

RESOLUTION NO. 13-23

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND,
CALIFORNIA REVIEWING THE FIRST AMENDMENT TO THE LAND
DISPOSITION AGREEMENT DATED DECEMBER 29, 2022 (ALDA) REGARDING
THE REAL PROPERTY ON DORMAN DRIVE (APN 560-420-006, 560-420-007 AND
560-420-010) AND ELECTING TO EXERCISE THE CITY'S RIGHT OF REVERTER
UNDER SECTION 6.1.9.2 OF THE ALDA**

A. WHEREAS, on August 6, 2014 the City of Richmond (“City”) and Terminal One Development LLC, a Delaware limited liability company (“Developer”) executed that Terminal One Land Disposition Agreement (“Original LDA”) for the transfer to and development by, Developer of that vacant real property described as the approximately 13.88 acres of dry land and approximately .71 acres of submerged land located at 1500 Dorman drive (APN 560-420-006, 560-420-007 and APN 560-420-010) (“Property”).

B. WHEREAS, in 2022 Developer proposed revisions to the Terminal One project that was originally approved by City Council in July 2016 (“Original Project”). The Original Project included 323 condominium units (subsequently reduced by Developer and City to 316 units) consisting of 302 multi-family flats and 21 single-family residences, associated common areas, and site amenities. In addition, the Original Project included a public waterfront park which incorporated reuse of the existing wharf as a public park facility, a shoreline extension of the San Francisco Bay Trail, an extension of Dorman Drive to provide vehicular access to the waterfront park and shoreline, a central pedestrian promenade, and an entry plaza with a small visitor-serving retail node.

C. WHEREAS, the Original Project became financially infeasible due to a combination of economic factors including:

1. Approximately \$21 Million in extraordinary costs to mitigate hazardous conditions and otherwise prepare the Site for redevelopment and to construct the public park and public access improvements, including the costs associated with:
 - a) seismically stabilizing the site,
 - b) completing the clean-up of soil and groundwater contamination,
 - c) structurally retrofitting the wharf,
 - d) addressing flood risk associated with sea level rise,
 - e) engineering the unengineered artificial fill covering the entire site,
 - f) demolishing the lead paint contaminated warehouse, and
 - g) constructing the public waterfront park and public access improvements; and
2. The challenges posed by:
 - a) multi-family condominium construction costs that in recent years have been increasing at a much faster rate than the values of multi-family condominiums,
 - b) a real estate market where new home prices in Richmond are significantly below Bay Area averages while new home construction costs are at the same high level throughout the Bay Area, and
 - c) a COVID-19 pandemic that has adversely impacted demand for multi-family condominiums while, at the same time, driving further increases in construction costs.

D. WHEREAS, in 2022, Developer submitted a proposed revised Project consists of 154 units of single-family housing, 30 units of junior accessory dwelling units, which project would comply with the City’s inclusionary housing ordinance (“Revised Project”) and where the City would retain the portion of the Original Property to be developed as a park (“Revised Property”).

E. WHEREAS, the City’s economic consultant, Land Econ Group (“LEG”) reviewed the economic feasibility of the Original Project and the Revised Project and concluded that the Original Project was not economically feasible, and the Revised Project was feasible.

F. **WHEREAS**, at the November 22, 2022 City Council meeting, the City Council declared the Property as excess surplus land under the Surplus Land Act (“SLA”) which would be exempt under the SLA as a pre-existing agreement provided that the closing occurred on or before December 31, 2022. This exemption was confirmed by the California Department of Housing and Community Development by a letter dated December 15, 2022.

G. **WHEREAS**, at the November 22, 2022 City Council meeting, the City Council also authorized the City Manager and City Attorney to negotiate an amendment to the LDA consistent with certain material terms as specified in Resolution 168-22 (“**Approved Terms**”).

H. **WHEREAS**, at the November 22 Council meeting, over 20 residents spoke against the Revised Project, raising issues such as lack of disclosure of documents such as developer proforma and resolution of approval, density and layout of units, design issues, truck traffic, CEQA issues, access and safety, site remediation and other issues. On December 6, project entitlement recommendations were referred to the City Council from the Planning Commission recommending denial. Many objections were the same as on November 22. The City Council on December 6 referred the project entitlements back to the Planning Commission and Design Review Board. However, in light of the one-time chance to proceed with the Revised Project, the City Council, by a 6-1 vote (with the Mayor in the negative) adopted Resolution 168-22 directing the City Attorney and City Manager to proceed and finalize the ALDA pursuant to the terms above.

I. **WHEREAS**, in accordance with the Approved Terms, and with extensive negotiations with citizens to incorporate Exhibit C-2 in the ALDA, the City and Developer entered into that certain First Amendment to Land Disposition Agreement dated and executed on December 29, 2022 (“ALDA”) and the Revised Property was transferred to the Developer in accordance with the ALDA on December 30, 2022 and meeting the HCD deadline of December 31, 2022.

J. **WHEREAS**, the following is a summary of the ALDA deal terms:

- (a) **Negotiations.** The City Attorney’s office prepared the initial draft of the ALDA (including the attachments thereto) and submitted it to the Developer and Developer’s legal counsel on December 1, 2022. The parties extensively and continuously negotiated the ALDA until December 29th when it was executed and submitted to escrow to consummate the Closing. The ALDA is attached as Attachment 6.
- (b) **Citizen Negotiations.** Concurrently, the City Attorney began a dialogue with a rotating group of residents culminating in Exhibit C-1 to the ALDA.
- (c) **Closing.** The transaction was closed, and title transferred to Developer on December 30, 2022 (“**Closing**”). The ALDA complied with the Approved Terms with certain modifications and additional provisions.
- (d) **Grant Deed.** The grant deed conveyed the Property to Developer subject to the terms of the ALDA.
- (e) **Remaining Title Issues and Right to Rescind.** While most serious title issues were resolved, although the Developer did continue to express issues with certain remaining title exceptions including, but not limited to, two (2) PG&E easements which were not removed prior to the Closing (“**Remaining Title Issues**”). Under LDA Section D(b)(ii) (amending LDA Section 3.3.1) it is provided that if the Remaining Title Issues are not resolved within 60 days after Closing, Developer has the option exercisable for up to 75 days after Closing, to deed the Property back to City subject to standard real estate requirements such as title insurance.
- (f) **Purchase Price.** The Purchase Price (the Original Purchase Price (\$10M) and the Additional Purchase Price (contingent on sales up to \$5M) was paid as follows:
 - (i) *Original Deposit:* \$500,000 was previously paid to City in 2014 and credited to the Original Purchase Price at Closing.
 - (ii) *Additional Deposit:* An additional \$500,000 was paid to City through escrow at Closing (less \$3,750 escrow fees).

- (iii) *First Note Secured by Trust Deed:* Developer executed a purchase money note in the amount of \$4,250,000* which bears interest at 4% per annum and provides for principal payments (a) \$2,250,000 payable upon issuance of Entitlements and expiration of the all appeal periods; and (b) \$2,000,000 payable on first to occur of (i) issuance of first residential building permit; and (ii) December 15, 2028 (which is the outside date no matter what happens with building permits). The note is secured by a deed of trust against the Property in first lien position insured by a loan title insurance policy. There are no provisions for subordination.
* \$250,000 represents amount of city transfer taxes which amount was disputed by Developer as to the calculation methodology. See discussion below regarding City Transfer Taxes.
- (iv) *Second Note Secured by Trust Deed:* Developer executed a purchase money note in the amount of \$5,000,000 which bears interest at 4% per annum and provides for entire principal payable on first to occur of (i) issuance of the 50th residential building permit; and (ii) December 15, 2028 (which is the outside date no matter what happens with building permits). The note is secured by a deed of trust against the Property in second lien position which is insured by a loan title insurance policy. The trust deed contains (a) provision for the subordination of this trust deed to a construction loan under certain conditions; and (ii) partial release provisions to release the trust deed upon sale of homes but requires a partial principal payment of \$100,000 for each home.
- (v) *Shared Appreciation Note Secured by Trust Deed:* Developer executed a purchase money note in the maximum amount of \$5,000,000. The actual principal amount is to be the lesser of \$5M or the amount of 15% of the difference between the actual Residential Unit sales prices and the sales prices of the Residential Units as projected by Developer prior to the commencement of construction as reported to City and approved by ECON as reasonable. Developer is to provide City with a monthly accounting report upon commencement of sales of the Residential Units and City has the right to audit. The note is secured by a deed of trust against the Property in third lien position which is insured by a loan title insurance policy. The trust deed contains (a) provision for the subordination of this note to a construction loan under certain conditions; and (ii) partial release provisions to release the trust deed which provides that 15% of the actual sales price is to be deposited into escrow account until the final accounting.
- (vi) *Miscellaneous:* All the Notes and Trust Deeds are cross-defaulted. In addition, any default under the LDA as amended and the Grant Deed are defaults under the Notes and Trust Deeds.
- (g) **City Transfer Taxes.** Developer requested that the City transfer taxes be deferred and included in the First Note. Escrow calculated the transfer taxes on the \$10M calculated at the single category of sales prices up to \$10M which would be \$25 per \$1,000 with a total \$250,000. Developer argued that the tax should be calculated at a graduated scale under the ordinance with a total amount due of \$207,000. The First Note includes the additional amount of \$250,000 which is to be adjusted by endorsement on the Note upon final determination of the amount due. **Scope of Development & New Site Plan.** A revised scope of development is attached to the ALDA as Exhibit C. The revised Site Plan is attached to the ALDA as Exhibit B.
- (h) **Developer - Entitlements & Construction Obligations.** Developer is obligated to expeditiously apply for and shall exercise commercially diligent efforts to obtain all entitlements in accordance with the Schedule of Performance (attached as Exhibit C-1). Developer has 24 months to

obtain the entitlements and the right to extend same for 12 additional months (“**Outside Entitlement Period**”). Upon commencement of construction, Developer shall diligently prosecute same and not cease construction for any period of 180 days except for force majeure events.

- (i) **City’s Discretionary Right of Reverter (75 days).** City has the sole discretion to exercise a right of reverter if the City Council public reviews the ALDA within 75 days of Closing which thereafter disapproves same and thereafter elects to exercise this right of reverter within 75 days of the Closing (Section 6.1.9.2). City has now decided to exercise its rights under this Section.
- (j) **Developer’s Right to Deed Property Back to City.** If Developer is not able to obtain all Entitlements by the Outside Entitlement Date despite its good faith diligent efforts, then for a period of 60 days after the Outside Entitlement Date, Developer may elect to deed the Property back to City pursuant to standard real estate procedures including title insurance.
- (k) **City’s Conditional Right of Reverter (To Reacquire Property).** City shall have the right to require the Site to be conveyed back to the City and City to repay the Purchase Price to the extent actually paid by Developer upon the occurrence of a Triggering Event which are defined as:
 - (i) Developer fails to obtain Entitlements by Entitlement Outside Date.
 - (ii) Developer fails to commence construction pursuant to Schedule of Performance.
 - (iii) Developer ceases construction for more than 180 days.
 - (iv) The First and Second Note become due and payable.

If City reacquires the Property, it shall be sold and proceeds shall be paid first to City to reimburse its costs, then Developer to reimburse its costs incurred with respect to the Property and any remainder amount retained by City.

- (l) **Attorney Fees Reimbursement.** Developer agreed to reimburse the City Attorney fees up to \$85,000 to be paid by January 31, 2023, and such amount was paid before the February 7 hearing.

K. WHEREAS, the original intent was for the City Manager to execute the ALDA as provided in the November 22 Resolution, but due to the holidays, she was unavailable and the Mayor also emailed he was on vacation, including a photo of a snow-covered house in his automated email response and on social media. On December 29, it was learned that all the required documents (ALDA, grant deed, etc.) had to be delivered to the title company in the afternoon due to their early holiday closure and so accordingly execution was arranged for the Vice Mayor and City Clerk. The documents were executed at approximate 1:30 p.m. on December 29th. When Council was informed that evening, the Mayor responded saying he should have signed the ALDA. The City Attorney contacted the Mayor and gave him two opportunities to re-sign the documents witnessed by the City Clerk for Friday afternoon, December 30th and Saturday morning, December 31st. The Mayor declined the first and did not appear for second appointment. He has now sued the City in the case of *Butt v. City of Richmond, et al* to invalidate the transaction due the Vice Mayor (now Mayor) executing the ALDA (“**Butt Litigation**”).

L. WHEREAS, currently there are two threatened claims of Brown Act violations by Brian Lewis, et al. and Daniel Butt on behalf of Former Mayor Tom Butt, alleging that that the City’s actions approving the ALDA terms on November 22 violated the Brown Act (“**Brown Act Violations**”). The City contends there were no Brown Act violations but believes that the Brown Act permits corrective action to cure violations, and that the hearing conducted hereunder qualifies as corrective action.

M. WHEREAS, in anticipation of the Brown Act Violations and any other legal challenges, Section 6.1.9.2 of the ALDA provides the City with the sole discretion to exercise a right of reverter if the City Council, after reviewing the ALDA at a public hearing within 75 days of the closing (December 30, 2022), disapproves the ALDA (“**City’s Right of Reverter**”). If the

City Council disapproves the ALDA and the transfer of title, the City Council may, in its sole discretion, exercise the City's Right of Reverter within 75 days of the Closing.

N. **WHEREAS**, at the City Council meeting on February 7 a public hearing was held pursuant to the authority of ALDA Section 6.1.9.2 and with opposition largely the same as stated in Recital H; notwithstanding the aforementioned recitals, the Council determined that substantial opposition to the Project still exists and wishes to exercise its Right of Reverter, rescinding its approval and authorizing the return of the Closing Deposit to Developer concurrent with the return of title.

WHEREAS, NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. ALDA. The City Council has reviewed the ALDA and while it approves all the terms of the ALDA as consistent with the terms of Resolution 168-22, it elects to exercise its rights under Section 6.1.9.2 of the ALDA.

Section 3. Right of Reversion. In accordance with Section 2, the City Council hereby exercises its Right of Reverter pursuant to the ALDA to reacquire the property. The officers of the City are directed to return the Closing Deposit to Developer concurrent with the reconveyance of title to City.

Section 4. Action. The officers of the City are additionally authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions which they, or any of them, may deem necessary or advisable in order to effect the terms of this Resolution.

Section 5. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council declares that the City Council would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 6. Effective Date. This Resolution shall take effect immediately upon its passage.

I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond at a regular meeting thereof held February 7, 2023, by the following vote:

AYES: Councilmembers Bana, Jimenez, Robinson, Zepeda, and Vice Mayor McLaughlin.
NOES: Mayor Martinez.
ABSTENTIONS: None.
ABSENT: Councilmember Willis.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

EDUARDO MARTINEZ
Mayor

Approved as to form:

DAVE ALESHIRE
City Attorney



State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 13-23**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on February 7, 2023.

