to the City's reasonable satisfaction), or otherwise consistent with the provisions of Section 10.1 and 10.2.

(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 and if the Permitted Mortgagee is the immediate Transferee pursuant to such foreclosure or deed in lieu, the Permitted Mortgagee's initial Transfer of any portion of the Property to a subsequent Transferee.

(c) Any Transfer consisting of the rental or subletting of a Residential Unit in the normal course of the Developer Affiliate's business operations.

(d) Any Transfer due solely to the death or incapacity of an individual.

(e) Any Transfer to a Developer Affiliate, provided however, any subsequent Transfer by the Developer Affiliate to any other entity other than another Developer Affiliate shall be subject to the restrictions on Transfer set forth in this Article 9.

(f) After Closing, the transfer by the limited partner of a Developer Affiliate of the limited partner's partnership interest to an affiliate of the limited partner provided that either the initial limited partner remains obligated to fund its equity contribution pursuant to the terms of the partnership agreement, or the affiliate assumes the obligations to fund the equity contribution, in accordance with the terms of the partnership agreement (if at the time of the

proposed Transfer no equity contribution remains unpaid, then consent shall not be required for the Transfer of the limited partnership interest);

(g) The removal of a general partner of a Developer Affiliate pursuant to the partnership agreement of the Developer Affiliate and the replacement of such general partner with an affiliate of the limited partner, provided that the admission of a non-affiliate of limited partner shall require the reasonable consent of the City;

(h) Any Transfer of a utility, public right of way, maintenance or access easement reasonably necessary for the development of the Project (each a "**Development Easement**").

Section 9.5 Other Transfers In City's Sole Discretion. Any Transfer not permitted pursuant to an express provision of Section 9.4 shall be subject to prior written consent by the City in accordance with this Section 9.5, which the City may grant or deny in its sole discretion. In connection with such a proposed Transfer, MidPen, the applicable Collaborating Partner or the applicable Developer Affiliate shall first submit to the City information regarding such proposed Transfer, including the proposed documents to effectuate the Transfer, a description of the type of the Transfer, and such other information as would assist the City in considering the proposed Transfer, including where applicable, the proposed transferee's financial strength and the proposed transferee's experience, capacity and expertise with respect to the development, operation and management of affordable housing developments similar to the Project (or applicable portion thereof). The City shall approve or disapprove the proposed Transfer, in its sole discretion, within ninety (90) days of the receipt from MidPen, the applicable Collaborating Partner or the applicable Developer Affiliate all of the information specified above including backup documentation and supplemental information reasonably requested by the City. The City shall specify in writing the basis for any disapproval. If the City should fail to act within such ninety (90) day period the Party requesting the Transfer shall provide the City with written notice of such failure to act which notice shall state in 14-point bold type on the cover page of the notice and on the envelope containing the notice the following:

**FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS OF THE DATE OF THE NOTICE WILL RESULT IN THE CITY WAIVING ITS RIGHTS TO OBJECT TO THE TRANSFER PROPOSED IN THIS NOTICE.**

If the City fails to respond to the Party requesting the Transfer's notice containing the above language within ten (10) business days of the date of the notice and such notice is delivered to the address and in the manner set forth in Section 15.1 below, the proposed Transfer shall be deemed approved.

Section 9.6 Effectuation of Permitted or Otherwise Approved Transfers. Not less than thirty (30) days prior to the intended effectiveness of a Transfer described in this Article 9 (other than permitted transfers under Section 9.4), the Party requesting the Transfer shall deliver to the City a notice of the date of effectiveness of the intended Transfer, a description of the intended Transfer, and such information about the intended Transfer and the transferee as is necessary to

enable the City to determine that the intended Transfer meets the standards for a Transfer under this Article 9.

(a) Within five (5) Business Days after the completion of any Transfer permitted pursuant to this Article 9, the Party requesting the Transfer shall provide the City with notice of such Transfer.

(b) No Transfer shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City Attorney and in form recordable among the land records of the County, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of the Developer under this Agreement and any ancillary agreements entered into by the Developer pursuant to this Agreement with respect to the portion(s) of the Property and the Project being transferred; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation prior to transfer. Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest in the Property is acquired by, through or under a Security Financing Interest or is derived immediately from any holder thereof shall not be required to give to the City such written agreement until such holder or other person is in possession of the Property, or applicable portion thereof, or entitled to possession thereof pursuant to enforcement of the Security Financing Interest.

(c) With the regard to all permitted or otherwise approved Transfers in accordance with this Article 9, the City shall provide, within fifteen (15) days of request, a written estoppel to the Developer stating either that Developer has performed any and all obligations required through the date of such Transfer, or, if such is not the case, stating with specificity the obligation(s) which the Developer has failed to perform through the date of such Transfer. In the absence of specific written agreement by the City (which the City may grant or withhold in its sole discretion), no Transfer permitted by this Agreement or approved by the City shall be deemed to relieve the transferor from any obligations under this Agreement. Notwithstanding the foregoing to the contrary, no transferee permitted pursuant to Section 9.4 or approved pursuant to Section 9.5 shall be liable for any Developer Event of Default caused by Developer or any other transferee under this Agreement.

## ARTICLE 10. SECURITY FINANCING AND RIGHTS OF HOLDERS

### Section 10.1 Security Financing Interests; Permitted and Prohibited Encumbrances.

(a) Mortgages, deeds of trust, and other real property security instruments are permitted to be placed upon the Property only as authorized by this Section 10.1. Any security instrument and related interest approved pursuant to Section 10.1(c) is referred to as a "**Security Financing Interest.**" Until the applicable Developer Affiliate is entitled to issuance of an Estoppel Certificate of Completion for a particular portion of the Property, the Developer Affiliate may place mortgages, deeds of trust, or other reasonable methods of security on such portion of the Property only for the purpose of securing any approved Security Financing Interest

financing the construction of the Vertical Improvements on the applicable portion of the Property.

(b) Following the time the applicable Developer Affiliate is entitled to issuance of an Estoppel Certificate of Completion for a particular portion of the Property, the Developer Affiliate may place any mortgages, deeds of trust, and other real property security interest it desires on that portion of the Property subject to the City Regulatory Agreement.

(c) Any mortgage, deed of trust or other real property security interest securing a loan set forth in any approved Project Financing Plan or Phase Update (or any approved amendment to such plan or update) shall be deemed an approved Security Financing Interest pursuant to this Article 10. The holder of a Security Financing Interest is referred to herein as a "**Permitted Mortgagee.**"

Section 10.2 Permitted Mortgagee Not Obligated to Construct. No Permitted Mortgagee is obligated by, or to perform, any of the Developer Affiliate's obligations under this Agreement, including, without limitation, to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in conveyances from the City to the Developer Affiliate evidencing the realty comprising the Property or any part thereof be construed so to obligate such Permitted Mortgagee. However, nothing in this Agreement shall be deemed to permit or authorize any Permitted Mortgagee to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Section 10.3 Notice of Default and Right to Cure. Whenever the City, pursuant to its rights set forth in Article 14, delivers any notice or demand to the Developer Affiliate with respect to the commencement, completion, or cessation of the construction of the Project, the City shall at the same time deliver to each Permitted Mortgagee a copy of such notice or demand. Each such Permitted Mortgagee shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the applicable portion of the Project 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 any Permitted Mortgagee to undertake or continue the construction or completion of the applicable portion of the Project (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to the applicable portion of the Project under this Agreement. The Permitted Mortgagee in that event must agree to complete the applicable portion of the Project, in the manner provided in this Agreement. Any Permitted Mortgagee properly completing the applicable portion of the Project pursuant to this Section 10.3 shall assume all applicable rights and obligations of Developer Affiliate under this Agreement and shall be entitled, upon written request made to the City, to an Estoppel Certificate of Completion for the Project or the applicable Phase or Sub-Phase from the City.

Section 10.4 Failure of a Permitted Mortgagee to Complete the Project. In any case where six (6) months after default by the Developer Affiliate in completion of construction of the Project under this Agreement, the applicable Permitted Mortgagee, having first exercised its

option to construct, has not proceeded diligently with construction, the City shall be afforded those rights against such Permitted Mortgagee it would otherwise have against the Developer Affiliate under this Agreement.

Section 10.5 Right of City to Cure. In the event of a default or breach by the Developer Affiliate of a Security Financing Interest prior to the completion of the Project, and if the Permitted Mortgagee has not exercised its option to complete the Project or applicable Phase, upon five (5) Business Days' prior written notice to the Developer Affiliate and the Permitted Mortgagee, the City may, in its sole discretion (but with no obligation to do so) cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer Affiliate of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Project thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by the holder to effect such subordination.