Pamela Christian
Pamela Christian, Clerk of the City of Richmond

ATTACHMENT 2

EXHIBIT C-2

BRICKYARD COVE ROADWAY REHABILITATION AND TRANSFER PLAN AND NEIGHBORHOOD MITIGATION REQUIREMENTS

I. BRICKYARD COVE ROADWAY REHABILITATION AND TRANSFER PLAN

A. Background

Ferry Point was the original site of significant marine operations in the Richmond Area – ferry service began in 1900 and with a rail connection constructed through a tunnel, it became the western terminus of Santa Fe Railroads. The area became Richmond’s initial port terminal with a wharf and warehousing. Significant manufacturing was introduced with the operation of the Brickyard Kiln with the manufactured bricks barged from Ferry Point to San Francisco for the rebuilding of San Francisco after the 1906 earthquake. These operations continued until the 1960s when the manufacturing was succeeded by residential development.

Richmond’s greatest growth came during the second world war when the four marine terminals, including Terminal 1, were developed, and operated by Kaiser Steel. Port operations declined after the war and Terminal 1 closed in the late 1980s.

The Brickyard Cove neighborhood located east of the project site includes marinas and residential developments established in the 1970s, 1980s, and 1990s. These developments include Brickyard Landing, which comprises condominium complex buildings and private recreation facilities, and Seacliff Estates, a single family residential subdivision, Waterline a condominium complex as well as single-family homes along South Mallard Drive, Sandpiper Spit, and Sanderling Island (largely constructed of engineered fill and concrete pilings, and/or supported on platforms over water).

These projects took access through the single access point through the Ferry Point Tunnel to Ferry Point which was a dead-end road. The Subdivision Agreement approved in 1968 provided for the extension of Brickyard Cove Road (“BYC Road”) to serve the projects as a private roadway.

B. Pending New Development

In addition to the Terminal 1 184-unit project at Ferry Point, there are several other development projects which will access the roadway system: PG&E site (94 units) and Quarry (79 units). These projects may involve significant grading activities, and truck traffic during the period of construction. Besides needing to pay import fees and for roadway improvements these projects are likely to degrade the existing roadway as described below. If the street rehabilitation work were performed before the projects were constructed, the roadways would need subsequent repair. Accordingly, it would be reasonable to collect fees from the early developer(s) and require the last developer to perform the work.

C. Current Condition of Roadway and Needed Rehabilitation

The Subdivision Agreement for the area in November 15, 1968 contemplated that BYC Road would become public when it was connected to Canal Boulevard to allow traffic circulation; and though this happened in 1996, the City acceptance did not happen and in the intervening years, the road condition has deteriorated and does not meet current City standards. The City Engineer believes that the current

roadway serves a traffic index of approximately 3.5. The City's Streetlight database suggests an average annual daily traffic flow along BYC Road of about 1000 vehicles with 3% being large trucks. The projects of Terminal 1 and Tract 9604 (PG&E Site), could increase those figures by XX %. The design life of the roadway should be 20 years requiring a TI factor of 6.1, but with projected growth, a more reasonable factor would be a TI of 6.5. This would add about half an inch of asphalt or an additional 100 tons of asphalt in the deficient sections.

The suggestion of a deficient roadway structural section is confirmed by the presence of distress in the pavement. The geotechnical report (July 18, 2019) showed that pavement distress appeared within 6 years of the last maintenance treatment by the private owners. It does not appear that the roadway was built to a reasonable standard to ensure a design life of at least 20 years. The addition of two more development projects (and a third, the Quarry Project), will hasten the deterioration of the roadway, and the additional construction traffic involving an estimated [redacted] heavy trucks due to transporting construction and grading materials will impose impacts requiring mitigation. It is therefore recommended that a reconstruction of the roadway be undertaken as many of these trips will have to come the long way avoiding the Ferry Tunnel. However, this reconstruction condition may not prevail in the whole length of BYC Road.

There has been some suggestion that the roadway was put down over a limited military era base and that there will need to be additional effort required to manage the subgrade due to the preexisting conditions and the soil conditions. There is therefore a need for some additional investigation and testing including over the length of BYC Road to determine the overall work program. The investigation programs shall be paid for 1/3 each by Developer, City, and HOA. This will occur as development plans are refined.

In any event, the City Engineer based on current information recommends a program that includes reconstruction of BYC Road to meet City Standards so that it will have a 20 year design life; that this recommendation is caused in large part by the heavy truck construction traffic originating from the projects; and finally that the phasing of the work should be performed so that the reconstruction occurs in the last phase of construction, for both projects. An arrangement might be necessary where developers pay in lieu fees instead of performing the actual work if the phasing will not work out satisfactorily due to the developments' staging.

The City Engineer will work with both projects (Terminal 1, PG&E and the Quarry Project as to that section of the roadway) as well as residents to develop the construction phasing plan, recognizing concerns that there might be excessive roadway deterioration, and the need to maintain neighborhood access throughout the construction process. A resident Coordinating Committee shall be established for this purpose, as established elsewhere herein.

D. City Standards for Reconstruction Project and City Acceptance

It is expressly understood that these Projects will be responsible for the damage that they cause to the BYC Road surfaces due to their construction activities, and in this case due to the road deterioration, the reconstruction of BYC Road is required. This includes not only the full frontages along the projects, but also the extended areas which will be degraded by the construction activity. The City will not allow BYC Road to be rehabilitated until all developments are complete, although the degraded condition of the Roadway in the interim will need to be considered in the phasing plan. City acceptance of the private sections of BYC Road will require the following unless otherwise approved by the City Engineer:

1. All curb ramps shall be upgraded to current standards as illustrated in Caltrans Standard Plan A88A.
2. The City will define the location for repair to curbs and gutters.
3. All record monuments shall be located within the project area. These shall be protected in accordance with the [Business & Professions Code §8771](#); [Streets & Highways §732 & §732.5, §1492.5, §1810.5](#); and [Penal Code §605](#).
4. The traffic index for this roadway shall be 6.5. Therefore, the pavement section per the geotechnical report should be 4 inches of asphalt concrete over 6 inches of Class II aggregate base.
5. As described in the geotechnical report, the subgrade shall be scarified and recompacted to a depth of 12 inches upon removal of the pavement section. Should unstable subgrade be present, the applicant shall either cement treat to a depth of 12 inches or over excavate, place Class II, and install a geogrid.
6. The Project shall coordinate with public utilities such as PG&E, EBMUD, AT&T, and Comcast to determine if they have any capital improvements within the project area.
7. The Project shall review the storm drain and sanitary sewer videos within the project area to confirm if Veolia needs to upgrade pipelines. .
8. Traffic shall be allowed through the work zone at all times.
9. The cross section on sheet C-3 does not match the plans on sheet C-4. The lane width shall be 11 feet.
10. The Project shall install flexible delineators separating the bicycle and vehicle lanes.
11. The Project shall evaluate modifying the west leg of the crosswalk at Brickyard Way to determine if it can be aligned to be perpendicular. If determined feasible, the Project shall be responsible for making such changes to the crosswalk.
12. The Project shall adjust to grade all utilities within the paved area.
13. The roadway is posted at 25 mph but City will review traffic-calming measures.

E. Brickyard Roadway Plan: Financing and Transfer

Developer agrees to participate with City in the development of a Brickyard Roadway Plan (“BRP”) which will meet the criteria herein and will include cost estimates, financing, phasing participation by responsible developers, and acceptance of dedication by City. The BRP shall be developed to incorporate the following elements:

1. Roadway Condition. Analysis by City of roadway condition and costs to reconstruct roadway to meet City standards. A report (the “Report”) to be prepared by the City Engineer by May 2023 and will be shared with Coordinating Committee. The Report shall include a cost estimate for the option of adding a traffic circle on Brickyard Cove Road. City Engineer has reviewed the Plans submitted August 10, 2022 and finds (i) more review of roadway condition required; (ii) need assessment of entire length; and (iii) need to assess responsibilities. The preliminary cost estimate is \$600-700k.
2. Schedule. A schedule shall be developed for phasing of construction so that improvements are installed after completion of the projects requiring access to

Brickyard Cove Road so any new roadway improvements will not be damaged by later construction. The Report must also consider the survivability of the road surfaced due to the construction activity (roadway must be useable by residents). Map showing sections to be analyzed (Dornan, BYC, Yacht Club, West, East). Sections and current ownership will be shown in ALDA, Exhibit C. BYR Plan needs to cover all these areas.

3. Developer Obligations.

- (a) Developer obligations for adjacent projects shall include, at a minimum:
 - (i) pay 100% of cost for the section of Brickyard Cove Road immediately adjacent to Project;
 - (ii) pay required Traffic Impact Fees;
 - (iii) repair any improvements damaged by its construction activity to meet City standards; and
 - (iv) participate in an integrated program for the whole roadway on fair share principles.
- (b) Developer may perform the improvement as a part of its Project unless City determines that subsequent projects will deteriorate any improvements installed, in which case Developer will pay an in-lieu fee equivalent to its share. The improvements shall include paving, curb/gutter, sidewalks, lighting, and structures within the street (sewer, storm water, etc.), and landscaping and repair of any landscaping damaged in any way by construction traffic.

4. Funding. Based on the Report and included in the Report shall be a funding plan (“Funding Plan”).

- (a) The Funding Plan shall include these elements:
 - (i) estimated cost based on when construction will occur; and
 - (ii) provide sufficient funding sources.
- (b) All potential funding from developers of benefitted parcels;
- (c) BYC Community (BYCHOA 1& 2, Brickyard Landing, Seacliff, Boardwalk Marina) will fund \$250,000 for all costs and liabilities related to both private sections of Brickyard Cove Road based on an allocation of costs mutually agreed to by BYC Community and payable at the time the work is commenced;
- (d) This agreement in (c) above is expressly conditioned upon the approval of each of the entities identified therein; and
- (e) Remainder from City.

5. Parkway Maintenance. HOAs shall be responsible for maintenance of irrigation and landscaping in parkway areas adjacent to their property and the street, but not the park or the Bay Trail.

6. City Acceptance - BYC Road. City shall accept dedication of the right of way as a public street upon the first to occur: approval of all entitlements for the Project and

expiration of challenge periods (the “Acceptance Date”) or five (5) years from Project Approvals (Project Approvals are final Council action on discretionary approvals). Additionally, if the improvements are not made by Developer, they shall be made by City within five (5) years of Project Approvals. The City may do it sooner if funding is obtained earlier.

7. Additional Commitments. City shall make best efforts (i) to include a traffic circle on Brickyard Cove Road, (ii) connection between Dornan and Brickyard Cove Road will narrow but meet City standards, (iii) Subject to HOA-1 approval the guard shack and cobblestones may remain for traffic calming, but maintenance of guard shack will be HOA-1 responsibility and City will grant license for maintenance. Best efforts will not require excess financial obligations of City.
8. Miscellaneous.
 - (a) The issue of improving Brickyard Cove Road and having City accept as a public street has been unresolved for a considerable time and the foregoing BRP would resolve the issue, but it remains an agreement between City and Terminal 1.
 - (b) City will bring the matter back to City Council for affirmation and commitment to community.
 - (c) Upon acceptance by City, with respect to private portions of Brickyard Cove Road, City shall be responsible for all claims and liabilities arising from usage of the public right-of-way incurred after the date of acceptance.

II. NEIGHBORHOOD MITIGATION REQUIREMENTS

A. Economic Issues

The economic analysis by Econ Land Group (“LEG”), concluded that the prior high-density project was not feasible in contrast to the current Project. The analysis has been published on the City’s website for the Project and is available to the public. The City has further requested that LEG work with Developer to release a proforma which shall give the public a fair understanding of project economics – general projected price range estimates of residential units and costs of shall be included.

B. Traffic

1. Emergency Access Plan. An emergency ingress/egress plan by emergency vehicles and the public to apply during construction shall be required for the affected communities (Brickyard Landing, Brickyard Cove #1, Brickyard Cove #2, Sea Cliff, Waterline, Richmond Yacht Club, Terminal One (Latitude), as a condition of approval of the Project and included in the Mitigation Measures. As it is understood that various factors currently impact such ingress/egress, such as rail operations, the City shall be involved with the development of the plan and shall provide a long-range focus so that (i) it will operate for the benefit of all the BYC Communities, and (ii) shall apply as future projects develop..
2. Traffic Management. A traffic management plan addressing trucking of fill, construction equipment and materials, to and from the Project and other concurrently developing sites, to include:
 - (a) number of trips, per day and per hour;

- (b) construction traffic, truck routes, including trucking of materials;
- (c) dust control measures; and
- (d) measures for cleaning of streets, parking lots, boats, structures, and residences within 48 hours of notice.

Additionally, a complaint hotline to Developer shall be established and included with the Mitigation Measures which shall require Developer to make a written record of complaints and the response taken. The record shall be available for public inspection.

- 3. Signage. Signage shall be posted to prohibit overnight parking on Brickyard Cove Road.

C. Housing Development

- 1. House Siting. House siting should achieve the following: (i) other than perimeter units, 3rd floor should not occupy more than 80% of 2nd floor of 50% of the stack of 64 units in central area which shall run in a north-south direction; (ii) if approved by the Yacht Club, the roof deck option will be eliminated for the four 3-story buildings starting from the northeast corner of the perimeter adjacent to the Yacht Club; (iii) all other east, southeast and south frontage (perimeter houses) shall be 2 and 3 stories (as depicted in Attachment 1 attached as Exhibit B). It is intended that the foregoing restrictions remain in effect for the Alternative Plan C2 below recognizing that the Plan will be revised through the design process (see Schedule in Exhibit C-1).
- 2. Alternative Plan. Developer shall develop alternative plan (“Alternative Plan”) whereby the Wharf is eliminated, JADU units made regular single-family units, and site plan modified to provide better view corridors and up to 10% of the units are eliminated. With the conversion of the JADU units, reduction in 3rd Floor area, and the reduction of units by 10%, there will be an as yet unclear impact on project economics. Developer is open to these ideas but intends that the total saleable square footage will not be more than 10% less than for the prior considered project. This is still being assessed. This plan will provide significantly enhanced parking including guest parking. Developer and City will utilize best efforts to assure that the Alternative Plan is developed dependent on obtaining permits to eliminate the wharf within an entitlement time frame which does not unreasonably delay the Project. Developer, within 60 days, shall assess (i) likelihood of obtaining permits, (ii) time frame and delay, (iii) net cost of removing wharf vs. reconstruction, and (iv) impacts on Project. If Developer elects not to proceed with alternative Project, City may revert the Property.
- 3. Review. The Project has been remanded back to the DRB and PC for full review and public participation. It is intended that this process be completed within six (6) months. However, given the period involved in seeking approvals to remove the wharf, it is contemplated that the initial period to determine viability will be 90 days and then 18 months for processing. City will grant a one-year extension, if necessary.
- 4. Design Standards. The provisions of Section 4.7.1 of the LDA shall continue to apply to the design of the Project and shall be applied by the DRB. BCARD will provide up three architects/designers to meet with Developer regarding compliance with these Design Standards prior to anything being submitted to DRB.

D. Housing Occupancy

No short-term rentals shall be permitted in the Project. Additionally, the Project CC&Rs shall contain provisions limiting rentals to no more than 25% of the units at a time, similar to the Seacliff Project. This shall be included in the ALDA.