Section 10.6 Right of City to Satisfy Other Liens. After the Developer Affiliate has had a reasonable time (but not less than twenty (20) days) to challenge, cure, or satisfy any liens or encumbrances on any portion of the Property conveyed to the Developer Affiliate thereof, and has failed to do so, in whole or in part, the City may in its sole discretion (but with no obligation to do so), upon five (5) Business Days' prior written notice to the Developer Affiliate, satisfy any such lien or encumbrances. Nothing in this Agreement shall require the Developer Affiliate to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer Affiliate 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 10.7 Permitted Mortgagee to be Notified. Each Developer Affiliate shall insert each term contained in this Article 10 into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective Permitted Mortgagee of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

Section 10.8 Modifications. If any actual or potential Permitted Mortgagee should, as a condition of providing financing for development of all or a portion of the Project, request any modification of this Agreement in order to protect its interests in the Project or this Agreement, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement.

Section 10.9 Miscellaneous Provisions.

(a) Limitation on Liability. In the event that any Permitted Mortgagee assumes the obligations of a Developer Affiliate under this Agreement, such Permitted Mortgagee shall only be liable or bound by the Developer Affiliate's obligations hereunder for such period as the Permitted Mortgagee is in possession and/or control of the portion of the Property in which the Permitted Mortgagee has acquired its interest and, furthermore, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the

extent of its interest (whether fee or leasehold) in the portion of the Property and the improvements thereon.

(b) Termination. Notwithstanding any other provision of this Agreement to the contrary, if any Developer Event of Default shall occur which, pursuant to any provision of this Agreement, entitles the City to terminate this Agreement and/or to exercise its rights under Section 14.5 or 14.6, the City shall not be entitled to terminate this Agreement or to exercise its rights under Section 14.5 or 14.6 unless (i) the City has provided the Permitted Mortgagee with notice of default pursuant to Section 10.3 and (ii) within the applicable cure period set forth in Section 10.3, such Permitted Mortgagee shall fail to either:

(1) Cure (Monetary). Cure the Developer Event of Default if the same consists of the nonperformance by the Developer of any covenant or condition of this Agreement requiring the payment of money by Developer to the City; and

(2) Cure (Non-Monetary). If the Developer Event of Default is not of the type described in clause (1) above, either, in such Permitted Mortgagee's sole discretion, (x) cure such Developer Event of Default, if the same is capable of being cured within the applicable cure period, or (y) commence, or cause any trustee under the Permitted Mortgage to commence, and thereafter diligently pursue to completion, steps and proceedings to foreclose on the applicable portion of the Property pursuant to judicial foreclosure, non-judicial foreclosure or deed-in-lieu process ("**Foreclosure**"); provided that except as extended by clause (3) below, such Foreclosure shall be completed within a maximum of eighteen (18) months following the commencement of such proceeding. Any Developer Event of Default which does not involve a covenant or condition of this Agreement requiring the payment of money by the Developer to the City shall be deemed cured if any Permitted Mortgagee shall diligently pursue to completion Foreclosure and shall, upon acquiring title to all or any portion of the Property, thereafter undertake its obligations (if any) with respect such portion of the Property pursuant to Section 10.3.

(3) Inability to Foreclose. If a Permitted Mortgagee is prohibited from commencing or prosecuting a Foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Developer (other than any such process, injunction or court action occurring in response to any negligence or misfeasance of Permitted Mortgagee), the times specified in Section 10.9(b)(2) above, for commencing or prosecuting a Foreclosure or other proceedings shall be extended for the period of the prohibition; provided that the Permitted Mortgagee shall have fully cured any Developer Event of Default required by Section 10.9(b)(1) above and shall continue to perform and/or cure all such obligations as and when the same fall due.

(c) Failure of Permitted Mortgagee to Complete Improvements. Upon the date upon which all cure periods of the Developer have expired following a Developer Event of Default related to the Completion of construction of any improvements on the Property under this Agreement, and the notice required by Section 10.3 to a Permitted Mortgagee was properly given, and such Permitted Mortgagee has not cured or commenced to cure as required by Section 10.9(b), the City may, at its option, upon thirty (30) calendar days' written notice to the Developer and such Permitted Mortgagee either: (a) purchase the Permitted Mortgage by

payment to the Permitted Mortgagee of all amounts thereunder, including all unpaid principal, interest, late fees and all other advances and amounts secured by the Permitted Mortgage; or (b) exercise its rights under Section 14.5 or 14.6 with respect to the applicable portions of the Property.

(d) Amendment; Termination. No amendment or modification to this Agreement may impair or materially alter a Permitted Mortgagee's rights hereunder, or increase a Permitted Mortgagee's obligations hereunder (whether ongoing or contingent obligations) without the consent of such Permitted Mortgagee, provided that such Permitted Mortgagee has agreed that its consent will not be unreasonably withheld. The Developer shall not terminate this Agreement as to any portion of the Property which is subject to any Security Financing Interest without first obtaining the prior written consent of all Permitted Mortgagees whose Permitted Mortgage encumber that portion of the Property.

(e) Condemnation or Insurance Proceeds. Except as otherwise expressly set forth in this Agreement, the rights of any Permitted Mortgagee, pursuant to its Security Financing Interest, to receive condemnation or insurance proceeds which are otherwise payable to such Permitted Mortgagee or to a Party which is its mortgagor shall not be impaired.

(f) Loss Payable Endorsement to Insurance Policy. The City agrees that the name of the senior-most Permitted Mortgagee may be added as the primary loss payee to the "loss payable endorsement" attached to any and all insurance policies required to be carried by Developer under this Agreement.

(g) Constructive Notice and Acceptance. Until such time as an Estoppel Certificate of Compliance is recorded with respect to any portion of the Property, all of the provisions contained in this Agreement shall be binding upon and benefit any Person who acquires fee title to or a leasehold interest in such portion of the Property.

(h) Bankruptcy Affecting the Developer. The Developer and City hereby agree that this Agreement (including the rights under Section 14.5 and 14.6 contained herein), and each Quitclaim Deed shall contain and consist of covenants running with the land and that neither this Agreement, nor any Quitclaim Deed shall be subject to rejection in bankruptcy and Developer hereby waives its rights to reject this Agreement and/or any Quitclaim Deed in bankruptcy. If, notwithstanding the foregoing, the Developer, as debtor in possession, or a trustee in bankruptcy for the Developer seeks to and does reject this Agreement, or any Quitclaim Deed in connection with any proceeding involving the Developer under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors (a "**Bankruptcy Proceeding**"), then without waiver of any right of the City to challenge such rejection, the Developer and the City hereby agree for the benefit of the City and each and every Permitted Mortgagee that such rejection shall, subject to such Permitted Mortgagee's acceptance, be deemed the Developer's assignment of the Agreement or Quitclaim Deed, as applicable, and the portions of the Property corresponding thereto to the Developer's Permitted Mortgagee(s) in the nature of an assignment in lieu of foreclosure. Upon such deemed assignment, this Agreement shall not terminate and each Permitted Mortgagee shall, become the Developer hereunder as if the Bankruptcy Proceeding had not occurred, unless such Permitted Mortgagee(s) shall reject such deemed assignment by written notice to the City within fifteen (15) calendar

days after receiving notice of the Developer's rejection of this Agreement in a Bankruptcy Proceeding.

(i) New Agreement and Ground Lease with Permitted Mortgagee.

(1) Request by Senior Permitted Mortgagee. In the event of termination of this Agreement for any reason (including by reason of any Developer Event of Default or by reason of the disaffirmance thereof by the Developer, as a debtor-in-possession, or by a receiver, liquidator or trustee for Developer or its property), the City, if requested by the then-most senior Permitted Mortgagee (or by the next most senior Permitted Mortgagee if Permitted Mortgagees with more senior priority do not so request) will enter into a new disposition and development agreement with the Permitted Mortgagee, provided that such party is the then-owner of the Property, upon the same terms, provisions, covenants and agreements set forth in this Agreement and commencing as of the date of termination of this Agreement (collectively, the "**New Agreement**"), subject to the following:

(A) Request for New Agreement. Such Permitted Mortgagee or requesting party shall have provided written notice to the City requesting the New Agreement within thirty (30) calendar days after the date of termination of this Agreement;

(B) Payment of Due and Unpaid Sums. Such Permitted Mortgagee or requesting party shall pay to the City at the time of the execution and delivery of the New Agreement those sums specified in Section 10.9(b) which would, at the time of the execution and delivery thereof be due and unpaid pursuant to this Agreement but for its termination, and in addition thereto any reasonable attorneys' fees and experts' fees and court costs and court expenses (including attorney's and expert's fees) to which the City shall have been subjected by reason of the Developer Event of Default; and

(C) Perform and Observe All Covenants. Such Permitted Mortgagee or requesting party shall, subject to the provisions of this Article, be subject to and shall perform and observe all covenants in this Agreement to be performed and observed by a Permitted Mortgagee, and failure to do so shall, after notice and opportunity to cure as provided by this Agreement, be a Developer Event of Default under this Agreement.

(2) Request by the City. In the event of termination of this Agreement for any reason (including by reason of any Developer Event of Default by Developer or by reason of the disaffirmance thereof by the Developer, as a debtor-in-possession, or by a receiver, liquidator or trustee for Developer or its property) the then-most senior Permitted Mortgagee, if requested by the City, and provided that such party is the then-owner of the Property, will enter into a new Agreement with the City upon the same terms, provisions, covenants and agreements set forth in this Agreement and commencing as of the date of termination of this Agreement ("**New Agreement**"), subject to the following:

(A) Response to Request for New Agreement. The City shall have provided written notice to such Permitted Mortgagee requesting the New Agreement within thirty (30) calendar days after the date of termination of this Agreement, with a copy to each other Permitted Mortgagee; and

(B) Perform and Observe All Covenants. The Permitted Mortgagee shall, subject to the provisions of Section 10.9(a) and (b), perform and observe all covenants in this Agreement to be performed and observed by a Permitted Mortgagee and failure to do so shall, after notice and opportunity to cure, be a Developer Event of Default under this Agreement.

(3) Priority of New Agreement. Any New Agreement shall be prior to any Security Financing Interest or other lien, charge, or encumbrance on the Property in favor of such Security Financing Interest and each Security Financing Interest shall execute such additional consents and/or subordination agreements as may reasonably requested by the City or the new Developer to evidence the priority of the New Agreement to all Security Financing Interests, whether recorded prior or subsequent to execution of the New Agreement.

## **ARTICLE 11.** **HAZARDOUS MATERIALS**

### Section 11.1 Obligations Regarding Hazardous Materials.

(a) Existing Property Environmental Conditions. Effective as of the applicable Phase Closing Date and (i) solely with respect to such Phase and (ii) with respect to Hazardous Materials that existed on the applicable Phase of the Property prior to the Phase Closing Date ("**Existing Phase Environmental Conditions**") affecting such Phase: as between the applicable Developer Affiliate and the City, the Developer Affiliate shall comply with any recorded covenants related to the Existing Phase Environmental Conditions, comply with the Site Management Plan and, as between the City and the Developer Affiliate, the Developer Affiliate shall be responsible for addressing any additional remediation required at a formerly closed site by any regulatory agency due to reevaluation in accordance with applicable law by any regulatory agency of the applied remediation strategy or any change in law or regulation related to the remediation standards, including any change in remediation standards or risk screening levels ("**Regulatory Reopener**"). If the Developer Affiliate effectuates a Transfer permitted pursuant to Article 9 in the manner required by Article 9, then the transferring Developer Affiliate shall have no further obligation pursuant to this Section 11.1 with respect to the portion of the Property Transferred.

(b) New Releases. Effective as of the applicable Phase Closing Date and (i) solely with respect to such Phase and (ii) with respect to releases of Hazardous Material at the Phase caused by the Developer Parties, which releases first occur after the applicable Phase Closing Date, excluding Incidental Migration of Hazardous Materials that existed as of the applicable Phase Closing Date ("**New Releases**"): as between the applicable Developer Affiliate and the City, the Developer Affiliate shall keep and maintain any portion of the Transfer Property conveyed to the Developer Affiliate in compliance with, and shall not cause or permit the Transfer Property to be in violation of, any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions in, on, under or emanating from the Transfer Property including, but not limited to, soil and ground water conditions. The Developer Affiliate shall not use, generate, manufacture, store or dispose of in, on, or under any portion of the Property conveyed, leased or licensed to the Developer Affiliate,

or transport to or from such Property or the development any Hazardous Materials, except such of the foregoing as may be customarily kept and used in and about the construction and operation of residential developments or in accordance with law or this Agreement. The Developer Affiliate shall be responsible for complying with the requirements of the Site Management Plan(s) related to the Property after conveyance of the Property or any portion thereof to the Developer Affiliate.

Section 11.2 Notification To City; City Participation. Each Developer Affiliate shall promptly notify and advise the City Attorney in writing if at any time it receives written notice of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer Affiliate, the Transfer Property, or the Project pursuant to any Hazardous Materials Law; (2) all claims made or threatened by any third party against the Developer Affiliate, the Transfer Property, or the Project relating to damage, injunctive relief, declaratory relief, violations, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (1) and (2) above are referred to as "**Hazardous Materials Claims**"); and (3) the Developer Affiliate's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property or the Project that could cause part or all of the Property or the Project to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property or the Project under any Hazardous Materials Law. At its sole costs and expense, the City 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.

Section 11.3 Developer's Hazardous Materials Indemnification. The Developer shall indemnify, defend (with counsel chosen by the City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties as set forth in more detail in Section 12.2.

## **ARTICLE 12.** **INDEMNIFICATION**

Section 12.1 General Indemnification. The Developer shall indemnify, defend (with counsel chosen by City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Developer's or the Contractors' performance or non-performance under this Agreement, including but not limited to, any relocation obligations to the tenants of the Existing Structures under State or federal law, or arising in connection with entry onto, ownership of, occupancy in, or construction on the Property by the Developer, the Contractors, any Licensee, or the tenants. This defense, hold harmless and indemnity obligation shall not extend to any claim arising solely from the applicable Indemnified Party's gross negligence or willful misconduct. If the Developer effectuates a Transfer permitted pursuant to Article 9 in the manner required by Article 9, then the transferring Developer shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the Transfer. The Developer's obligation to indemnify, defend and hold harmless under this Section 12.1 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

Notwithstanding the foregoing to the contrary, provisions of this Section 12.1 shall not apply to matters arising out of or related to Hazardous Materials, which are addressed in Section 12.2 below.

Section 12.2 Hazardous Materials Indemnification. The Developer shall indemnify, defend (with counsel chosen by City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties from and against all third party suits, actions, claims, causes of action, costs, demands, judgments, liens, damage, cost, expense or liability the City may incur directly or indirectly arising out of or attributable to any New Release, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Property or the Project, and the preparation and implementation of any closure, remedial or other required plans and (2) all reasonable costs and expenses incurred by the City in connection with clause (1), including but not limited to reasonable attorneys' fees. The defense, hold harmless and indemnity obligations contained in this Section 12.2 shall not extend to any claim arising solely from the applicable Indemnified Party's gross negligence or willful misconduct. The Developer's obligation to indemnify, defend and hold harmless under this Section 12.2 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action. If the Developer effectuates a Transfer permitted pursuant to Article 9 in the manner required by Article 9, then the transferring Developer shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the Transfer. If the Developer effectuates a partial Transfer permitted pursuant to Article 9 in the manner required by Article 9, the transferee shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs as a result of the Developer's action with respect to any portion of the Property not transferred to the transferee.

Section 12.3 No Limitations Based Upon Insurance. The indemnification, defense and hold harmless obligations of the Developer under this Article 12 and elsewhere in this Agreement (sometimes collectively, the "**Indemnification Obligations**") shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which the Developer is required to carry under this Agreement. In claims against any of the Indemnified Parties by an employee of the Developer, or anyone directly or indirectly employed by the Developer or anyone for whose acts the Developer may be liable, the Indemnification Obligations shall not be limited by amounts or types of damages, compensation or benefits payable by or for the Developer or anyone directly or indirectly employed by the Developer or anyone for whose acts the Developer may be liable.

### **ARTICLE 13.** **INSURANCE REQUIREMENTS**

Section 13.1 Required Insurance Coverage. Except as otherwise provided in Section 13.11, during the Term the Developer shall maintain or cause to be maintained and kept in force, at the sole cost and expense of the Developer or the Contractors the insurance applicable to the Project and required under this Article 13.