E. Remediation

Significant remediation needs to be performed on the Project site. Developer commits to: (i) complete environmental characterization of the site as required by the RWQCB (actual reports on RWQCB's geotracker site) and provide the report concurrently to the BCARD; and (ii) fund up to \$50,000 to pay for an independent environmental remediation consultant(s) retained by BCARD to provide comments to RWQCB on behalf of BCARD concerning the carrying out of the remediation work. Invoices shall be sent to Developer and paid within 30 days.

F. CEQA

.City will reevaluate for the Project if all significant and cumulative impacts for projects in the area have been identified, assessed, and mitigated in accordance with California law. This will be presented to the Planning Commission as a part of the CEQA review process and thereafter to the City Council. Nothing herein waives the rights of the citizens to challenge the environmental findings.

G. Miscellaneous

1. Retaining Wall. The design, location, and aesthetics of the retaining wall and fence along the project and the Yacht Club's common property line shall be agreed by the Yacht Club and the Developer working together in good faith. Provided Developer gets all agency permits, Developer will pay for or reimburse the cost of the retaining wall and fence which shall be built, at a minimum, to the standards in accordance with the Yacht Club's Conditional Use Permit for West Lot. If no agreement is reached regarding the aesthetics/design/location of the fence and/or retaining wall, the Developer shall honor all provisions of the BCARD settlement agreement regarding the fence and wall.
2. Special Tax. Except as expressly provided herein, Cove residents shall not be charged with any special tax, assessment or other cost allocation to pay for construction or maintenance of any park, wharf, Terminal 1 landscaping, or lighting, or any Terminal One Bay Trail section along all sides of Terminal One property including the north section on BCR west of Yacht Club to Dornan Drive.

ATTACHMENT 6

FIRST AMENDMENT TO LAND DISPOSITION AGREEMENT

This First Amendment to Land Disposition Agreement ("**First Amendment**") is entered into on December 29, 2022 ("**Effective Date**"), by and between the CITY OF RICHMOND, a municipal corporation and charter city ("**City**"), and TERMINAL ONE DEVELOPMENT LLC, a Delaware Limited Liability Company ("**Developer**").

RECITALS

- A. **Site.** City owns that certain real property consisting of 13.12 acres located at 1500 Dornan Drive in the City of Richmond constituting Contra Costa Assessor's Parcel Numbers 560-420-007 ("**Parcel 2**") and 560-420-010 ("**Parcel 1**") (jointly the "**Site**").
- B. **Historic Port Terminal.** Until the early 1990s, the Site was a port terminal, used by the Port of Richmond for shipping, transport and related industrial activities. Most buildings and structures have been demolished and removed from the Site, except for an approximately 94,000 square-foot former port operations warehouse building (Terminal One Warehouse) that is partially supported by the existing wharf ("**Municipal Wharf No. 1**" or "**Wharf**") located on Parcel 2 along the southern portion of the Site, and some building foundations, railroad tracks, and other concrete surfaces.
- C. **2014 LDA.** City and Developer entered into that certain Land Disposition Agreement dated August 6, 2014 ("**Original LDA**") for the sale and development of approximately 11.9 acres of the Site for construction of a medium density residential project (the "**Residential Property**"), with ownership of the remaining 1.9-acre portion of the site to be retained by the City for development of a public park (the "**Park Property**").
- D. **Original Project Infeasible.** Developer has proposed revisions to the Terminal One project that was originally approved by City Council in July 2016 ("**Original Project**"). The Original Project included 323 condominium units (subsequently reduced by Developer and City to 316 units) consisting of 302 multi-family flats and 21 single-family residences, associated common areas, and site amenities. Each residential unit within the Project is hereinafter referred to as a "**Residential Unit**." In addition, the Original Project included a public waterfront park which incorporated reuse of the existing Wharf as a public park facility, a shoreline extension of the San Francisco Bay Trail, an extension of Dornan Drive to provide vehicular access to the waterfront park and shoreline, a central pedestrian promenade, and an entry plaza with a small visitor-serving retail node.
- E. According to the Developer, the Original Project became financially infeasible due to a combination of economic factors including:
 - 1. Approximately \$21 Million in extraordinary costs to mitigate hazardous conditions and otherwise prepare the Site for redevelopment and to construct the public park and public access improvements, including the costs associated with:

- a) seismically stabilizing the site,
- b) completing the clean-up of soil and groundwater contamination,
- c) structurally retrofitting the wharf,
- d) addressing flood risk associated with sea level rise,
- e) engineering the unengineered artificial fill covering the entire site,
- f) demolishing the lead paint contaminated warehouse, and
- g) constructing the public waterfront park and public access improvements; and

2. The challenges posed by:

- a) multi-family condominium construction costs that in recent years have been increasing at a much faster rate than the values of multi-family condominiums,
- b) a real estate market where new home prices in Richmond are significantly below Bay Area averages while new home construction costs are at the same high level throughout the Bay Area, and
- c) a COVID-19 pandemic that has adversely impacted demand for multi-family condominiums while, at the same time, driving further increases in construction costs.

F. **Revised Project.** Due to the foregoing increased development costs and changes in market conditions, Developer has revised the residential component of the Original Project to replace the previously approved 316 condominium units with 154 detached single-family homes and duets (the “**Revised Project**” or “**Project**”). Option “A” for the Revised Project would retain the principal features of the Waterfront Park as described in Recital D above. Option “B” for the Revised Project would not include the Waterfront Park. The Developer is now seeking land use approvals (the “**Entitlements**”) for the Revised Project.

G. **Revised Residential Property Acquisition.** Developer has also revised its initial proposal, as set forth in the Original LDA, with respect to the Residential Property Developer seeks to acquire. Instead of proposing to acquire an approximately 11.9-acre portion of the Property for construction of a medium density, primarily multi-family condominium project, Developer proposes in this First Amendment to acquire an approximately 10-acre portion of the Property, as more particularly described in the “**Revised Residential Property Description**” attached as Revised Exhibit A. for development of a medium density, single-family residential project (the “**Revised Residential Property**”). Developer’s revised proposal will either include development of a public waterfront park similar in character to the park features of the Original Project on the portion of the Property to be retained by the City (the “**Revised Park Property**”) or will omit such feature, as determined by the City.

H. **Revised Scope of Development.** The type, size, density, quality and other characteristics of use as reflected in the Revised Project are further described in the “**Revised Scope of Development**” attached to this amendment as Revised Exhibit C, which represents Developer’s initial expectations with respect to the Revised Project the Developer proposes to build on the Property and the land use entitlements

for which Developer is seeking approvals. The Revised Scope of Development replaces and is substituted for the Scope of Development for the Original Project. A new Schedule of Performance is attached as Exhibit C-1.

- I. **Alternative Project without Wharf.** The Revised Scope of Development also provides for an evaluation of the feasibility of an alternative project design (the “**Alternative Project**”) that contemplates the removal rather than reuse of the Wharf and the redesign of the proposed project to reduce the density of the residential land plan and to otherwise improve both the form and the function of the project design. This analysis will also evaluate the feasibility of processing entitlements for both the Revised Project (with the Wharf repurposed as a park facility) and the Alternative Project (with the Wharf removed) concurrently, with the Alternative Project to be processed as the preferred option and the Revised Project to be the back-up option if the Alternative Project either is denied the requisite approvals or faces overwhelming obstacles in obtaining such approvals, including issues of infeasible costs and/or timing deadlines

- J. **Independent Analysis.** The City sought an independent financial analysis to review Developer’s determination that, while the economics of the original multi-family condominium project make it infeasible to finance or build, the revised single-family residential project is economically viable. The analysis was performed by Land Econ Group (“**LEG**”) LEG’s economic analysis of the feasibility of the Original Project concurred with the Developer’s feasibility assessment. LEG found that the high construction cost of parking podiums and midrise buildings with elevators push the cost of development well beyond the projected selling prices. LEG therefore deemed the project currently infeasible and likely infeasible for years to come. LEG’s economic analysis of the Revised Project found that Developer’s single-family residential proposal would be marginally feasible, in that it would be able to carry the agreed upon land cost and likely the ancillary costs involved in seismically stabilizing the site and Wharf and in completing the cleanup of residual soil and ground water contamination.

- K. **Revised Entitlements.** The Developer has prepared and submitted to City revised Entitlement Applications for the Revised Project, to include an EIR Addendum and Mitigated Monitoring and Reporting Program (MMRP), a major amendment to the Planned Area (PA) Plan, with associated major design review (DR), a vesting tentative map (VTM), and a conditional use permit (CUP) for park and residential uses within the Shoreline Overlay District,

- L. **Inclusionary Housing.** The Revised Project will comply with the City’s inclusionary housing ordinance.

- M. **State Surplus Land Act.** Recent amendments to the State Surplus Lands Act, Government Code section 54220, *et seq.* (“**SLA**”), significantly expand the State regulatory requirements applicable to governmental agencies such as the City with respect to the disposition of governmental property. These amendments also created various exemptions, including an exemption for preexisting land disposition agreements such as the Original LDA, pursuant to which in order to remain exempt, the transaction contemplated by the agreement **must be consummated** on or before

December 31, 2022.

- N. **Council Determination Exempt Surplus Land.** The City's representatives negotiated revisions to the LDA and at a hearing held November 22, 2022 the City Council considered the staff report and recommendations and approved Resolution 168-22 directing that notice be given to HCD pursuant to the SLA that the property qualified and has been declared exempt and that the City Manager and City Attorney finalize the Amended LDA (the "**ALDA**") and take other actions necessary to establish and close the escrow with Developer before the end of the year.
- O. **State Notification of Exemption.** By letter dated December 15, 2022, the California Department of Housing and Community Development notified the City that the Terminal One Property qualified for an exemption under the SLA provided the disposition of the Property was completed by the end of the 2022 calendar year.
- P. **Changes to LDA.** In order to close by December 31, 2022, Developer has agreed to waive certain conditions of the sale protecting Developer such as having Entitlements in place prior to Closing and City has agreed to provide purchase money carryback financing.
- Q. **Entitlements to Proceed Separately.** Concurrently with these actions the City has continued to process the Entitlements as described above and in Revised Exhibit C. There have been presentations before the Design Review Board, Planning Commission and City Council. These are ongoing and not required to conclude before the sale as provided in the LDA and City has the right to recover the Property should the Project not timely proceed in accordance with Developer's post-closing entitlement and development obligations.

NOW, THEREFORE, based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, the parties hereto agree as follows:

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

2. **Defined Terms.** Defined terms shall have the same meaning as set forth in the Original LDA as modified by this First Amendment ("**ALDA**" or "**First Amendment**"). In the event of a conflict, the definition in this First Amendment shall control. It is expressly understood that all terms of the LDA remain in full force and effect except as expressly provided herein.

3. **Effective Date.** This First Amendment shall be effective on the date the City executed this First Amendment as evidenced by the date on the signature page of this First Amendment ("**First Amendment Effective Date**").

4. **Modifications/Amendment.** As of the First Amendment Effective Date, the Original LDA is amended and modified as follows:

A. **Section 1 Definitions.** Section 1 is amended to add new definitions as follows:

First Loan Policy shall have the meaning set forth in Section 3.3.7(i).

First Note shall have the meaning set forth in Section 2.2.2(b).

First Trust Deed shall have the meaning set forth in Section 2.2.2(b).

Good Funds shall have the meaning set forth in Section 2.2.3.

Loan Title Policies shall have the meaning set forth in Section 3.3.7.

Notes shall have the meaning set forth in Section 2.2.2.

Project Labor Agreement shall have the meaning set forth in Section 6.4.

Property shall mean only Parcel 1 (APN 560-042-010) which is legally described on Revised Exhibit A.

Residential Unit shall have the meaning set forth in Recital D of this First Amendment.

Schedule of Performance shall mean the Schedule of Performance for which provision is made in Section 6.1.

Scope of Development shall mean the Revised Scope of Development attached hereto as Revised Exhibit C as defined Section 4.

Second Loan Policy shall have the meaning set forth in Section 3.3.7(ii).

Second Note shall have the meaning set forth in Section 2.2.2(c).

Second Trust Deed shall have the meaning set forth in Section 2.2.2(c).

Shared Appreciate Note shall have the meaning set forth in Section 2.2.2(d).

Third Loan Policy shall have the meaning set forth in Section 3.3.7(iii).

Third Trust Deed shall have the meaning set forth in Section 2.2.2(d).

Trust Deeds shall have the meaning set forth in Section 2.2.2.

Wharf Property shall mean Parcel 2 (APN 560-042-007) the ownership of which shall be retained by City.

- B. Section 2.2 Purchase Price.** Section 2.2 is deleted in its entirety and the following is substituted in its place and stead:

“2.2 Purchase Price. The purchase price for the Residential Property is both of

the following (“**Purchase Price**”):

- (i) Ten Million Dollars (\$10,000,000) (“**Base Purchase Price**”), plus
- (ii) A shared appreciation component (the “**Shared Appreciation Amount**”) equal to the lesser of Five Million Dollars (\$5,000,000) or an amount equal to Fifteen Percent (15%) of the difference between (a) the actual total sales prices of the Residential Units of the Project as it is finally entitled (“**Actual Total Sales Prices**”), and (b) the total sales prices of the Residential Units as projected by Developer at commencement of construction (“**Projected Total Sales Prices**”) and reported to the City by Developer’s affidavit specifying the Projected Total Sales Prices. The City shall have the right to audit the Projected Total Sales Prices and the Actual Total Sales Prices.

2.2.1 Nonrefundable Earnest Money Deposit. Pursuant to the ERNA, Developer has previously deposited with City the total sum of Five Hundred Thousand Dollars (\$500,000) (“**Deposit**”). The Deposit is non-refundable under any circumstances whatsoever. The Deposit shall be applied to the Purchase Price at Closing.

2.2.2. Funding Purchase Price at Closing. On or before 1:00 p.m. on the business day preceding the Closing Date or such earlier time as required by Escrow Holder in order to close Escrow on the Closing Date, Buyer shall deposit all of the following with Escrow Holder:

- (a) The sum of Five Hundred Thousand Dollars (\$500,000) in Good Funds (“**Closing Deposit**”).

- (b) The First Purchase Money Note Secured by Deed of Trust shall be in the form attached as Exhibit M-1 in the amount of the Purchase Price of Four Million Two Hundred Fifty Thousand Dollars (250,000) (“**First Note**”). The First Note shall be secured by a deed of trust in the form attached as Exhibit M-2 referencing the applicable amount of the First Note to be recorded at Closing in first lien position against the Property (“**First Trust Deed**”). **NOTE:** Only the sum of Four Million Dollars (\$4,000,000) shall be credited to the Purchase Price.

- (c) The Second Note Secured by Deed of Trust shall be in the form attached as Exhibit N-1 in the amount of the Purchase Price of Five Million Dollars (\$5,000,000) (“**Second Note**”). The Second Note shall be secured by a deed of trust in the form attached as Exhibit N-2 referencing the applicable amount of the Second Note to be recorded at Closing in second lien position against the Property (“**Second Trust Deed**”).