Section 13.2 Comprehensive General Liability Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, comprehensive general liability insurance in an amount not less than Two Million Dollars (\$2,000,000) with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including premises operations, underground and collapse, completed operations, contractual liability, independent contractor's liability, broad form property damage and personal injury, and Five Million Dollars (\$5,000,000) general aggregate limit, which minimum amounts shall be increased by the CPI Increase every five (5) years on the anniversary of the Effective Date and covering, without limitation, all liability to third parties arising out of or related to the Developer's performance of its obligations under this Agreement or other activities of the Developer at or about the Property and the Project, including, without limitation, the Developer's obligations under Section 12.1. Such insurance in excess of One Million Dollars (\$1,000,000) may be covered by a so-called "umbrella" or "excess coverage" policy.

Section 13.3 Vehicle Liability Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, vehicle liability insurance in an amount not less than One Million Dollars (\$1,000,000) (combined single limit) including any automobile or vehicle whether hired or, if applicable, owned by the Developer.

Section 13.4 Workers' Compensation Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, workers' compensation insurance in an amount not less than the statutory limits in accordance with Article I of Chapter 4 of Part I of Division 4 of the California Labor Code.

Section 13.5 Property Insurance. After conveyance of any portion of the Property to the Developer Affiliate and continuing through the Term, the Developer Affiliate shall maintain or cause to be maintained and kept in force, property insurance covering all real and personal (non-expendable) property (except for personal property otherwise typically covered by insurance maintained by tenants) conveyed to Developer Affiliate and the Vertical Improvements, in form appropriate for the nature of such property, covering all risks of loss, including earthquake (only if required by the Developer Affiliate's lender and to the extent available at commercially reasonable cost), for 100% of the replacement value, with deductible, if any, reasonably acceptable to the City Risk Manager.

Section 13.6 Construction Contractor's Insurance. The Developer Affiliate shall cause the General Contractor to maintain insurance of the types and in at least the minimum amounts described in Sections 13.2 (exclusive of the cross-reference to Section 12.1), 13.3, and 13.4, and shall require that such insurance shall meet all of the general requirements of Sections 13.8 and 13.9. Except with respect to construction of tenant improvements, the Developer Affiliate shall also cause the General Contractor to obtain and maintain Contractor's Pollution Liability Insurance covering the General Contractor and all subcontractors in an amount of not less than Ten Million Dollars (\$10,000,000) with a maximum deductible of One Hundred Thousand Dollars (\$100,000) with coverage continuing for ten years after completion of construction.

Section 13.7 Pollution Liability Insurance Policy.

(a) Within the time set forth in the Milestone Schedule and as a condition precedent to any conveyance hereunder, the Developer shall procure to the reasonable satisfaction of Developer and the City, at its cost, a real estate environmental liability insurance policy (a "**Pollution Liability Insurance Policy**") covering pre-existing conditions with a ten (10) year term that names the Developer as the named insured with the right to control the policy, and the City as an additional insured. The Pollution Liability Insurance Policy shall meet the requirements of Section 13.9, shall include a Five Million (\$5,000,000) policy per claim and in the aggregate coverage limit and a maximum deductible of One Hundred Thousand Dollars (\$100,000) or other amount reasonably agreed by the City, and shall provide the following types of coverage:

- (1) Pollution Legal Liability;
- (2) On-Site and Off-Site Clean-Up Costs;
- (3) Non-Owned Disposal Site;
- (4) In-Bound and Out-Bound Contingent Transportation
- (5) Legal Defense Expense
- (6) Business Interruption for Developer, including to the extent reasonably available, soft-costs and construction delays

(b) The Developer shall confer with and consider in good faith the input of the City in connection with procurement of a Pollution Liability Insurance Policy. The Developer shall pay the premiums and any other costs of procuring the Pollution Liability Insurance Policy, and any required deductible amount to activate the insurance in the event of a claim.

(c) Nothing in this Agreement shall preclude or prevent the Developer from seeking and applying proceeds from claims made under the Pollution Liability Insurance Policy toward costs of remediation of Hazardous Materials provided, however, that the Developer shall be solely responsible for the payment of any deductible and other costs in connection with procuring such proceeds.

(d) Developer shall use commercially reasonable efforts to renew the Pollution Liability Insurance Policy for one additional ten (10) year term prior to expiration of the Pollution Liability Insurance Policy.

Section 13.8 General Insurance Requirements. With the exceptions of the Pollution Liability Insurance Policy, the insurance required by this Article 13 shall be provided under an occurrence form, and the Developer shall maintain (or cause to be maintained) such coverage continuously throughout the Term of this Agreement (except for the General Contractor's insurance requirement set forth in Section 13.6, which shall be maintained until the Developer Affiliate is entitled to issuance of an Estoppel Certificate of Completion for the applicable Phase and the Pollution Liability Insurance Policy, which shall be maintained as specified in Section 13.7). 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 two and one-half (2.5) the occurrence limits specified above.

Section 13.9 Additional Requirements. The insurance policies required pursuant to this Article 13 (other than Workers' Compensation insurance) shall be endorsed to name as additional insureds the City and its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers (the "**Additional Insureds**"). All insurance policies shall contain:

(a) an agreement by the insurer to give the City at least thirty (30) days' notice (ten (10) days' notice for non-payment of premium) prior to cancellation or any material change in said policies;

(b) except with respect to the Pollution Liability Insurance Policy, an agreement by the insurer that such policies are primary and non-contributing with any insurance that may be carried by the City. For the Pollution Liability Insurance Policy, the policy shall contain an agreement by the insurer that, upon acquisition of any portion of the Property by the Developer, with respect to the portion of the Property so acquired, whether by lease or quitclaim deed, the Pollution Liability Insurance Policy is primary and non-contributing with any insurance that may be carried by the City for environmental conditions at, on or under acquired Property;

(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 by the Additional Insureds up to applicable policy limits; and

(d) a waiver by the insurer of all rights of subrogation against the Additional Insureds in connection with any claim, loss or damage thereby insured against.

(e) all insurance companies providing coverage pursuant to this Article 13, shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A. M. Best's rating of not less than "A:VII".

Section 13.10 Certificates of Insurance. Upon the City Risk Manager's request at any time during the Term of this Agreement, the Developer shall provide certificates of insurance, in form and with insurers reasonable acceptable to the City Risk Manager, and/or insurance policies including all endorsements, evidencing compliance with the requirements of this section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the Additional Insureds as additional insureds.

Section 13.11 Alternative Insurance Compliance. During such time that a Permitted Mortgagee imposes insurance requirements that are inconsistent with the requirements set forth in Article 13, the Developer may satisfy the insurance requirements of this Article 13, other than the Pollution Liability Insurance Policy by meeting the requirements of such Permitted Mortgagee; provided that Developer shall provide at least five (5) Business Days prior written notice to the City specifying: (x) the nature of the inconsistency; (y) a statement that there is no commercially reasonable way for the Developer to comply with **both** the City's and investor's insurance requirement; and (z) the alternative insurance requirement the Developer intends to comply with.

## **ARTICLE 14.** **DEFAULT AND REMEDIES**

Section 14.1 Application of Remedies. This Article 14 shall govern the Parties' rights to terminate this Agreement and the Parties' remedies for breach or failure under this Agreement.

Section 14.2 No Fault of Parties.

(a) Bases For No Fault Termination. The following events constitute a basis for a Party to terminate this Agreement without the fault of the other: if despite the responsible Party's good faith and diligent efforts, a condition precedent set forth in Section 4.3 is not satisfied or, when applicable, waived by the benefitting Party, prior to the date for such satisfaction/waiver (as such date may be extended pursuant to this Agreement), unless such failure is caused by the default of a Party, in which case Section 14.3 or 14.4 shall apply.

(b) Termination Notice; Effect of Termination. Upon the happening of an event described in Section 14.2(a):

(1) The Parties shall meet and confer in good faith for a period not to exceed sixty (60) calendar days in an effort to agree upon a mutually acceptable amendment to this Agreement to address the failed condition which amendment may include designating either MidPen or a different Collaborating Partner to assume the obligations to acquire or develop a particular Phase; and

(2) If the parties fail to reach agreement pursuant to Section 14.2(b)(1) or if MidPen or a different Collaborating Partner fail to assume the obligations to acquire or develop the particular Phase of the Project at issue, at the election of either Party, this Agreement may be terminated with respect to all Phases not previously conveyed to a Developer Affiliate by written notice to the other Party.

Upon a termination pursuant to this Section 14.2, any costs incurred by a Party in connection with this Agreement and the Project shall be completely borne by such Party and neither Party shall have any rights against or liability to the other, except with respect to: (1) any payments made by the Developer to the City prior to the termination pursuant to Article 2 shall remain the property of the City; (2) any funds remaining in Escrow pursuant to Article 4 shall be returned to Developer, (3) the delivery of plans and documents as set forth in Section 14.7; and (4) the survival of certain terms of this Agreement as provided in Section 14.8.

Section 14.3 Fault of City.

(a) City Event of Default. Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a "**City Event of Default**":

(1) The City without good cause fails to convey the Property within the time and in the manner specified in Article 4 and the applicable Developer Affiliate is otherwise entitled to such conveyance.

(2) The City breaches any other material provision of this Agreement.

(3) The material breach of any of the City's representations or warranties set forth in this Agreement.

(b) Notice and Cure; Remedies. Upon the happening of an event described in Section 14.3(a), the Developer or Developer Affiliate shall first notify the City in writing of its purported breach or failure. The City shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the City has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, the City shall have such longer period of time as may reasonably be necessary to cure the breach or failure, provided, however, in any event the breach or failure must be cured within one hundred twenty (120) days. Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the City has caused a breach or failure of performance of this Agreement, then the City shall not be deemed to have caused such breach or failure of performance until the City has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement. If the City does not cure within the applicable cure period set forth above, then the event shall constitute a City Event of Default, and the Developer shall be entitled to the following rights and remedies:

(1) Prior to Phase 1 Closing. With respect to a City Event of Default occurring prior to the Phase 1 Closing, the Developer shall be entitled to: (A) terminate in writing this entire Agreement; or (B) seek specific performance of this Agreement against the City. The above remedies shall constitute the exclusive remedies of the Developer for a City Event of Default occurring prior to the Phase 1 Closing.

(2) After Phase 1 Closing. With respect to a City Event of a Default that occurs after the Phase 1 Closing, the Developer shall be entitled seek specific performance of this Agreement against the City; and/or (ii) exercise any other remedy against the City permitted by law or under this Agreement, provided, however in no event shall the Developer be entitled to seek or receive consequential damages.

#### Section 14.4 Fault of Developer.

(a) Developer Event of Default. Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a "**Developer Event of Default**":

(1) A Developer Affiliate refuses for any reason (including, but not limited to, lack of funds) to accept conveyance from the City of the Transfer Property or any portion thereof within the time and in the manner specified in Article 4 other than a failure of a condition precedent set forth in Section 4.3(b).

(2) The Developer or a Developer Affiliate fails to meet the Milestone Schedule (as the same may be extended pursuant to this Agreement) with respect to conveyance of any portion of the Property.

(3) A Developer Affiliate fails to construct the Project in the manner set forth in Article 5 by the applicable Major Milestone Schedule deadlines (as the same may be extended pursuant to this Agreement) or a Developer Affiliate fails to meet a Progress Milestone Date and as a result it would be impossible for the Developer Affiliate to meet a subsequent Major Milestone Date.

(4) A Collaborating Partner fails to deliver a Release Agreement or release the Existing Leases within the time and as required pursuant to this Agreement or a Collaborating Partner violates the terms of any Release Agreement.

(5) A Collaborating Partner fails to relocate any of the tenants of the Existing Structures within the time set forth in the Milestone Schedule in a manner consistent with the applicable laws.

(6) The Developer attempts or completes a Transfer except as permitted under Article 9.

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

(8) Any representation or warranty of the Developer contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City.

(9) A court having jurisdiction shall have made or entered any decree or order: (A) adjudging a Collaborating Partner or MidPen to be bankrupt or insolvent, (B) approving as properly filed a petition seeking reorganization of a Collaborating Partner or MidPen seeking any arrangement for the Collaborating Partner or MidPen under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (C) appointing a receiver, trustee, liquidator, or assignee of the Collaborating Partner in bankruptcy or insolvency or for any of their properties, or (D) directing the winding up or liquidation of a Collaborating Partner or MidPen.

(10) A Collaborating Partner or MidPen shall have assigned its assets for the benefit of its creditors (other than pursuant to a Security Financing Interest) 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.

(11) A Collaborating Partner or MidPen shall have voluntarily suspended its business, or the Collaborating Partner or MidPen shall have been dissolved or terminated.

(b) Notice and Cure; Remedies. Upon the happening of any event described in Section 14.4(a), the City shall first notify the Developer in writing of its purported breach or failure. The Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the Developer has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, provided however, in any event the breach or failure must be cured within one hundred twenty (120) days. Notwithstanding the above cure period, a default described in paragraph (9) (10) or (11) of Section 14.4(a) shall constitute a Developer Event of Default immediately upon its occurrence without need for notice and without opportunity to cure. Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the Developer

has caused a breach or failure of performance of this Agreement, then the Developer shall not be deemed to have caused such breach or failure of performance until the Developer has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement.

If the Developer does not cure within the applicable cure period set forth above, then the event shall constitute a Developer Event of Default and the City shall be afforded all of the following rights and remedies: If the Developer Event of Default is caused by MidPen, during the cure period described above, the Collaborating Partners may propose to the City a replacement for MidPen to assume MidPen's obligations under this Agreement. The City shall approve or disapprove any such replacement for MidPen in accordance with the procedures set forth in Section 9.5. Any proposal to replace MidPen shall also include information on how the replacement entity will cure the Developer Event of Default.

If the Developer Event of Default is caused by a Collaborating Partner, during the cure period set forth above, any other Collaborating Partner or MidPen can offer to assume the defaulting Collaborating Partner's rights and responsibilities pursuant to this Agreement. If a Collaborating Partner or MidPen assume the defaulting Collaborating Partners rights and responsibilities under this Agreement, the City shall accept such assumption as a cure for the Developer Event of Default if (i) the assuming Collaborating Partner or MidPen cure the existing default caused by the defaulting Collaborating Partner and (ii) the defaulting Collaborating Partner assigns its Existing Leases to MidPen or the assuming Collaborating Partner.

(1) Prior to Phase I Closing Date. With respect to a Developer Event of Default occurring prior to the Phase 1 Closing Date, the City shall be entitled to (A) terminate in writing this entire Agreement and (B) exercise the rights and remedies described in Section 14.7. The above remedies shall constitute the exclusive remedies of the City for a Developer Event of Default occurring prior to the Closing on the first Phase of the Property.

(2) Between Phase 1 Closing Date and Prior to Estoppel Certificate of Completion. With respect to a Developer Event of Default occurring after the Phase 1 Closing Date but prior to the issuance of an Estoppel Certificate of Completion for the Final Phase, the City shall be entitled to: (A) terminate in writing this Agreement with respect to those portions of the Property that have not been conveyed to a Developer Affiliate if such Developer Event of Default is the result of any failure of conditions or obligations required to be met for the conveyance of Phases of the Property; (B) seek specific performance of any Vertical Improvement Completion Assurance if such Developer of Event of Default is the result of a default of the provisions of Article 5; (C) exercise the rights and remedies described in Sections 14.5, 14.6 and 14.7; and/or (D) exercise any other remedy against the Developer permitted by law or under the terms of this Agreement. Notwithstanding anything set forth herein, the City shall not be entitled exercise any of its remedies set forth above against a Developer Affiliate that has accepted conveyance of a portion of the Property unless such Developer Event of Default is caused by such Developer Affiliate.

(3) After Estoppel Certificate of Completion. With respect to a Developer Event of Default occurring after the Developer is entitled to an Estoppel Certificate of

Completion for the final Phase of the Project, the City shall be entitled to: (A) prosecute an action for damages against the Developer; (B) seek specific performance of this Agreement against the Developer; and/or (C) exercise any other remedy against the Developer permitted by law or under the terms of this Agreement.

Section 14.5 Right of Reverter/Power of Termination. If this Agreement is terminated pursuant to Section 14.4(b)(2) following the Closing on any portion of the Property and prior to the time when the applicable Developer Affiliate is entitled to issuance of an Estoppel Certificate of Completion for the final Phase of the Project, then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of any portion of the Property conveyed to the Developer Affiliate not subject to (i) an Estoppel Certificate of Completion or (ii) a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance ("**Revested Parcel**") with all improvements on the Revested Parcel, and re-vest in the City the estate previously conveyed to the Developer Affiliate by the City with respect to the Revested Parcel. The City's rights under this Section 14.5 shall terminate and be of no further force and effect once the Developer is entitled to an Estoppel Certificate of Completion for the final Phase of the Project.