- (d) The Shared Appreciation Note Secured by Deed of Trust shall be in the form attached as Exhibit O-1 in the maximum amount of Five Million Dollars (\$5,000,000) (“**Shared Appreciation Note**”). The Shared Appreciation Note shall be secured by a deed of trust in the form attached

as Exhibit O-2 referencing the Shared Appreciation Note to be recorded at Closing in third lien position against the Property (“**Third Trust Deed**”).

The First Note, Second Note and Shared Appreciation Note are collectively sometimes referred to as the “**Notes**.” The First Trust Deed, Second Trust Deed and Third Trust Deed are sometimes collectively referred to as the “**Trust Deeds**.”

2.2.3. Good Funds. Prior to Closing, all funds deposited in Escrow shall be in “**Good Funds**” which means a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California.

C. Section 3.1 Due Diligence is amended to provide that Developer has completed the Developer’s Due Diligence Review, the Due Diligence Period has expired, and Developer has approved the condition of the Property.

D. Section 3.3 Title Review. Section 3.3 is amended as follows:

(a) Section 3.3.1 Preliminary Report is amended to acknowledge that Developer has reviewed and has separately stated its continuing title objections to exceptions (“**Title Objections**”) taken in that certain revised preliminary title report issued by the Title Company dated as of December 22, 2022 (“**Preliminary Report**”)

(b) Section 3.3.2 Review Period is amended to provide as follows:

- (i) The “**Permitted Exceptions**” are (i) Exceptions 4, 19, 22, 24, and 26 of the Preliminary Report; (ii) the Trust Deeds, and (iii) any exceptions resulting from Developer’s access to the Property pursuant to Section 3.4.
- (ii) In view of the short period remaining prior to the Outside Closing Date as required by the City, the Parties acknowledge that despite their cooperation and their exercise of diligent commercial efforts, they may be unable to fully resolve the Title Objections with the Title Company, and in order to have a pre-defined procedure to enable closing by the Outside Closing Date, the Parties agree that in such event, Developer shall notify City in writing prior to the Closing of what title objections remain unacceptable (“**Reserved Title Objections**”). City may, in its reasonable commercial discretion, agree in writing to the Reserved Title Objections in which event the Parties shall continue to cooperate post-closing through mutual diligent commercial efforts to effect a cure to the Title Objections (by means of reissued updated Title Policies or issuance of endorsements) that is acceptable to Developer in exercise of its reasonable commercial discretion and without material cost to either City or to Developer (provided, however, the issuance of an updated

ALTA extended title policy shall not be included as a Reserved Title Objection); provided, however, that if one or more of the then-remaining Title Objections cannot be so cured within sixty (60) days after Closing, Developer may thereafter (but no later than seventy-five (75) days after the Closing (“**Election Period**”), give a written notice of election to tender a grant deed returning title to the Property to the City (“**Tender Notice**”), and within thirty (30) days after delivery of the Tender Notice, shall be deeded back to the City by a grant deed pursuant to an escrow with insurable title free and clear of liens and encumbrances (including non-delinquent property taxes and similar public exactions) arising after the Closing or caused by Developer prior to Closing as evidenced by an ALTA non-extended owner’s title policy. Developer shall provide such standard title company documents as required for a transfer of title including, but not limited to, tax documents, and an owner’s certificate to the title company and releases for any non-approved items caused by Developer. In such event, all studies, plans, and records then currently held by Developer regarding development of the Project shall remain the property of Developer unless City elects to purchase those materials at Developer’s cost Developer obtains the written consent of the issuer to such transfer thereby allowing use of same by City, and Developer shall provide reasonable evidence of the costs of such reports.

For the avoidance of doubt, Developer acknowledges that City has made no representation or warranty that any or all of the Reserved Title Objections will or can be resolved to Developer’s satisfaction as set forth herein above, and in such event, Developer must then either waive the Reserved Title Objections or tender title back to City, pursuant to the process specified herein above. If Developer fails to deliver the Tender Notice within the Election Period, such right shall automatically terminate and be of no further force or effect.

(c) **Section 3.3.3 Monetary Lien** is amended to provide that “**Monetary Liens**” (to be removed by City by Closing) do **not** include the Trust Deeds.

(d) **Section 3.3.6 Title Policy** is amended to provide that the form of owner’s title policy shall be an ALTA non-extended owner’s policy.

(e) A new **Section 3.3.7 Loan Title Policies** is added to add the following:

“**Section 3.3.7 Loan Title Policies.** At the Closing, the Title Company will issue three (3) loan title policies each to be issued in favor of City as follows (collectively the “**Loan Title Policies**”):

(i) An ALTA loan title policy issued in favor of City in the amount of the Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000) insuring the First Trust Deed in first lien position subject to Exceptions 4 -13, 19, 22, 24, and

27 – 28 in the Pro Forma Loan Policy delivered to City by the Title Company on December 28, 2022 (“**Lender Approved Exceptions**”) and showing the Second Trust Deed and the Third Trust Deed in Schedule B Part II as each subordinate to the First Trust Deed and Endorsements 39.06 and 9.06 (“**First Loan Policy**”).

(ii) An ALTA loan title policy issued in favor of City in the amount of the Five Million Dollars (\$5,000,000) insuring the Second Trust Deed in second lien position subject to the Lender Approved Exceptions and the First Trust Deed and showing the Third Trust Deed in Schedule B Part II as subordinate to the Second Trust Deed and the Endorsements 39.06 and 9.06 (“**Second Loan Policy**”).

(iii) An ALTA loan title policy issued in favor of City in the amount of the Five Million Dollars (\$5,000,000) insuring the Shared Appreciation Trust Deed in third lien position subject to the Lender Approved Exceptions, the Second Trust Deed and Third Trust Deed together with Endorsements 39.06 and 9.06 (“**Third Loan Policy**”).”

E. Section 4 Entitlements. Section 4 is amended as follows:

(a) **Section 4.1.1 Entitlement Period** is amended (i) to provide for an initial Entitlement Period of twenty-four (24) months following the Close of Escrow, subject to extension for an additional twelve (12) months as provided in the Schedule of Performance, and (ii) to delete in its entirety the last sentence of this section.

(b) **Section 4.1.2 Entitlements** is amended to delete “the new shoreline road” and “the conversion of Brickyard Cove Road into a bike and pedestrian trail” from the list of shoreline and infrastructure improvements to be included in the Project-related offsite improvements for which Entitlements are sought.

(c) **Section 4.3 BNSF Property** is deleted in its entirety to reflect the determination, that the property identified in Section 4.3 as the “BNSF Property” and shown on Exhibit D is owned by the East Bay Regional Park District, not BNSF.

(d) **Section 4.4 Transit Access Plan** is amended to delete the requirement that the Transit Access Plan be prepared prior to the Close of Escrow and to provide instead that the Transit Access Plan is to be prepared prior to issuance of the first building permit for a residential structure.

(e) **Section 4.8 Evidence of Funding** is deleted in its entirety.

F. Section 5 Escrow and Close of Escrow. Section 5 is amended as follows:

(a) **Section 5.1 Opening and Closing of Escrow** is amended to confirm that Escrow has been duly opened as Escrow No. 1117013994. The second sentence is deleted in its entirety and the following is substituted in its place and stead:

“As used in this Agreement, the “**Close of Escrow**” or “**Closing**” shall mean the date on which the Revised Grant Deed in the form of Exhibit F attached hereto (“**Grant Deed**”) conveying the Property to Developer immediately followed by the First Trust Deed, Second Trust Deed and Third Trust Deed, *in that specific order*, are recorded in the Contra Costa County Recorder’s office. Escrow must close by the Outside Closing Date as specified in Section 5.5. Notwithstanding the foregoing, the Parties may agree in writing to a table closing with the Title Policies issued by the Outside Closing Date (as defined below) but the applicable documents recorded on the following business day.”

(b) **Section 5.2 Escrow Fees and Other Charges** is amended to provide that Developer shall also pay the premium cost for the Loan Title Policies and any endorsements thereto requested by City.

(c) **Section 5.3 Developer’s Conditions to Close of Escrow** is amended to delete Section 5.3.2 (Entitlements) in its entirety.

(d) **Section 5.4 City’s Conditions to Close Escrow** is amended to delete Section 5.4.2 (Evidence of Funding for Offsite Improvements) in its entirety.

(e) **Section 5.4 City’s Conditions to Close of Escrow** is further amended to add a new provision as follows:

“**5.4.4. Loan Title Policies.** The Title Company will issue the Loan Title Policies as specified in Section 3.3.7.”

(f) **Section 5.5. Closing Date** is deleted in its entirety and the following is substituted in its place and stead:

“**5.5 Closing Date.** The Close of Escrow shall occur no later than **December 31, 2022** (“**Outside Closing Date**”). The Outside Closing Date may not be extended by City and/or Developer **for any reason**. If Escrow does not close by the Outside Closing Date, this Agreement shall be subject to City complying with the SLA as it currently exists which may result in another party having the right to acquire the Property and, therefore, Section 5.8.2 shall apply. For the avoidance of doubt, Developer acknowledges that in the event of a failure to close by the Outside Closing Date, (i) the LDA is terminated in its entirety, (ii) Developer will have no further rights of any kind to purchase the Property under the LDA; and (iii) City will have no obligation of any kind to enter into a subsequent LDA with Developer with respect to the Property.”

(g) **Section 5.6.1 Developer’s Deliveries** is amended as follows:

(i) **Section 5.6.1(a) Purchase Price Balance** is deleted in its entirety and the following is substituted in its place and stead:

“(a) Developer’s share of the closing costs and prorations as provided in Sections 5.2, 5.6.1(e) and 5.7.2 and the amount of the Purchase Price less the amount of the Original Deposit and the Notes.”

(ii) A new **Section 5.6.1(d) Notes and Trust Deeds** is added as follows:

“(d) Developer shall deliver the Notes duly executed and the Trust Deeds duly executed and acknowledged.”

(iii) A new Section 5.6.1(e) is added whereby Developer shall reimburse City for its attorney fees incurred with respect to this Amendment (“**City Attorney Fee Reimbursement Amount**”) not to exceed Eighty-Five Thousand Dollars (\$85,000) and upon presentation of an invoice and which shall be paid by Developer to City on or before January 31, 2023. This covenant shall survive the Closing.

(h) **Section 5.7.1 Actions by Escrow Holder** is deleted in its entirety and the following is substituted in its place and stead:

“5.7.1 Actions by Escrow Holder. On the Closing Date, provided all of the conditions to the Parties' obligations have been satisfied or waived, Escrow Holder shall undertake and perform the following acts in the following order:

(a) record the Grant Deed and obtain conformed copies thereof for delivery to Developer and City;

(b) record the First Trust Deed, Second Trust Deed, and Third Trust Deed, *in that specific order*, and obtain conformed copies thereof for delivery to Developer and City;

(c) pay County documentary transfer taxes of Eleven Thousand Dollars (\$11,000);

(d) instruct the County Recorder to return the executed original Grant Deed to Developer;

(e) instruct the County Recorder to return the original Trust Deeds to City;

(f) deliver to Developer: (i) a conformed copy of the recorded Grant Deed and Trust Deeds, (ii) the Title Policy covering the Property subject only to the Permitted Exceptions, (iii) a conformed copy of each other document recorded in connection with the Close of Escrow, and (iv) an original of each unrecorded document received by Escrow Holder hereunder; and

(g) deliver to City (i) the original Notes; (ii) conformed copies of the

recorded Grant Deed and Trust Deeds; (iii) the Loan Title Policies (in accordance with Section 3.3.7); (iv) a conformed copy of each other document recorded in connection with the Close of Escrow; and (v) the Purchase Price less the amount of the Deposit and less the amount of the City's share of closing costs and prorations set forth in Section 5.2.”

(f) Section 5.7.2 Prorations is deleted in its entirety and the following is substituted in its place and stead:

“**5.7.2 Prorations.** City is not subject to real property taxes and assessments. Accordingly, no prorations of real estate taxes shall be made at Closing. Developer shall be responsible for all real property taxes and assessments accruing after the Closing.”

“The City Transfer Tax amount shall not be paid in cash at Closing but has been added to the First Note as part of the principal.”

(g) Section 5.8.1. Default is amended to provide that the failure to Close by the Outside Closing Date (as set forth in Section 5.5) is not subject to any cure rights nor any extensions under Section 11.6 (Force Majeure) and, in such event, the rights under Section 5.8.2 shall apply.

(h) A new Section 5.10 City Manager is added as follows:

“**5.10. City Manager.** City by its execution of this Agreement hereby agrees that its City Manager or her designee (who has been designated by City Manager’s written notice delivered to Developer and Escrow Holder) shall, in her sole and exclusive discretion, have the right to execute documents on behalf of City including, but not limited to, issuing approvals, disapprovals and extensions. Any such approval, disapproval or extension executed by the City Manager or her designee shall be binding on City.”

G. Section 6 Post-Closing Development Obligations is amended to provide that the provisions set forth in Section 6 with respect to the Post-Closing Development Obligations and Post Closing Actions shall apply after the Closing and Developer has received all Entitlements for a Project that is acceptable to Developer in Developer’s sole discretion within twenty four (24) months from Closing which may extend pursuant to Section 4.1.1 (“**Outside Entitlement Date**”). If Developer has not received all Entitlements by the Outside Entitlement Date (as may have been extended) and either: (i) all statutory or regulatory periods for appealing or otherwise legally challenging the Entitlements, including but not limited to legal challenges under CEQA, have expired without any appeal or legal challenge being made, or (ii) if an appeal or legal challenge to the Entitlements is made, such appeal or legal challenge has been resolved in a manner acceptable to the Developer in Developer’s sole discretion (“**Developer Receipt of Full Entitlements**”). Accordingly, where the Original LDA provides the timing of a Post-Closing Development Obligation or a Post-Closing Action referenced in Section 6 is tied to

the Close of Escrow, Section 6 is amended to tie those obligations and actions to Developer Receipt of Full Entitlements. Section 6 is further amended to provide that with respect to all the Post-Closing Development Obligations and Post-Closing Actions, (i) Developer shall proceed expeditiously and shall exercise diligent commercial efforts to proceed in accordance with the schedule of performance set forth in Section 6.1 (“**Schedule of Performance**”) attached as Exhibit C-1; (ii) Developer shall providing a detailed written progress report every sixty (60) days to the City’s designated lead person/agency with respect to the Project; and (iii) Developer shall respond promptly and in writing to all requests by agencies having jurisdiction over the Project for information regarding the Project.

Discretion Retained By City. City’s execution of this Agreement does not constitute any Project Approval or other approval by City and in no way limits the discretion of City in the environmental review or the permit and approval process in connection with development, construction or operation of the Project or otherwise commit the City’s discretionary powers in any particular manner. Nothing in this Agreement shall in any way limit the discretion of the City in acting in that regulatory capacity, and no action or inaction by the City acting in that regulatory capacity shall be a breach or default under this Agreement. Without limiting the preceding sentence, and notwithstanding the title of this Agreement or that the City is a party of this Agreement, neither this Agreement nor any provision thereof shall be deemed under any circumstance to render this Agreement or constitute a development agreement as set forth in California Government Code Sections 65864 et seq.