(a) Such right of reverter shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(1) Any Security Financing Instrument with respect to the Revested Parcel; or

(2) Any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Revested Parcel, provided that the holder has elected to complete the Project in a manner provided in this Agreement.

(b) Upon re-vesting in the City of title to the Revested Parcel as provided in this Section 14.5, the City shall, in a commercially reasonable manner resell the Revested Parcel to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Project on the Revested Parcel or such other improvements acceptable to the City. Upon such resale of the Revested Parcel, the proceeds thereof shall be applied as follows:

(1) First to reimburse the City for all costs and expenses incurred by the City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture, management, and resale of the Revested Parcel (but less any income derived by the City from any part of the Revested Parcel in connection with such management); all taxes, installments of assessments payable prior to resale, and water and sewer charges with respect to the Revested Parcel (or, in the event the Revested Parcel is exempt from taxation or assessment or such charges during the period of ownership by the City, an amount equal to the taxes, assessments, or charges that would have been payable if the Revested Parcel was not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Revested Parcel at the time of re-vesting of title in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer Affiliate, its successors or transferees; expenditures made or obligations

incurred with respect to the making or completion of the improvements on the Revested Parcel or any part thereof; and any amounts otherwise owing the City by the Developer Affiliate and its successors or transferee.

(2) Second, to reimburse the Developer Affiliate, its successor or transferee, up to the amount equal to any payments made by the Developer Affiliate to the City pursuant to Article 2, plus the fair market value of the improvements the Developer Affiliate has placed on or for the benefit of the Revested Parcel, less any gains or income withdrawn or made by the Developer Affiliate from the Revested Parcel or the improvements thereon. Notwithstanding the foregoing, the amount calculated pursuant to this paragraph (2) shall not exceed the fair market value of the Revested Parcel together with the improvements thereon as of the date of the Developer Event of Default which gave rise to the City's exercise of the right of reverter.

(3) Any balance remaining after such reimbursements shall be retained by the City as its property.

(c) The rights established in this Section 14.5 are to be interpreted in light of the fact that the City will convey the Property to the Developer Affiliate for development and not for speculation.

#### Section 14.6 Option to Repurchase, Reenter and Repossess.

(a) The City shall have the additional right at its option to repurchase, reenter, and take possession of the Property not subject to (i) an Estoppel Certificate of Completion or (ii) a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance with all improvements thereon, if this Agreement is terminated pursuant to Section 14.4(b)(2) after the Phase 1 Closing Date and prior to the time when the applicable Developer Affiliate is entitled to issuance of an Estoppel Certificate of Completion for the final Phase of the Project. The City's rights under this Section 14.6 shall terminate and be of no further force and effect once the Developer is entitled to an Estoppel Certificate of Completion for the final Phase of the Project.

(b) Such right to repurchase, reenter, and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit any Security Financing Instrument with respect to the Property; or any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Property, provided that the Permitted Mortgagee has elected to complete the Project in a manner provided in this Agreement.

(c) To exercise its right to repurchase, reenter and take possession with respect to the Property not subject to (i) an Estoppel Certificate of Completion or (ii) a current building permit for Vertical Improvements that are subject to a Vertical Improvement Completion Assurance, the City shall pay to the applicable Developer Affiliate in cash an amount equal to any payments made by the Developer Affiliate to the City in cash pursuant to Sections 2.2 of this Agreement, plus the lesser of the (1) actual cost and (2) the fair market value of the improvements constructed on the Property subject to the Option by the Developer Affiliate at the time of the repurchase, reentry, and repossession, less any gains or income withdrawn or

made by the Developer Affiliate from the portion of the Property subject to the Option, less the amount of any liens or encumbrances on the portion of the Property subject to the Option which the City assumes or takes subject to, less any damages to which the City is entitled under this Agreement by reason of the Developer Event of Default.

Section 14.7 Plans, Data and Approvals. If this Agreement is terminated pursuant to Section 14.2(a)(1) or Section 14.4, then the Developer or the Developer Affiliate shall promptly deliver to the City copies of all plans and specifications for the Project (subject to being released by any architects or engineers possessing intellectual property rights), all permits and approvals obtained in connection with the Project, and all applications for permits and approvals not yet obtained but needed in connection with the Project.

Section 14.8 Survival. Upon termination of this Agreement under this Article 14, those provisions of this Agreement that recite that they survive termination of this Agreement shall remain in effect and be binding upon the Parties notwithstanding such termination.

Section 14.9 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

## **ARTICLE 15.** **GENERAL PROVISIONS**

### Section 15.1 Notices, Demands and Communications.

(a) Method. Any notice or communication required hereunder to be given by the City or the Developer shall be in writing and shall be delivered by each of the following methods: (1) electronically (e.g., by e-mail delivery); and (2) either personally, by reputable overnight courier, or by registered or certified mail, return receipt requested. Notwithstanding the time of any electronic delivery, the notice or communication shall be deemed delivered as follows:

(1) If delivered by registered or certified mail, the notice or communication shall be deemed to have been given and received on the first to occur of: (A) actual receipt by any of the addressees designated below as a party to whom notices are to be sent; or (B) five (5) days after the registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If delivered personally or by overnight courier, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed.

(2) Either Party may at any time, by giving ten (10) days' prior written notice to the other Party pursuant to this section, designate any other address in substitution of the address to which such notice or communication shall be given.

(b) Addresses. Notices shall be given to the Parties at their addresses set forth below:

If to the City to: City of Alameda  
Alameda City Hall, Rm 320  
2263 Santa Clara Avenue  
Alameda, CA 94501  
Attn: City Manager  
Telephone: 510-747-4700  
Facsimile: 510-865-1498  
Email: jkeimach@alamedaca.gov

With a copy to: City of Alameda  
Alameda City Hall, Rm 280  
2263 Santa Clara Avenue  
Alameda, CA 94501  
Attn: City Attorney  
Telephone: 510-747-4752  
Facsimile: 510-865-4028  
Email: jkern@alamedacityattorney.org

If to Developer to: MidPen Housing Corporation  
303 Vintage Park Drive, Suite 250  
Foster City, CA 94404  
Attention: President  
Telephone: 650-356-2900  
Fax Number: 650-357-9766

With copies to: Alameda Point Collaborative  
677 W. Ranger Avenue  
Alameda, CA 94501  
Attn: Executive Director  
Telephone: 510-898-7800

With copies to: Building Futures With Women and Children  
1395 Bancroft Avenue  
San Leandro, CA 94577  
Attn: Executive Director  
Telephone: 510-357-0205

With copies to: Operation Dignity  
3850 San Pablo Avenue, Suite 102  
Emeryville, CA 94608  
Attn: Executive Director  
Telephone: 800-686-9036

(c) Special Requirement. If failure to respond to a specified notice, request, demand or other communication within a specified period would result in a deemed approval, a conclusive presumption, a prohibition against further action or protest, or other adverse result under this Agreement, the notice, request, demand or other communication shall state clearly and

unambiguously on the first page, with reference to the applicable provisions of this Agreement, that failure to respond in a timely manner could have a specified adverse result.

Section 15.2 Non-Liability of Officials, Employees and Agents. No City elected or appointed official, board member, commission, officer, employee, attorney, agent, volunteer or their respective successors and assigns shall be personally liable to the Developer, or any successor in interest, in the event of a City Event of Default.

Section 15.3 Time of the Essence. Time is of the essence in this Agreement.

Section 15.4 Title of Parts and Sections. Any titles of the Sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any of its provisions.

Section 15.5 Applicable Law; Interpretation. This Agreement shall be interpreted under the laws of the State of California. This Agreement shall be construed in accordance with its fair meaning, and not strictly for or against either Party. This Agreement has been reviewed and revised by counsel for each Party, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

Section 15.6 Severability. If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force.

Section 15.7 Legal Actions. Any legal action under this Agreement shall be brought in the Alameda County Superior Court. If 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 of this Agreement, then the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Agreement) including any appeals. In the case of the attorneys' fees payable to the City when the City has been represented by legal counsel employed within the City Attorney's Office, the attorneys' fees shall be measured by the reasonable attorneys' fees that would have been paid by the City had it instead been represented by outside counsel in the matter.

Section 15.8 Binding Upon Successors; Covenants to Run With Land. 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, and the terms of this Agreement shall constitute covenants running with the land; provided, however, that there shall be no Transfer by the Developer except as permitted in Article 9. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

Section 15.9 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. The City has not provided any financial assistance in connection with this Agreement or the Project, this Agreement constitutes an arms-length transaction.

Section 15.10 Provisions Not Merged With Quitclaim Deed. None of the provisions of this Agreement shall be merged by the Quitclaim Deed or any other instrument transferring title to any portion of the Property, and neither the Quitclaim Deed nor any other instrument transferring title to any portion of the Property shall affect this Agreement.

Section 15.11 Entire Understanding of the Parties. This Agreement and any subsequent agreements contemplated by this Agreement to be entered into by the Parties constitute the entire understanding and agreement of the Parties with respect to the conveyance of the Property and the development of the Project.

Section 15.12 Approvals.

(a) City Actions. Whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, without further approval by the City Council, and any such action shall be in writing, provided, however, any such actions that would extend a Major Milestone Date (other than as allowed in Section 1.3 or 1.4) must be approved by the City Council.

(b) Standard of Approval. Whenever this Agreement grants the City or the Developer the right to take action, exercise discretion or make allowances or other determinations, the City or the Developer shall act reasonably and in good faith, except where a sole discretion standard is specifically provided.

Section 15.13 Authority of Developer. MidPen and the Collaborating Partners executing this Agreement on behalf of the Developer do hereby covenant and warrant, each as to itself only, that:

(a) Each is a duly authorized and existing California nonprofit public benefit corporation;

(b) Each is and shall remain in good standing and qualified to do business in the State of California;

(c) Each has full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement;

(d) the execution and delivery of this Agreement were duly authorized by proper action of each Collaborating Partner and MidPen, and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions on the Developer's part contemplated by this Agreement, except as have been obtained and are in full force and effect;

(e) the persons executing this Agreement on behalf of each Collaborating Partner and MidPen have full authority to do so; and

(f) this Agreement constitutes the valid, binding and enforceable obligation of each Collaborating Partner and MidPen.

Section 15.14 Amendments. This Agreement may be amended only by means of a writing signed by the Parties, and pursuant to a resolution approved by the City Council, except that amendments expanding the Property to which this Agreement applies shall be approved by ordinance adopted by the City Council.

Section 15.15 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 15.16 Operating Memoranda. 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 agree to cooperate with each other with regard to changes that may be needed in this Agreement as a result of the proposed development of the adjacent properties by the Market Rate Developer and the development of the Backbone Infrastructure. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

(a) Operating Memoranda that implement the provisions of this Agreement or that provide clarification to existing terms of this Agreement or revise Progress Milestone Dates may be executed on the City's behalf by its City Manager, or the City Manager's designee, without action or approval of the City Council, provided such Operating Memoranda do not change material terms of this Agreement or alter any Major Milestone Dates: Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 15.14, and must be approved by resolution of the City Council.

## **ARTICLE 16.** **DEFINITIONS AND EXHIBITS**

Section 16.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply:

(a) "**Affordable Housing Units**" means the Very Low-Income Units and Low-Income Units developed in accordance with this Agreement subject to the City Regulatory Agreement.

(b) "**Agreement**" means this Disposition and Development Agreement.

(c) "**Approved Construction Documents**" means the construction plans and specifications submitted by a Developer Affiliate and approved by the City in connection with the City's grant of the necessary grading, demolition, building, and related permits for the Project, together with any modifications thereto processed and approved, as appropriate, in accordance with applicable City ordinances, rules and regulations.

(d) "**Backbone Infrastructure**" has the meaning given in Recital V.

(e) "**Business Day**" means a day on which the offices of the City are open to the public for business.

(f) "**Casualty**" means any damage or destruction to the Project in excess of One Hundred Thousand Dollars (\$100,000), which amount shall be adjusted in accordance with increases in the "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" (hereinafter, "CPI-U"), as published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84 = 100)" (hereinafter, "CPI-W"), published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor, shall be used for making the computation. In the event the Bureau of Labor Statistics shall no longer maintain such statistics on the purchasing power of the U.S. consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority shall be used for making the computation.

(g) "**CEQA**" means the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and all relevant state and local guidelines in connection therewith.

(h) "**City**" means the City of Alameda, California, a municipal corporation. Those acting on behalf of the City may include the City Council, the City Planning Board, the City Manager and the City's boards, commissions, departments, employees and consultants.

(i) "**City Council**" means the Alameda City Council.

(j) "**City Event of Default**" has the meaning given in Section 14.3.

(k) "**City Manager**" means the Alameda City Manager or the City Manager's designee.

(l) "**City Released Parties**" has the meaning given in Section 4.6.

(m) "**Closing**" means the close of escrow through which the City will convey its fee estate or any portion thereof in each Phase of the Property to the Developer.

(n) "**Commencement of Construction or Commenced**" shall mean the performance of any work on any Phase of Vertical Improvements on the Property including clearing, grading, or other preliminary site work.

(o) "**Completion Assurances**" means any payment and performance bonds, labor and materials bonds, or completion guarantees from a Developer Affiliate or other persons or entities, irrevocable letters of credit, or other legal instruments providing assurances and remedies for the completion of any Sub-Phase of Vertical Improvements by the Developer Affiliate.

(p) "**Contractors**" means, collectively, the General Contractor and any other contractors or subcontractors retained directly or indirectly by a Developer Affiliate, the General Contractor, or any tenant in connection with the construction of any Sub-Phase of the Vertical Improvements, including the initial tenant improvements within the Project.

(q) "**CPI Increase**" means increases in the "Consumer Price Index - Seasonally Adjusted U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" (hereinafter, "**CPI-U**"), as published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84 = 100)" (hereinafter, "**CPI-W**"), published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor, shall be used for making the computation.

(r) "**Day**" means calendar day unless otherwise specified.

(s) "**DDA Memorandum**" means the memorandum of this Agreement, substantially in the form of the attached Exhibit F, to be recorded as provided in Section 1.1.

(t) "**Density Bonus Regulations**" means City of Alameda Ordinance 3012, set forth in Section 30-17 (Density Bonus Regulations) of Chapter XXX (Development Regulations) of the Municipal Code.

(u) "**Developer**" means collectively, MidPen Housing Corporation, a California nonprofit public benefit corporation, Alameda Point Collaborative, a California nonprofit public benefit corporation, Building Futures With Women and Children, a California nonprofit public benefit corporation, and Operation Dignity, a California nonprofit public benefit corporation or any successor permitted pursuant to the terms of this Agreement.

(v) "**Developer Affiliate**" means for each Phase, a limited partnership in which the managing general partner is a limited liability company in which (1) MidPen Housing Corporation or an affiliate in which MidPen Housing Corporation has a Controlling Interest is a member/manager and (2) one or more of the other Collaborating Partners or an affiliate in which the Collaborating Partner has a Controlling Interest is also a member/manager.

(w) "**Developer Event of Default**" has the meaning given in Section 14.4.

(x) "**Development Agreement**" means that certain development agreement between the City and the Developer pursuant to Government Code Section 65864.

(y) "**Development Costs**" has the meaning set forth in Section 2.3.

(z) "**Development Plan**" means the plan setting forth the parameters of the Project approved by the Planning Board on September 25, 2017, consistent with the Alameda Municipal Code Section 30-4.13 (j), the Planning Documents, and the Main Street Neighborhood Plan attached as Exhibit H hereto.

(aa) "**DIR**" means the California Department of Industrial Relations.

(bb) "**EDC Agreement**" means the Memorandum of Agreement For the Conveyance of Portions of the Naval Air Station Alameda from the United States of America to the Alameda Reuse and Redevelopment Authority, dated as of June 6, 2000, as amended.

(cc) "**Effective Date**" has the meaning set forth in Section 1.1.

(dd) "**EIR**" has the meaning set forth in Recital I.

(ee) "**ENA**" means the Exclusive Negotiation Agreement entered into by the City and the Developer as of December 15, 2015, as amended December 7, 2016.

(ff) "**Encumbrance Release**" means releases for any encumbrances on the Collaborating Partner's Existing Structures or the leaseholds created by the Existing Leases.

(gg) "**Escrow Holder**" means the Pleasanton, California office of First American Title Insurance Company, or such other title company or qualified escrow holder upon which the Parties may subsequently agree, with which an escrow shall be established by the Parties to accomplish the Closing as provided in Article 4 of this Agreement.

(hh) "**Estoppel Certificate of Completion**" means a certificate defined in Section 8.4.

(ii) "**Existing Lease**" means those certain leases between a Collaborating Partner, the City and the County for portions.

(jj) "**Financing Plan**" shall mean the Project Financing Plan, as updated by the Phase Updates as such terms are defined in Section 3.1.