(a) Section 6.1.1 Phase 1 Final Map Requirements is amended to add new subsection (f) as follows:

“(f) preparation of a schedule for the construction and completion of as well as the provision of access to the residential and public park/access improvements that gives careful consideration to the risks posed by on-going construction activities and to the safety of those who will be occupying the homes and using the public park/access improvements.

(b) A new Section 6.1.7 Additional Requirements is added as follows:

“6.1.7 Additional Requirements. Notwithstanding anything to the contrary in this Agreement, Developer agrees as follows: (a) Prior to the commencement of any site work or construction activity, the Parties shall negotiate and enter into an agreement that details the manner in which (i) the pre- and post-construction condition of Brickyard Cove Road is to be assessed, (ii) the pre-and post-construction roadway condition assessments are to be used in evaluating the extent to which the construction-related will has caused damage to the roadway and in preparing a post-construction roadway rehabilitation program, and (iii) responsibility for funding the repairs required to address the construction-related damage is to be allocated on a pro-rata, fair share basis among the projects using Brickyard Cove Road – where a project’s responsibility for funding repairs is roughly proportional to the project’s responsibility for causing the damage necessitating the repairs; (b) No impact fees from other projects shall be

contributed to this Project; (c) prior to the issuance of the first building permit for residential construction, the Parties shall negotiate and enter into an agreement that details the manner in which maintenance of the Project infrastructure and public park/access improvements is to be performed and funded; and (d) at all times after the Closing, Developer, at its sole cost and expense, shall continue to implement commercially reasonable security measures, including maintaining barriers and security patrols, in order to keep the Project safe and secure against invasion and occupation by trespassers.”

(c) A new **Section 6.1.8 Completion of Construction** is added as follows:

“6.1.8 Completion of Construction. Developer shall apply reasonable commercial diligence to the completion of all plans, reviews, construction and development specified in the Scope of Development. Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than one hundred eighty (180) consecutive days, except when due to force majeure (as defined in Section 11.6). Developer shall keep City informed of the progress of construction and submit to City written reports of the progress of the construction when and in the form reasonably requested by City.”

(d) A new **Section 6.1.9 Rights of Reverter** is added as follows:

“6.1.9.1 Right of Reverter. In the event that, following Close of Escrow and prior to payment by Developer to City of the Base Purchase Price, there is a Triggering Event (as defined below) default by Developer (or Developer’s successor(s) in interest) of a material term or condition of the Agreement under Section 9.1, City shall have the right, at its sole option, to reenter and take possession of the Site with all improvements thereon and to terminate and re-vest in City the estate conveyed to Developer.

“Triggering Event” shall mean any of the following:

(i) Developer fails to obtain the Entitlements by the Outside Entitlement Date (as defined in Section G of this First Amendment regarding Section 6);

(ii) Developer fails to commence construction pursuant to the Estimated Schedule of Performance as such Schedule may be changed and modified from time to time;

(iii) Developer ceases construction for more than one hundred (180) days in violation of Section 6.1.8 except when due to force majeure (as defined in Section 11.6); or

(iv) The Notes become due and owing on December 15, 2028 as the outside maturity date.

A. The right to re-enter, repossess, terminate, and re-vest shall be subject

to and be limited by and shall not defeat, render invalid, limit, or impair:

- (a) Any mortgage, deed of trust, or other security interests permitted by this Agreement.
- (b) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests.

B. Upon the re-vesting in City of possession to the Property, as provided in this Section 6.1.9.1, City shall, pursuant to its responsibilities under state law, use its best efforts to sell the Site as soon and in such manner as City shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as determined by City), which will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to City.

In the event of a sale of the Property pursuant to the foregoing, the proceeds thereof shall be applied as follows:

- (a) First, to reimburse City on its own behalf or on behalf of the City for all costs and expenses incurred by City, including but not limited to, salaries to personnel, legal costs and attorneys' fees, and all other contractual expenses in connection with the recapture, management, and sale of the Site (but less any income derived by City from the Site or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Site; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Site or part thereof; and amounts otherwise owing City by Developer, its successors, or transferees; and
- (b) Second, to reimburse Developer, its successor or transferee, up to the amount equal to (i) the sum of the Purchase Price paid to City by Developer for the Site, (ii) the costs incurred for the development of the Site and for the agreed improvements existing on the Site at the time of the re-entry and repossession, less (iii) any gains or income withdrawn or made by Developer from the Site or the improvements thereon.
- (c) Any balance remaining after such reimbursements shall be retained by City as its property.

To the extent that the right established in this Section involves a forfeiture, it must be strictly interpreted against City, the party for whose benefit it is created. The rights established in this Section are to be interpreted in light of the fact that City will sell the Site to Developer for development and not for speculation in

undeveloped land.”

6.1.9.2 City Discretionary Right of Reverter

In addition to the Reverter rights in City pursuant to Section 6.1.9.1 above, the City shall have certain reverter right, in its sole discretion, according to the following terms and conditions:

A. Prior to seventy-five (75) days after Closing, City may elect to review the LDA Amendment for further approval at a City Council session and by decision noticed to Developer on or before one hundred thirty-five (135) days after Closing, elect in its sole discretion, to disapprove the LDA Amendment and the consequent transfer of the Property to Developer, and cause a retransfer of title back to the City.

B. If City elects to exercise the reverter pursuant to this Section 6.1.9.2 , City shall have the right to reenter and take possession of the Property with all improvements thereon and to terminate and re-vest in City the estate conveyed to Developer, subject to (i) the protections and procedures set forth in Section 6.1.9.1 (A) ; and (ii) the requirement that the City concurrently return the full amounts of the Closing Deposit.

C. In the event of Reverter pursuant to this Section 6.1.9.2, all studies, plans, and records then currently held by Developer regarding development of the Project shall remain the property of Developer unless City elects, in its sole discretion, to purchase those materials at Developer’s cost and Developer obtains the written consent of the issuer to such transfer thereby allowing use of same by City, and Developer shall provide reasonable evidence of the costs of such reports.”

(e) A new **Section 6.1.10 Developer Right to Deed Back Property for Protracted Delay** is added as follows:

“6.1.10 Developer Right to Deed Back Property for Protracted Delay. In the event that the Developer Receipt of Full Entitlements (as defined in Section 6) has failed to occur, despite Developer’s good faith, diligent commercial efforts to obtain said entitlements, then from and after the Outside Entitlement Date and for a period of sixty (60) days thereafter (**“Option Period”**), Developer may thereafter give written notice to City electing to convey the Property to City (**“Election Notice”**) pursuant to an escrow whereby Developer shall deliver a grant deed returning title of the Property to the City, and within thirty (30) days after delivery of the Election Notice, title to the Property shall be deeded back to the City, with insurable title as evidenced by an ALTA non-extended owners title policy, free and clear of liens and encumbrances (other than non-delinquent real property taxes and similar public exactions) arising after the Closing and matters caused by Developer prior to Closing, and concurrently, the Closing Deposit shall be fully returned to Developer. Developer shall provide standard title company documents to transfer real estate title including, but not limited to, tax documents an owner’s certificate to the title company and documents to remove any items caused by Developer after the Closing. In such event, all studies, plans, and

records then currently held by Developer regarding development of the Project shall remain the property of Developer unless City elects, in its sole discretion, to purchase those materials at Developer's cost Developer obtains the written consent of the issuer to such transfer thereby allowing use of same by City, and Developer shall provide reasonable evidence of the costs of such reports. If Developer fails to deliver the Election Notice within the Election Period, such rights shall automatically terminate and be of no further force or effect."

- (f) A new **Section 6.1.11 Consequences of Court Order Invalidating, Rescinding, or Otherwise Voiding the LDA** is added as follows:

"6.1.11 Consequences of Court Order Invalidating or Otherwise Rescinding, or Otherwise Voiding the LDA. In the event that, if litigation brought by a third party within ninety (90) days of the Closing, is a court order invalidates, rescinds or otherwise voids the LDA and the transfer of title to Developer, City and Developer will use prompt and diligent commercial efforts to transfer the Property in accordance with the Court Order. If not otherwise provided in the Court Order to the contrary, the Parties shall be returned to their positions prior to the Closing, including, without limitation, Developer delivering a grant deed for the Property to City, with insurable title as evidenced by an ALTA non-extended owners title policy, free and clear of liens and encumbrances (other than non-delinquent real property taxes and similar public exactions) arising after the Closing and matters caused by Developer prior to Closing, and concurrently, the Closing Deposit shall be fully returned to Developer. Developer shall provide standard title company documents to transfer real estate title including, but not limited to, tax documents an owner's certificate to the title company and documents to remove any items caused by Developer after the Closing. In such event, all studies, plans, and records then currently held by Developer regarding development of the Project shall remain the property of Developer unless City elects, in its sole discretion, to purchase those materials at Developer's cost Developer obtains the written consent of the issuer to such transfer thereby allowing use of same by City, and Developer shall provide reasonable evidence of the costs of such reports."

- H. **Section 6.4 Project Labor Agreement** is amended to add the following sentence to Section 6.4: "Subsequent to Closing, Developer and the applicable union representatives shall negotiate in good faith a mutually satisfactory Project Labor Agreement appropriate to the single-family nature of the Project."

- I. **Section 6.17 Termination of Agreement** is amended to delete it in the entirety and the following is substituted in its place and stead:

"This Agreement shall terminate and shall have no further force and effect after the last to occur of certificate of occupancy for the last Residential Unit excluding indemnity obligations and the final accounting of the amounts due to City pursuant to the Shared Appreciation Note."

- J. **Section 9 Default, Remedies and Dispute Resolution** is amended as follows:

1. **Section 9.2** is amended to apply only to defaults which occur prior to the Closing.

2. A new **Sections 9.5 Failure to Close** is added as follows:

“**9.5 Failure to Close.** Where the default involves a failure to Close in accordance with the terms and conditions of Section 5 (Escrow and Close of Escrow), the provisions of Section 5.8.1 (Default) shall control.”

3. A new **Section 9.6 Limitation on Remedies** is added as follows:

“**9.6 Limitation on Remedies.** Notwithstanding any other provision, in no event shall Seller, or its officers, agents, attorneys, or employees, be liable in damages for any breach or violation of this Agreement by Seller except to the extent of the Original Deposit plus any monies paid under the First Note and Second Note (but excluding monies paid under the First Note in discharge of deferred transfer taxes incurred in connection with the Closing). Buyer understands that this limitation of actions is reasonable due to the SLA requirements which will supersede this Agreement if the Closing does not occur as required by Section 5.1.”

J. Section 10 Notice is amended to delete the copy of notice to City to be as follows:

Office of the City Attorney
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804-1630
Attn: David Aleshire, City Attorney
Tel. (510) 620-6509
Facsimile: (510) 620-6518
Email: daleshire@awattorneys.com

K. Section 11.8 Assignment is hereby reaffirmed and is additionally amended to provide that the provisions of Section 11.8 are made specifically applicable to the City’s consent to any post-closing assignment, participation, sale, or transfer of any controlling ownership interest in Developer, and to any transfer of ownership of the Project and its Entitlements, and the Notes and Deeds of Trust issued pursuant to this Amendment shall be subject to the provisions of Section 11.8 and shall so reflect by an express cross-reference hereto.

L. Section 11.25 Indemnity is hereby reaffirmed as set forth in the Original LDA.

M. Section 11.28 Exhibits is amended as set forth below. The Revised and New Exhibits below are attached to this First Amendment. All exhibits originally attached to the LDA remain in effect except Exhibit G which is deleted in its entirety. .

Revised Exhibit A	Revised Property Description
Revised Exhibit B	Terminal One Property Site Map
Revised Exhibit C	Revised Scope of Development
New Exhibit C-1	Schedule of Performance
New Exhibit C-2	Brickyard Cove Roadway Rehabilitation and Transfer Plan and Neighborhood Mitigation Requirements
Revised Exhibit F	Revised Grant Deed
New Exhibit M-1	First Note
New Exhibit M-2	First Trust Deed
New Exhibit N-1	Second Note
New Exhibit N-2	Second Trust Deed
New Exhibit O-1	Shared Appreciation Note
New Exhibit O-2	Third Trust Deed

5. City to Execute. The person(s) executing this First Amendment on behalf of Developer represent and warrant that: (i) Developer is duly organized and existing under the laws of California; (ii) it is duly authorized to execute and deliver this First Amendment on behalf of Developer; (iii) upon execution, this First Amendment is binding upon Developer; and (iv) entering into of this First Amendment does not violate any provision of any other agreement to which Developer is bound.

6. Construction. This Agreement shall be construed according to its fair meaning as if prepared by both Parties to this Agreement and in accordance with the intent of the Parties. This Amendment shall also supersede any and all discussions or other documents pertaining to the subject matter herein. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

7. Execution in Counterparts. This First Amendment may be executed in counterparts, and all so executed shall constitute one agreement binding on both Parties hereto, notwithstanding that both Parties are not signatories to the original or the same counterpart.

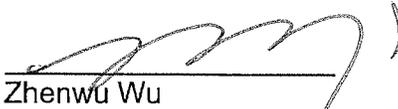
8. Electronic Execution. The Parties agree that this First Amendment may be executed by either or both parties in compliance with UETA or ESIGN. For clarification, DocuSign and AdobeSign are acceptable for compliance with this section. Notwithstanding the foregoing, the approval as to form signature of David Aleshire as City Attorney may be done via PDF.

9. Full Force and Effect. Except as specifically provided in this First Amendment, the terms of the Existing LDA shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the date first written above.

DEVELOPER:

TERMINAL ONE DEVELOPMENT LLC,
a Delaware limited liability company

By: 
Zhenwu Wu
Manager

CITY:

CITY OF RICHMOND, a municipal
corporation and charter city

By: 
Eduardo Martinez, Vice Mayor

"First Amendment Effective Date"

Dated: December 29, 2022

ATTEST:


Richmond, CA City Clerk

Approved as to form:

ALESHIRE & WYNDER, LLP

By: 
David J. Aleshire, City Attorney

REVISED EXHIBIT A
REVISED PROPERTY LEGAL DESCRIPTION

That certain real property in the City of Richmond , County of Contra Costa, State of California legally described as follows:

PARCEL ONE:

That certain real property in the City of Richmond, County of Contra Costa, State of California, being portions of Lot 26-1/2 and 27, Section 23, and portions of Lots 6, 7 and 8, Section 26, Township 1 North, Range 5 West, Mount Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tidelands," filed June 11, 1917, in Rack Map No. 9, in the Office of the Recorder of Contra Costa County, California, being more particularly described as follows:

COMMENCING at San Pablo Rancho Exterior Boundary Stake No. 347 as shown on the map entitled "Map of the San Pablo Rancho, accompanying and forming a part of the final Report of the Referees in Partition," filed March 1, 1894, at No. 2, Map Rack, in the Office of the Recorder of Contra Costa County, California; THENCE along the northerly line of Lot 26 ½ North 83°58'58" East 31.12 feet to a point of intersection of said Lot line and the easterly line of Dornan Drive (formerly known as South Garrard Boulevard) (60 foot wide) the center line of which is described as Parcel No. 2 in the deed from the Atchison, Topeka and Santa Fe Railway Company to the City of Richmond filed February 26, 1920 in Volume 355 of Deeds at Page 256, in the Office of the Recorder of Contra Costa County, California; THENCE continuing along the northerly line of Lot 26 ½ North 83°58'58" East 187.44 feet to station 348 in said exterior boundary; THENCE continuing along said exterior boundary South 46°25'00" East 64.93 feet, said point being the **POINT OF BEGINNING**; THENCE continuing along last said exterior boundary line South 46°25'00" East 20.63 feet to a point on the exterior boundary of the San Pablo Rancho, as shown on said map of the San Pablo Rancho, said point also being on the northerly line of the parcel of land described in the deed from Atchison, Topeka and Santa Fe Railway Company to the City of Richmond, filed February 26, 1920, in Volume 359 of Deeds at Page 270 in the Office of the Recorder of Contra Costa County, California, said point also being on the southwesterly line of the parcel of land described in the grant of easement from the Atchison, Topeka and Santa Fe Railway Company to the City of Richmond, filed January 13, 1970, in volume 6043 of Official Records at Page 198 in the Office of the Recorder of Contra Costa County, California, to Exterior Boundary Stake No. 349 of said San Pablo Rancho; THENCE North 83°10'43" East 256.68 feet along said exterior boundary of the San Pablo Rancho, also being the northerly line of said parcel (359 D 270) and the southerly line of said easement (6043 O.R. 198), to Exterior Boundary Stake No. 350 of said San Pablo Rancho; THENCE North 67°53'22" East 27.32 feet along said exterior boundary of the San Pablo Rancho, also being the northerly line of said parcel (359 D 270) and the southerly line of said easement (6043 O.R. 198); THENCE North 84°52'40" East 44.09 feet to a point on a tangent curve concave to the north and having a radius of 623.69 feet; THENCE easterly an arc distance of 337.29 feet along said 623.69 foot radius curve, through a central angle of 30°59'08" to the westerly line of the parcel of land described in the grant of easement from Richmond Belt Railway to the City of Richmond,

CONTINUED ON NEXT PAGE

filed November 30, 1917, in Volume 310 of Deeds at Page 45, in the Office of the Recorder of Contra Costa County California, being on a non-tangent curve concave to the east and having a radius of 509.28 feet, the center of the circle of said curve bears South 83°48'38" East; THENCE southerly an arc distance of 84.35 feet along said 509.28 foot radius curve, also being along said westerly line of the Belt Railway easement (310 D 45), through a central angle of 09°29'22"; THENCE South 03°18'00" East 111.44 feet along said westerly line (310 D 45) to a point on a tangent curve concave to the west and having a radius of 409.28 feet; THENCE southerly an arc distance of 86.23 feet along said 409.28 foot radius curve, also being along said westerly line (310 D 45), through a central angle of 12°04'16", to the southwest corner of said easement (310 D 45), said corner being on the southerly line of said Lot 27, Section 23; THENCE South 89°46'20" East 65.31 feet along the southerly line of said easement (310 D 45), also being along the southerly line of Lot 27, Section 23, to a point on a non-tangent curve concave to the northwest and having a radius of 453.00 feet, the center of the circle of said curve bears North 81°46'18" West from said corner, said point as shown on the Record of Survey filed August 3, 1966, in Book 44 of Land Survey Maps at Page 3, in the Office of the Recorder of Contra Costa County, California; THENCE southwesterly an arc distance of 489.61 feet along said 453.00 foot radius curve, through a central angle of 61°55'34"; THENCE South 00°13'40" West 223.05 feet to a point on the southerly line of said Lot 6, Section 26; THENCE North 61°48'20" West 873.65 feet along said southerly line of Lot 6, Section 26, and the southerly line of said Lot 7, Section 26 to a point on the southerly extension of the westerly line of the aforementioned Dornan Drive; THENCE North 09°24'40" East 12.65 feet along said westerly line of Dornan Drive and its southerly extension; THENCE South 80°35'20" East 60.00 feet to the easterly line of said Dornan Drive; THENCE North 09°24'40" East 293.79 feet along said easterly line of Dornan Drive to a point on a tangent curve concave to the southeast and having a radius of 20.00 feet; THENCE northeasterly an arc distance of 31.42 feet along said 20.00 foot radius curve, through a central angle of 90°00'00"; THENCE South 80°35'20" East 38.15 feet to a point on a tangent curve concave to the north and having a radius of 415.00 feet; THENCE northeasterly an arc distance of 105.24 feet along said 415.00 foot radius curve, through a central angle of 14°31'47"; THENCE North 84°52'40" East 74.52 feet to the **POINT OF BEGINNING**.

(The bearing "North 09°24'40" East" between found monuments along Dornan Drive as shown on that certain survey entitled "Balanced Survey of Portion of the Exterior Boundary of the San Pablo Rancho, from S.P. Sta. 347 to S.P. Sta. 364," dated February 27, 1930, on file in the office of the East Bay Regional Park District, was used as the Basis of Bearings for this description.)

APN: 560-420-010

REVISED EXHIBIT B

REVISED SITE PLAN



Site Plan - Alternative A

LACONIA
DEVELOPMENT LLC

LATITUDE
CITY OF RICHMOND, CA

SP1.1
0 20 40 80
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WHA
ARCHITECTS

EXHIBIT “C”

**REVISED SCOPE OF DEVELOPMENT
FOR THE
TERMINAL ONE PROJECT
(12/25/22)**

I. INTRODUCTION

A. The Terminal One Planned Area Plan

In July of 2016, the City Council of the City of Richmond adopted Resolution No. 63-16 and Ordinance No. 13-16 N.S. approving the Terminal One Project (the “**Original Project Approvals**”). The Original Project Approvals included the rezoning of the Terminal One Property located at 1500 Dornan Drive, Richmond, CA -- APNs 580-420-006, 580-420-007, and 580-420-010 -- (the “**Project Site**”, or “**Site**”) to Planned Area (PA) District and the approval of the Planned Area (PA) Plan for the Terminal One Project (the “**PA Plan**”).

The approved PA Plan makes provision for development on the Terminal One Property of a master-planned mix of land uses (the “**Original Project**”) with two principal components:

1. “a residential neighborhood with 323 residential dwelling units and associated common area amenities” (PA Plan at p. 1); and
2. “a public waterfront park with parkland-related amenities” (PA Plan at p. 1).

The residential component of the Terminal One Project is also known as “Latitude.” The original 323-unit residential neighborhood contemplated by the PA Plan included 302 condominium flats, 21 townhomes, and two podium garages. Following approval of the PA Plan, the total unit count for the Original Project was reduced to 316 total units, including 295 condominium flats. The condominium flats would range in size from one bedroom to three bedrooms and would be constructed in five multi-family buildings to be built over two partially sub-grade single-story podium garages, with building heights extending four- and five-stories above the podium garages. The 21 townhomes would range in size from three to four bedrooms, would be two- and three-stories in height, and would be configured as single-family residences to be constructed at grade along the southern edge of the Original Project’s two podium garages, with the second floor at the rear of the townhome units extending over and sitting on top of the podium structures.

The public waterfront park contemplated by the PA Plan would extend the length of the Terminal One shoreline and would include the following principal elements:

1. the existing 100+ year old, structurally deficient Municipal Wharf No. 1 repurposed as a public park amenity and the centerpiece of the waterfront park;
2. a shoreline extension of the San Francisco Bay Trail;
3. a new ring road at the perimeter of the residential neighborhood;
4. a north/south promenade through the center of the residential neighborhood which would provide a pedestrian and bicycle connection and view corridor between the Original Project's Brickyard Cove Road frontage and the Terminal One waterfront park and shoreline; and
5. an entry plaza at the northwest corner of the Project Site that would provide a gateway to the waterfront park and include a small 2,000± square foot node of visitor-serving retail space.

B. Changed Circumstances Occurring During and Following Completion of the Entitlement Process

Although the Terminal One PA Plan was approved in July of 2016, the process of securing the additional regulatory entitlements required to develop the land use program for which provision is made in the PA Plan was not completed until roughly 3½ years later when the San Francisco Bay Conservation and Development Commission (“BCDC”) finally approved a Major Permit for the Original Project on March 5, 2020.

By the time the Original Project was fully entitled, almost seven years had passed since the Project Applicant had submitted its original redevelopment proposal for the Terminal One Site. During this extended entitlement period, the economic factors and market forces which collectively determine the feasibility of financing and constructing new developments such as the Terminal One Project, underwent significant changes. As a result of these changed circumstances, by the time the Original Project was fully approved in 2020, the total costs of developing the Original Project and bringing to market the Original Project's 316 condominium units exceeded the total revenues that would have been generated by the sale of the condominium units. And, of course, when the cost of a project exceeds the market value that is created, the project is no longer economically feasible to develop.

In the 2¾ year period following BCDC's March 2020 approval of the Project, the prospect of financing and constructing the Original Project contemplated by the PA Plan has become even more challenging as the COVID-19 pandemic has adversely impacted demand for multi-family condominiums at the same time that the costs of constructing this type of housing have risen dramatically. To address the widening discrepancy between project costs and market value that has made the approved Original Project economically infeasible, the Project Applicant has redesigned the residential component

of the Project as a 154± unit single-family residential (“SFR”) subdivision (the “SFR Project”). This SFR redesign restores the economic viability of the Terminal One Project by combining the significantly lower costs involved in constructing single-family homes with the higher market values these homes generate.

C. The Purpose of the SFR Project -- To Provide an Economically Viable Development Option

The purpose of the SFR Project that is the subject of this Revised Scope of Development is to provide the Project Applicant with an economically viable single-family residential development option that can be developed on the Terminal One Site as an alternative to the original multi-family condominium project Original Project which is economically infeasible to either finance or construct. Although the SFR Project would substitute a single-family residential subdivision for the approved multi-family condominium project, it would retain the principal features of the Terminal One Waterfront Park as described above, with the single exception of the ring road. The SFR Project would replace the ring road with an extension of Dornan Drive from the Brickyard Cove Road intersection to a turn-around bulb located adjacent to the west end of the Wharf.

II. OVERVIEW OF SFR PROJECT

A. The Land Use Program for the SFR Project

The Terminal One SFR Project contemplates the redevelopment of a 13+ acre shoreline site that previously served as a port terminal and tank farm. As illustrated by the conceptual site plan attached as **Exhibit A** to this Revised Scope of Development (the “SFR Site Plan”), the Terminal One SFR redevelopment program proposes to replace these abandoned, heavy industrial land uses with the following two new interrelated master-planned developments:

- A 4± acre waterfront park (the “Terminal One Waterfront Park”) -- consisting of Municipal Wharf No. 1 repurposed as a public park facility, together with public access improvements and open space features -- that is designed:
 - a. to create a compelling “sense of place” that will celebrate the Terminal One Site’s dramatic shoreline setting, with its panoramic Bay-views and tideland ecology;
 - b. to provide the greater Richmond community with multi-modal access to the Site’s extraordinary waterfront attributes;
 - c. to complement and connect to the 307-acre Miller-Knox Regional Shoreline Park that abuts the Site’s western and northern edges; and

- d. to enable the public to engage both physically and visually with the marine environment and parkland resources that give this Bay-front Site its special character.
- A 9± acre residential neighborhood (the “**Latitude Residential Neighborhood**”) - - consisting of 154± single-family homes and 30± Junior Accessory Dwelling Units (“**Junior ADUs**”) -- that is designed:
 - a. to expand the range of housing opportunity in Richmond and to contribute to the City’s effort to provide for its State-mandated fair share allocation of regional housing need;
 - b. to reflect a design that is inspired by and pays tribute to the Site’s unique shoreline/parkland setting;
 - c. to embrace a new urbanist approach to planning, sustainable design concepts, and smart growth principles that emphasize compact development, efficient use of infrastructure, reservation of public parkland and open space, and preservation of ecological values; and
 - d. to create a complementary interface between the public open space of the Waterfront Park and the private habitable space of the Latitude residences that celebrates social engagement, inter-personal connectivity, and community.

B. The Terminal One Waterfront Park

The Terminal One Waterfront Park is designed to provide the public with an opportunity to connect to, experience, and enjoy the Terminal One shoreline’s ecological attributes and visual character, which are at the heart of the sense of place the Terminal One Project is intended to create.

This signature element of the Terminal One Project:

- will encompass the entire Terminal One shoreline;
- will feature a robust public access program, including a shoreline extension of the San Francisco Bay Trail;
- will function as a community resource in concert with the adjacent 307-acre Miller-Knox Regional Shoreline Park;
- will serve as both a waystation and destination of choice on the Bay Trail; and

- will provide a refuge where the Richmond community can experience and enjoy the special beauty and captivating allure of the San Francisco Bay shoreline and can connect with the natural order of the waterfront environment on an intimate level.

Principal Features of the Waterfront Park

The land use plan for the Waterfront Park, as illustrated in the SFR Site Plan attached as **Exhibit A**, incorporates the following principal elements:

1. **Terminal One Wharf Park**-- The existing blighted and seismically unstable 49,950± SF Municipal Wharf No. 1 will be structurally retrofitted and reprogrammed for public use as a park amenity and a special public moment along the new shoreline leg of the Bay Trail. The Wharf Park will serve as the centerpiece of the Terminal One Waterfront Park and will be designed to recall the history of the Wharf while, at the same time, bringing to life this tired and hazardous structure that was once the port terminal's reason for being – investing it with a new public purpose, and transforming it into a vital community attribute that will complement the diversity of open space experiences and recreational opportunities already afforded by the adjacent Miller-Knox Regional Shoreline Park. The primary goal of the reuse plan for the Wharf is to provide public access to the panoramic Bay-views and the extraordinary Bay-front resources that the Wharf affords. To achieve this goal, the reuse plans contemplate the creation of a pedestrian promenade along the Wharf's waterfront reach, the length of which will be lined by a series of interconnected and elevated program areas, including a family picnic pavilion, an informal play theater, a flexible lawn area, a coastal garden, and a raised viewing deck.
2. **Bay Trail Shoreline Loop** -- The Project will include a new segment of the Bay Trail that will ring the eastern, southern, and western perimeter of the Site extending from Brickyard Cove Road at the northeastern corner of the Site to the Dornan Drive intersection and the Miller-Knox Park at the northwestern corner of the Site. For most of its length, the Bay Trail Loop will consist of a minimum 12-foot-wide paved section with 3-foot-wide DG shoulders and will provide direct bicycle and pedestrian access to the Terminal One Waterfront Park and shoreline from the existing Bay Trail. The raised elevation of the Bay Trail Loop will also function as a flood barrier, providing protection to the interior of the Site from both storm events and sea level rise.
3. **The Terminal One Gateway Plaza and Retail Node** -- The Project's Gateway Plaza will anchor the northwest corner of the Project Site, providing a public gathering place, a San Francisco Bay/Marin Headlands overlook, a gateway to the

Waterfront Park, and a centering point of reference connecting the Project's residential neighborhood to the east, the Miller-Knox Park to the west and north, and the Terminal One Waterfront Park and San Francisco Bay frontage to the south. The Gateway Plaza will incorporate outdoor café seating and a small retail node that may be put to use as a coffee shop, a café, a deli, a kayak/bicycle rental, a small market, or other visitor/neighborhood-serving retail use.