(kk) "**General Contractor**" means a licensed and experienced general contractor approved by the City pursuant to Section 5.4 and with which the Developer enters into the Construction Contracts for construction of the Project.

(ll) "**Hazardous Materials**" means any flammable explosives, radioactive materials, hazardous wastes, petroleum and petroleum products and additives thereof, toxic substance or related materials, including without limitation, any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal, state or local laws, ordinances or regulations.

(mm) "**Hazardous Material Delay**" means delay caused by (1) the requirement by an environmental regulatory agency to perform investigation or remedial action beyond the segregation, characterization, and proper disposal (including reuse) required by any applicable Site Management Plan for any Hazardous Materials (A) not previously identified at the Property (based on information included in the Hazardous Materials Documents), (B) previously identified at the Property, but that are encountered in a previously unidentified location or in concentrations in excess of those previously identified (each based on information included in the Hazardous Materials Documents), except to the extent the Hazardous Materials are associated with an open Petroleum Program site (which are addressed in clause (2) below), or (C) encountered in the construction of any portion of the Infrastructure Package located outside of the Property boundaries, except to the extent the Hazardous Materials are associated with OU-2C's Industrial Waste Line or Storm Drain Lines A, B, or C; (2) the requirement by an environmental regulatory agency to perform investigation or remedial action beyond the preparation of work plans for additional sampling or investigation, the implementation of such approved work plans and the preparation of closure reports necessary to address or obtain closure for non-CERLCA Hazardous Materials located at the Property to the extent such investigation or remedial action is necessary to permit the land uses identified in the Development Plan; or (3) perform investigation or remedial action for Hazardous Materials that are the result of a Regulatory Reopener.

(nn) "**Hazardous Materials Laws**" means any applicable federal, state or local laws, ordinances, or regulations related to any Hazardous Materials.

(oo) "**Incidental Migration**" means the non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of Hazardous Materials.

(pp) "**Inclusionary Housing Ordinance**" means City of Alameda Ordinance 2926, set forth in Section 30-16 (Inclusionary Housing Requirements for Residential Projects) of Chapter XXX (Development Regulations) of the Municipal Code.

(qq) "**Indemnification Obligations**" has the meaning given in Section 12.3.

(rr) "**Indemnified Parties**" means, collectively, the City, its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers and their successors and assigns.

(ss) "**Land Payment**" has the meaning given in Section 2.1.

(tt) "**Major Milestone Dates**" means the Outside Phase Closing Dates and the Vertical Improvement Completion Dates set forth in the Milestone Schedule.

(uu) "**Market Rate Developer**" means the market rate developer selected to develop the property adjacent to the RESHAP development area.

(vv) "**Milestone Schedule**" means the schedule for performance of various tasks and obligations under this Agreement that is attached as Exhibit G, and as may be modified from time to time pursuant to Section 1.5.

(ww) "**Mitigation Measures**" means the mitigation measures set forth in the Mitigation Monitoring and Reporting Program that is attached as Exhibit E.

(xx) "**Mitigation Monitoring and Reporting Program**" or "**MMR Program**" has the meaning set forth in Recital CC and is attached as Exhibit E.

(yy) "**Operating Memorandum**" has the meaning given in Section 15.16.

(zz) "**Outside Phase Closing Date**" has the meaning given in Section 4.2.

(aaa) "**Permitted Exceptions**" has the meaning given in Section 4.5(a).

(bbb) "**Phasing Plan**" means the Phasing Plan attached as Exhibit C.

(ccc) "**Pollution Liability Insurance Policy**" has the meaning given in Section 13.7.

(ddd) "**Preliminary Title Report**" means the preliminary title report for the Property prepared by the Escrow Holder.

(eee) "**Project**" means the improvements to be constructed and developed by the Developer in accordance with this Agreement. The proposed Project is generally described in Recitals T, and will be more specifically set forth and depicted in the Development Plan and the Approved Construction Documents.

(fff) "**Property**" has the meaning given in Recital N, and is more particularly described in the attached Exhibit A, and shown on the map of the Property attached hereto as Exhibit B.

(ggg) "**Quitclaim Deed**" means the quitclaim deed by which the City will convey its fee estate in the Property to the Developer at the Closings. A form of the Quitclaim Deed is attached to this Agreement as Exhibit I.

(hhh) "**Renewed Hope Settlement Agreement**" means that certain Settlement Agreement dated as of March 20, 2001 related to the *Renewed Hope Housing Advocates and Arc Ecology v. City of Alameda, et al.*

(iii) "**Residential Units**" has the meaning given in Recital T.2.

(jjj) "**Security Financing Interest**" has the meaning given in Section 10.1.

(kkk) "**Supplemental Approvals**" means collectively the following City approvals related to and necessary for development of the Vertical Improvements on the applicable Phase of the Property consistent with this Agreement:

(1) design review approval for the improvements included in the applicable Phase;

(2) a building permit;

(3) will serve letters or other contracts from the utility companies providing utility services to the Property demonstrating that utility service is available for the applicable Phase; and

(lll) "**Term**" has the meaning given in Section 1.2.

(mmm) "**Title Policies**" has the meaning given in Section 4.7.

(nnn) "**Transfer**" has the meaning given in Section 9.1.

(ooo) "**TDM Compliance Strategy**" has the meaning given in Section 8.14.

(ppp) "**Vertical Improvements**" shall mean for a particular Phase, the buildings and other improvements specified for such Phase in the Development Plan.

(qqq) "**Vertical Improvement Construction Contracts**" means the Construction Contract between the Developer and the General Contractor for construction of the Sub-Phase of the Vertical Improvements, as submitted by the Developer and approved by the City pursuant to Section 5.4

Section 16.2 Exhibits. The following exhibits are attached to (or upon preparation will be attached to) and incorporated into this Agreement:

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Phasing Plan
Exhibit D-1	Backbone Infrastructure
Exhibit D-2	Backbone Infrastructure Phasing Map
Exhibit E	Mitigation Monitoring and Reporting Program and Environmental Checklist
Exhibit F	Form of DDA Memorandum
Exhibit G	Milestone Schedule
Exhibit H	Development Plan
Exhibit I	Form of Quitclaim Deed
Exhibit J	TDM Compliance Strategy
Exhibit K	City Regulatory Agreement
Exhibit L	General Assignment
Exhibit M	Bill of Sale
Exhibit N	City Disclosure Documents
Exhibit O-1	Notice of City Release of Environmental Claims
Exhibit O-2	Notice of Developer Release of Environmental Claims
Exhibit P	List of Navy Quitclaim Deeds and CRUPs
Exhibit Q	Release and Termination of Lease
Exhibit R	Site Management Plan

**[The Remainder of this Page is Intentionally Left Blank]**



In WITNESS WHEREOF, the Parties have signed this Disposition and Development Agreement on the dates indicated below.

**CITY OF ALAMEDA**

By: \_\_\_\_\_  
Elizabeth Warmerdam  
Acting City Manager

Date: \_\_\_\_\_

**Attest:            Recommended for Approval:**

\_\_\_\_\_  
Lara Weisiger, City Clerk

\_\_\_\_\_  
Jennifer Ott, Director, Base Reuse and  
Transportation Planning

**Approved as to Form:**

\_\_\_\_\_  
Andrico Q. Penick  
Chief Real Estate Counsel

Authorized by City Council Ordinance No. \_\_\_\_\_

*Signatures continue on next page*

**MidPen Housing Corporation**, a California nonprofit public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Alameda Point Collaborative**, a California nonprofit public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Building Futures with Women and Children**, a California nonprofit public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Operation Dignity**, a California nonprofit public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibits:**

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Phasing Plan
Exhibit D-1	Backbone Infrastructure
Exhibit D-2	Backbone Infrastructure Phasing Map
Exhibit E	Mitigation Monitoring and Reporting Program and Environmental Checklist
Exhibit F	Form of DDA Memorandum
Exhibit G	Milestone Schedule
Exhibit H	Development Plan
Exhibit I	Form of Quitclaim Deed
Exhibit J	TDM Compliance Strategy
Exhibit K	City Regulatory Agreement
Exhibit L	General Assignment
Exhibit M	Bill of Sale
Exhibit N	City Disclosure Documents
Exhibit O-1	Notice of City Release of Environmental Claims
Exhibit O-2	Notice of Developer Release of Environmental Claims
Exhibit P	List of Navy Quitclaim Deeds and CRUPS
Exhibit Q	Release and Termination of Lease
Exhibit R	Site Management Plan