4. **The Shoreline Greenbelt** -- The Terminal One Waterfront Park will also include a Shoreline Greenbelt that will occupy the open space corridor that lines the northern frontage of the Bay Trail Loop's shoreline reach. This Shoreline Greenbelt will incorporate a stormwater treatment bioswale and will serve as an organic buffer and transitional space between the Waterfront Park-related land uses to the south and the residential land uses to the north.
5. **Dornan Drive Shoreline Extension** – A southern extension of Dornan Drive will connect the Dornan Drive/Brickyard Cove Road corridor to the Terminal One Wharf and scenic shoreline, will provide the larger Richmond community with vehicular access to the Waterfront Park, and will include a drop-off/loading area adjacent to the west end of the Wharf Park as well as on-street parking along the Dornan Drive frontage.
6. **The Central Promenade** -- The public will also have access to the Project's Central Promenade that will extend from the Brickyard Cove Road corridor at the Site's northern edge through the center of the residential neighborhood to the Waterfront Park and shoreline at the Site's southern edge. This pedestrian promenade is designed: (i) to open the site along a north/south axis; (ii) to tie together the Project's park and residential land uses; (iii) to bring the public realm into the Project's core; (iv) to establish a visual and physical connection between the Miller-Knox Park headlands and the San Francisco Bay shoreline across the Project Site; and (v) to provide internal Project connectivity.
7. **Other Notable Features of the Waterfront Park** -- In addition to the principal features of the Waterfront Park described above, the Park will also include:
 - **Bay Trail Way-Side Park** -- A pocket park will be developed adjacent to the eastern reach of the Bay Trail Shoreline Loop.
 - **Bay Tidelands Preserve** -- A dedicated marine ecology preserve will be created east of the Wharf Park and protected from development in perpetuity.
 - **Bay Trail Commuter Extension** – The Project will also extend the existing Bay Trail segment north of Brickyard Cove Road from its current terminus

opposite the main Project entry to connect with the new Bay Trail Shoreline Loop at the Dornan Drive intersection.

- **Waterfront Park Visitor Parking** – The Project will provide approximately 45 parking spaces for use by visitors to the Waterfront Park, including on-street parking along the Brickyard Cove Road corridor in addition to the public on-street parking that will be provided along the Dornan Drive Extension, as referenced above.

C. The Latitude Residential Neighborhood

The creation of the Latitude Residential Neighborhood involves the transformation of a seismically unstable, brownfield site previously put to industrial use into a 9± acre residential neighborhood.

Principle Features of the Latitude Residential Neighborhood

The Latitude Residential Neighborhood, as illustrated in the **SFR Site Plan** attached as **Exhibit A**, will occupy the interior of the Terminal One site and will consist of a diverse mix of **154± single-family residential units** and **30± Junior Accessory Dwelling Units**. The single-family homes will range in size from approximately 1,800-2,700 square feet, will include both three- and four- bedroom units, and will be two- and three-stories in height. Each of the homes will have a two-car garage.

1. The Single-Family Home Plans.

The SFR Project’s single-family residences will include a diverse mix of six different home plans, as summarized below, each of which is designed to occupy a particular station within the Latitude subdivision and to take advantage of the opportunities afforded by that location on the Site:

- **Plan #1** – two-story, three-bedroom, single-family detached (“**SFD**”) homes. Most Plan #1 homes will occupy perimeter lots overlooking the Project’s San Francisco Bay frontage. Plan #1 homes will have a hybrid orientation with the home’s main entry and garage accessed off an interior street and with a “beach” entry and the principal living areas of the homes (including the first floor great room and covered porch and the second floor master bedroom and covered deck) fronting either on the Dornan Drive Extension, with unobstructed views of the Marin Range and Mt. Tamalpais to the west, or on the eastern/southeastern reach of the Bay Trail Loop, with views across the Yacht Club campus extending from the San Pablo Ridge Line to the Oakland hills and Bay Bridge to the east.

- **Plan #2** – two-story, four-bedroom, SFD homes. The Plan #2 homes will occupy the Project’s prime lots overlooking the southern waterfront. These larger two-story homes will have a hybrid orientation with the home’s main entry and garage fronting on an interior street and with a beach entry and the principal living areas of the homes (including the first-floor great room and covered porch and the second-floor master bedroom and covered deck) fronting on the Project’s shoreline reach, with its Shoreline Greenbelt open space corridor, Bay Trail Shoreline Loop, Wharf Park, and panoramic views of the Bay Bridge and San Francisco skyline directly to the south; the rising sun and topography of the East Bay to the east; and Angel Island, the Marin headlands, and the setting sun to the west.
- **Plan #3** – three-story, four-bedroom, SFD homes, which will be constructed on two rows of lots located immediately to the north of and parallel to the row of two-story homes that will front on the Project’s Shoreline Greenbelt and southern waterfront. The Plan #3 homes will have a more traditional street orientation with the home’s main entry, garage, and principal living areas (including a large, covered deck off the second-floor great room and the third-floor master bedroom) fronting on an interior street. These homes will have optional roof decks and ground-floor Junior ADUs. Most of these three-story homes will have filtered Bay-views to the south over and around the two-story homes that front on the Shoreline Greenbelt.
- **Plan #4** – three-story, four-bedroom, SFD homes, most of which will occupy perimeter lots overlooking the eastern and southeastern segments of the Bay Trail Loop. These Plan #4 homes will have a hybrid orientation with the home’s main entry and garage accessed off of an interior street and with the principal living areas of the homes (including the second-floor great room and covered deck and the third-floor master bedroom, also with a covered deck) fronting on the eastern/southeastern reach of the Bay Trail Loop, with views of the East Bay across the Yacht Club campus. The Plan #4 homes will have optional roof decks and ground-floor Junior ADUs with separate entries that will provide direct access to the Bay Trail.
- **Plan #5** – smaller three-story, four-bedroom, SFD homes which will occupy interior lots. The Plan #5 homes will have alley-loaded rear garages with the main entry and principal living areas of the homes (including the second-floor great room and the third-floor master bedroom) fronting on the Project’s Greenway Corridors. These homes will also have large second-floor covered decks overlooking the Greenway Corridors as well as optional roof decks.
- **Plan #6** – three-story, four-bedroom, single-family attached (“SFA”) duplex homes which will occupy both perimeter lots along the Project’s Brickyard Cove

Road frontage and interior lots that front on the Project's Greenway Corridors. These Plan #6 homes are designed to function as live/work units with ground-floor flex space that can be used as a home office or commercial workspace. The main entries to and principal living areas of these homes (including the second-floor great room and covered deck and the third-floor master bedroom) will front on Brickyard Cove Road or the Greenway Corridors within the Project, with rear-loaded garages. The floor plans for these live/work units will offer a ground-floor option that would provide a separate dedicated commercial entry to the home's workspace off of Brickyard Cove Road.

2. The Junior Accessory Dwelling Units.

As noted above, the SFR Project's 30 larger three-story SFD homes (i.e., the Plan #3 and Plan #4 units) will include Junior ADUs. These accessory units will be roughly 400 SF in size, will be located on the ground-floor of the larger three-story SFD homes, and will have a kitchenette, a bathroom, a living/sleeping area, and a separate entrance. They will function as a studio or one-bedroom unit within the single-family structure and are designed to provide housing opportunities:

- a) To address underserved demand profiles, including family members (such as grandparents and adult children), caregivers, guardians, custodians, and students;
- b) To address the needs of homeowners (particularly seniors who are living on fixed incomes) who want to generate supplemental rental income; and
- c) To provide affordable accommodations for renters.

The Junior ADUs are also designed to enable their use as an integrated component of the living space of the single-family homes of which they are a part. In this capacity, they can be used as an additional bedroom, a home office, or a flexible self-contained workspace.

3. The Greenway Corridors.

The main entries and principal living areas of most of the homes that occupy the interior of the residential neighborhood will front on landscaped Greenway Corridors, with garage access provided by alleys at the rear of the residences. These landscaped pedestrian paseos are designed to create a walkable context that ties the neighborhood together, provides access to the Waterfront Park and shoreline resources at the neighborhood perimeter, and enhances the opportunities for social contact and interaction.

4. The Common-Area Amenity Space.

The residential land use plan for the SFR Project also makes provision for common-area amenity space, including a Homeowners Association-operated Neighborhood Center located near the southwest corner of the Latitude Residential Neighborhood. This 3,500± square foot recreation_center will be designed to serve the Latitude Residential Neighborhood and will include lounge, fitness, meeting/assembly, and common-room space.

5. Density and Coverage.

At build-out of the SFR Project, the development of the Project’s residential neighborhood will result in:

- a. An overall density equal to approximately 15.3 units per net developable acre¹; and
- b. An overall coverage factor equal to approximately 30% of the gross developable area of the site.²

III. THE PLACE-MAKING OBJECTIVES DRIVING DESIGN OF THE SFR PROJECT

A. Principal Programmatic Objectives of the SFR Project

The character of the place the SFR Project is intended to create is driven by the following two principal programmatic objectives:

1. To celebrate the Site’s dramatic waterfront setting – with its unobstructed panoramic Bay views, waterfront ecology, and parkland resources; and
2. To provide both visitors to the Waterfront Park and residents of the Latitude Neighborhood alike with an opportunity to connect not only to the Terminal One shoreline but also to each other in ways that will energize their common experience, activate shared space, and generally enrich the relationships that bind a community together.

¹ The Project’s “gross developable area” is equal to the gross area of the dry land portion of the Project Site: 12.6± acres or approximately 548,856 SF. The Project’s “net developable area” is calculated by applying a land use efficiency factor of 80% to the gross developable area: 12.6± acres x 0.8 efficiency factor = 10.08± net developable acres. The overall “project density” is calculated by dividing the total number of dwelling units to be developed on the Terminal One site (154 DUs) by the net developable acreage (10.08± acres): 154 DUs/10.08± net developable acres = 15.3± DUs per net developable acre.

² The Project’s “coverage factor” is calculated by dividing the area of the total building footprint (166,000± SF) by the gross developable area (548,856± SF): 166,000± SF/548,864±SF = 30% coverage.

B. Land Use Planning Strategies Employed to Realize Place-Making Objectives

In pursuit of these dual place-making objectives, the land use plan of the SFR Project employs a number of design strategies, including:

- **A Multi-Modal Public Access Program** -- including the Bay Trail Shoreline Loop, the Dornan Drive Shoreline Extension, and the Central Promenade -- designed to provide the greater Richmond community with opportunities to access the panoramic views afforded by the SFR Project's shoreline location and to connect physically as well as visually not only with the Terminal One Waterfront Park and shoreline resources but also with the extraordinary Bay-shore and parkland environment that adjoins the Terminal One Project on three of its four sides.
- **A Public Waterfront Park Program** -- incorporating a variety of features, including the Wharf Park facilities, that are designed to enhance the visitor experience by functioning in a programmatic capacity to provide opportunities for both active and passive engagement with the Terminal One waterfront and the Project's shoreline resources. These opportunities to connect with the natural order and its setting on an intimate and personal level, in turn, give the SFR Project its special sense of place and unique character.
- **A Four-Tiered Land Use Plan** -- consisting of:
 - a) **Tier One** -- The First-Tier land uses consist of the principal public park/open space and public access features of the Project, including the Wharf Park, the Bay Trail Loop, and the Dornan Drive Extension, which will occupy the Project's prime acreage at the site perimeter where the unobstructed, panoramic Bay-views, the ecological values, and the recreational opportunities afforded by the Terminal One waterfront and the Miller-Knox Regional Shoreline are most immediately accessible.
 - b) **Tier Two** -- The Second-Tier land uses consist of the 59± single-family homes located at the perimeter of the Latitude neighborhood -- including the two-story SFD homes that line the SFR Project's shoreline reach, the two-story SFD homes that front on the Dornan Drive Shoreline Extension, the three-story SFA duplex homes that front on Brickyard Cove Road, and the two- and three-story SFD homes that line the eastern/southeastern reach of the Bay Trail Loop opposite the Richmond Yacht Club. The main living space of all of these homes will front on the public access corridors that surround the residential development (i.e., the Dornan Drive Extension, the southern and eastern segments of the Bay Trail Shoreline Loop, and Brickyard Cove Road). These

Second-Tier homes are designed to create the primary interface between the public space that encircles the SFR Project and the residential space that lies within. These homes:

- (i) Are designed and oriented so as to capture the commanding visual prospects which the Site's southern exposure and projection into the Bay make possible.
- (ii) Will make liberal use of window openings and glazing:
 - to frame the dramatic views,
 - to capture the natural light,
 - to open the indoor space to the more expansive reach of the outdoor environment and natural order, and
 - to enable a more intimate visual connection and sense of engagement with the waterfront setting.
- (iii) Will feature home entries which front on the public access corridors which surround the site, with beach entries, landscaped walkways, first-floor covered porches, and second- and third-floor covered decks to foster an integration of indoor and outdoor space and create a welcoming presence that invites social interaction and provides an opportunity for the type of inter-personal engagement that plays a critical role in bringing communities to life.

The Second-Tier homes that occupy the prime view lots along the southern and western perimeter of the Site will all be two-story residences that will step up to the three-story homes occupying the interior of the site. The transition between the two- and three-story homes is designed not only to create a visually appealing shoreline aesthetic and graduated sense of scale, but also to provide the three-story homes at the Project's interior with view opportunities over the two-story homes at the residential perimeter.

The Second-Tier duplex homes that front on Brickyard Cove Road are designed to function as live/work units and will include a ground-floor workspace with the option for a dedicated entry off the Brickyard Cove Road corridor.

The Second-Tier three-story homes that line the Project's eastern and southeastern border will include ground-floor Junior ADUs that will have

separate entries and that will front on and have direct access to the Bay Trail Shoreline Loop.

- c) **Tier Three** – The Third-Tier land uses consist primarily of three-story SFD homes which will be aligned inside and overlook the two-story First-Tier homes located at the southern perimeter of the residential development. The principal living space of the Third-Tier three-story SFD homes will be located on the second and third floors and these homes will have optional roof decks to optimize access to views and light. Most of these three-story homes will have partial views of the Bay over the two-story homes that line the residential neighborhood’s southern perimeter.
- d) **Tier Four** – The Fourth-Tier land uses consist of smaller three-story SFD homes and SFA duplex homes which will occupy the interior of the site. Because these units will not have access to the views enjoyed by the Second- and Third-Tier units, the design of these homes will instead emphasize the second place-making objective of the Project – the creation of opportunities for the sort of social contact and engagement that enriches relationships and binds communities together. To this end, all of the Fourth-Tier homes will have alley- or rear-loaded garages and will front on Greenway Corridors with landscaped common-area walkways to encourage the kind of incidental and improvisational social encounters that make neighborhoods interesting.

C. Comparing the Latitude Residential Neighborhood to a Suburban Subdivision

The Latitude Residential Neighborhood is designed to create a very different sense of place than the type of subdivision found in many suburban locations.

Suburban subdivisions often have a character that is both insular and inwardly focused -- with exterior edges designed to create a sense of enclosure; with homes designed to exclude external elements; with front doors opening onto auto-centric streetscapes that are dominated by driveways, garage doors, and recessed entries; with site plans that are largely devoid of significant public park and open space features; and with little integration of public and private space.

The Latitude Residential Neighborhood, on the other hand, is designed to create a very different sense of place with:

- an outward orientation and focus on the shoreline environment and parkland resources surrounding the site;
- exterior edges that are designed to create both:

- (a) a sense of engagement with the external environment that celebrates the site’s dramatic waterfront setting and
 - (b) an interface between the public space at the perimeter of the residential neighborhood and the habitable space within the neighborhood that provides an opportunity for the kind of social interaction between residents and visitors that bind a community together;
- homes that are designed to capture both views and natural light and open the indoor space to the more expansive reach of the outdoor environment;
 - a pedestrian-oriented circulation plan that emphasizes walkable access to the waterfront and to the parkland and open space features that surround the site and give the site its special character, with the majority of homes fronting on the public access corridors at the neighborhood perimeter and on Greenway Corridors within the neighborhood; and
 - A compact residential land use plan that reserves roughly 30% of the site for dedicated public park and public access uses, including the Project’s prime acreage along the entire Terminal One shoreline where the panoramic Bay-views, ecological values, and recreational opportunities are most accessible.

IV. OTHER COMPONENTS OF THE SFR PROJECT’S LAND USE PROGRAM

A. Project Circulation

The Terminal One Project circulation plan will include the following principal components:

1. Regional Project Access -- Primary vehicular access to the Project from regional locations will be provided by U.S. Highway 580 (“I-580”) by way of Dornan Drive and the Dornan Drive Tunnel. Secondary access to the site from I-580 will also be available via Canal Boulevard/West Cutting Boulevard, Seacliff Drive, and Brickyard Cove Road. The Richmond BART station located at 1700 Nevin Avenue provides access to regional transit service through the BART system as well as to statewide and national rail service through the Amtrak system. The BART/Amtrak stations can be accessed from the SFR Project by way of surface streets (Dornan Drive/South Gerrard Blvd/ to West Macdonald Avenue) at a distance of 3.1 miles.

2. Ferry Service to San Francisco -- In addition, ferry service between Richmond and San Francisco, operating out of the new terminal facility located at the Craneway Pavilion, can be accessed from the SFR Project by way of surface streets (Dornan Drive/Cutting Boulevard/Harbour Way) at a distance of approximately 3.5 miles.
3. Brickyard Cove Road -- The Terminal One circulation plan assumes the continued operation of Brickyard Cove Road as a two-lane collector roadway which will not only provide access to the Latitude Residential Neighborhood but will also provide commuter, commercial, and other through-traffic with a means of bypassing the Project. Access to the Latitude neighborhood will be by way of two street entrances off Brickyard Cove Road. The main entrance will be located at the center of the Project's Brickyard Cove Road frontage. This location will also serve as the entry point for the Central Promenade. A secondary entrance will be provided at the northeast corner of the Project Site. In addition, the Brickyard Cove Road corridor that extends the length of the Project Site's northern boundary will include 34± on-street public parking spaces.
4. The Dornan Drive Shoreline Extension -- The Project will include a southern extension of Dornan Drive from its current terminus at the northwest corner of the Project Site to a turn-around bulb located adjacent to the west end of the Wharf Park. The Dornan Drive Shoreline Extension will provide direct vehicular access to the Terminal One Waterfront Park with a drop-off/loading area at the Wharf Park. In addition, the extension of Dornan Drive will include 11± on-street parking spaces for park visitors.
5. The Central Promenade -- The SFR Project's pedestrian/bicycle circulation system will also include an internal promenade extending through the center of the residential neighborhood on a north/south axis. The Central Promenade is designed to function as one of the Project's principal connecting elements. In this regard, it will serve as a pedestrian and bicycle-oriented paseo that will not only connect the Brickyard Cove Road corridor to the north with the SFR Project's Waterfront Park and shoreline to the south, but will also connect the Project's interior core and its exterior perimeter. In the process, the Central Promenade will provide an interactive interface between the Project's public realm and its more private residential countenance. This integrating feature of the Project's pedestrian circulation system will also provide a physical and visual link between the Miller-Knox Park headlands to the north of the Project Site and the San Francisco Bay shoreline to the south.
6. Pedestrian and Bicycle Circulation -- The Terminal One circulation system is designed to prioritize pedestrian and bicycle modes of travel. It features:
 - a shoreline extension of the Bay Trail (the Bay Trail Shoreline Loop) providing bicycle and pedestrian access to the SFR Project's Waterfront Park from off-

site locations to the east, north, and west by way of connections to existing Bay Trail facilities;

- a “commuter” extension of the Bay Trail (the Bay Trail Commuter Extension) which will run from the existing terminus of the Bay Trail located on the north side of Brickyard Cove Road opposite the midpoint of the SFR Project’s northern frontage to the Dornan Drive/Brickyard Cove Road intersection, where it will connect with existing segments of the Bay Trail located in the Miller-Knox Park and with future on-street bike lanes planned for the Dornan Drive corridor; and
- an interconnected network of Greenway Corridors, sidewalks, and the Central Promenade within the Latitude Residential Neighborhood designed to:
 - (i) provide connectivity within the residential neighborhood,
 - (ii) tie together the SFR Project’s residential and park-related land uses, and
 - (iii) to provide residents, guests, and visitors alike with access to the shoreline and parkland resources at the perimeter of the Site.

7. Circulation Plan Elements Designed to Deemphasize the Automobile -- In recognition of the importance of (a) creating a sense of place which celebrates the natural order and ecological attributes of the shoreline, and (b) the priority assigned to pedestrian and bicycle circulation as a means of providing access to these attributes at a more intimate level, the SFR Project’s circulation plan is designed to deemphasize the automobile. To this end, the plan incorporates the following elements:

- As noted above and further discussed below, Brickyard Cove Road has been retained as a collector roadway. Operating in this capacity, Brickyard Cove Road will serve two functions. First, it will provide commuter and commercial traffic with a means of bypassing the Latitude Residential Neighborhood, reducing both (a) the volume of traffic using the streets within the subdivision and (b) the potential conflicts between commuter/commercial traffic (where the focus is on the through-put of this existing roadway and on minimizing travel time and distance) and resident/guest traffic (where the focus is on the neighborhood-serving character of the roadway network within the Latitude subdivision).
- By locating the two entrances to/exits from the Latitude Residential Neighborhood off Brickyard Cove Road, and by designing the single-family homes that front on the Dornan Drive Extension with rear-loaded garages, the Project’s circulation plan allows residents of the Latitude neighborhood (and

their guests) to access their homes without the need to make use of the Dornan Drive Extension. This shoreline roadway has, in effect, been reserved for use by those members of the public interested in accessing the Project's Waterfront Park and shoreline attributes.

- The design of the on-site vehicular circulation system also incorporates traffic calming features that function to prioritize pedestrian and bicycle modes of travel and reduce the threat posed by vehicular traffic to the safety of those walking and bicycling. These features include a roadway network within the residential neighborhood that makes widespread use of alleys and incorporates short, interconnected street sections with 10-foot travel lanes and other traffic calming measures such as raised crosswalks/speed tables, stop signs, on-street parking, and a "Safety Zone" designation with a posted speed limit of 20 mph.
- Almost all resident parking will be hidden from view within the two-car garages that are a part of each single-family home.

B. Parking

A total of approximately 408± parking spaces will be provided by the Project, consisting of 362± spaces for residents and guests within the Latitude subdivision (resulting in a parking ratio of 2.35± spaces per single-family home) and 46± public spaces along the SFR Project's Dornan Drive and Brickyard Cove Road frontages.

1. Resident and Guest Parking -- Parking for residents and guests of the Latitude Residential Neighborhood will be provided within the subdivision and will consist of 308± garage spaces, 18± tandem driveway spaces on covered parking pads, 21± on-street parallel parking spaces, and 15± parking stalls.
2. Visitor Parking – Parking for visitors to the Terminal One Waterfront Park will consist of 11± on-street spaces along the Project's Dornan Drive frontage, and 35± on-street spaces along the Brickyard Cove Road Frontage. \

C. Utilities

1. Water and Wastewater -- The SFR Project will rely on existing and available water and wastewater treatment and off-site transmission/conveyance capacity. Additional on-site water and wastewater lines, laterals, connections, and other improvements will be constructed as needed to tie into the existing backbone infrastructure and adequately serve the Project.
2. Stormwater -- The SFR Project will employ a system of bioswales and other natural treatment measures to collect, retain, and treat stormwater run-off on-site.

Following on-site treatment, stormwater run-off will be conveyed to an existing 54-inch storm drain line and outfall for off-site discharge.

D. Inclusionary Housing

Ten percent of the homes in the SFR Project will be made available to moderate-income households at affordable sales prices in accordance with the provisions of Richmond Municipal Code Section 15.04.603 – “Inclusionary Housing and Affordable Housing Linkage Fee” and Richmond Municipal Code Section 15.04.602 – “Affordable Housing Density Bonus.”

V. CONSIDERATION OF ALTERNATIVE PLAN WITH REMOVAL OF WHARF

As noted in the preceding description of the proposed Project, by the time the original 316-unit, primarily multi-family, condominium project was fully approved in March of 2020, the project was no longer economically viable due to a combination of factors. The changed circumstances adversely impacting the Project economics included:

1. The identification of approximately \$21 Million in extraordinary costs to mitigate hazardous conditions and otherwise prepare the Site for redevelopment and to construct the public park and public access improvements, including the costs associated with:
 - a) seismically stabilizing the site,
 - b) completing the clean-up of soil and groundwater contamination,
 - c) structurally retrofitting the wharf,
 - d) addressing flood risk associated with sea level rise,
 - e) engineering the un-engineered artificial fill covering the entire site,
 - f) demolishing the lead paint-contaminated warehouse, and
 - g) constructing the public waterfront park and public access improvements;
and

2. The challenges posed by:
 - a) multi-family condominium construction costs that in recent years have been increasing at a much faster rate than the values of multi-family condominiums,

 - b) a real estate market where new home pricing in Richmond is significantly below Bay Area averages while new home construction costs are at the same high level throughout the Bay Area, and

 - c) a COVID-19 pandemic that has adversely impacted demand for multi-

family condominiums while, at the same time, driving further increases in construction costs.

While the proposed single-family residential redesign described in the preceding narrative (the “**Proposed SFR Project**”) restores the Project’s economic viability by substituting single-family homes for the multi-family condominiums of the Original Project, the single-family Project must be developed at a density that will generate sufficient revenue from home sales to cover the approximately \$21 Million in extraordinary site preparation and park-related costs referenced above. If a way can be found to reduce these costs, it would be possible to reduce the density and make changes in the land plan to give it a more open character.

In the course of processing the entitlements for the Proposed SFR Project, a proposal has been made:

- a) to reduce the total project cost by eliminating the costly structural retrofit required to convert the Wharf into a park facility and instead removing this abandoned 100+ year old structure that, in its current condition poses a hazard to the public health and safety, can accommodate no public or private use whatsoever, and requires 24/7 security; and
- b) to use the resulting cost savings to allow a reduction in the residential unit count/saleable square footage required to generate sales revenue adequate to support project costs.

This proposal involving removal rather than reconstruction of the Wharf (the “**Alternative SFR Project**”) appears to have generated widespread interest and support both among the City’s elected and appointed leadership as well as within the community at large – a response that is shared by the Project Applicant.

Preliminary analysis of the Alternative SFR Project suggests that the elimination of the expense of reconstructing the Wharf would introduce an additional level of design flexibility and may make it possible to reduce the total saleable square footage of the Proposed SFR Project by as much as 10%.

With this objective in mind, the Project Applicant will be evaluating the feasibility of a design that contemplates the removal of the Wharf rather than the structural retrofit and reuse of this abandoned port facility. This evaluation will include an assessment of the potential cost savings that would be realized and the extent to which these cost savings would allow changes to be made to the conceptual site plan that would reduce the density of the Project.

While removal of the Wharf would eliminate the active and passive recreational uses

provided by the repurposed structure, this change in the land plan for the site would also allow:

- the creation of a waterfront setting that has a more natural and organic character;
- a greater emphasis on the role of the new Bay Trail Shoreline Extension in providing the public with access to the Bay-shore environment and the panoramic views that will be the site's signature resource; and
- an expansion of the shoreline greenbelt as a defining feature of the visitor experience.

At the same time, the cost savings involved in removing the Wharf rather than restoring and reusing this 100+ year old structure as a public park amenity:

- would allow a reduction in the density of the Latitude Residential Neighborhood which could approach 10% of the homes, depending on the amount of the cost savings in combination with the off-setting impact of any loss in home sale revenues resulting from reductions in the total saleable residential square footage;
- would enable additional design flexibility, particularly with regard to the way in which the third-floor architecture of the three-story homes is articulated using step-back and off-set design strategies which can improve project aesthetics but reduce saleable square footage;
- would provide an opportunity to create a more open residential land plan that can improve access to views and spacial relationships within the plan area; and
- would make it possible to expand the parking available to residents and their guests, which if combined with the elimination of the Junior ADU's, could both increase the supply of and reduce the potential demand for parking within the subdivision.

The feasibility analysis of the Alternative SFR Project will be performed following the closing on the purchase of the Residential Property by the Project Applicant and will include an assessment of:

- the additional local, state, and federal regulatory approvals that will need to be obtained, the likely timeframe involved in processing these regulatory approvals, the extent to which these timeframes would result in project delays, and the likelihood the required approvals can be secured;
- the difference between the cost of removing the Wharf and repurposing the Wharf

as a park amenity;

- the extent to which the cost savings attributable to the removal of the Wharf would allow changes to be made in the Project that would improve both the form and function of the Project design; and
- the extent to which the Alternative SFR Project would require additional environmental impact review under CEQA.

The foregoing analysis will also evaluate the feasibility of processing the entitlements for the Proposed SFR Project (with the Wharf) and the Alternative SFR Project (with the Wharf removed) concurrently. Under this concurrent processing course of entitlement, the Alternative SFR Project would be the preferred option and the Proposed SFR Project would provide a back-up option if the Alternative SFR Project either is denied the requisite approvals or cannot be entitled within a reasonable timeframe.

The retrofit and improvements to the Wharf for which provision is made in the approved 316-unit condominium project were carefully designed to avoid work in and impacts to the waters of the San Francisco Bay. Nevertheless, the Bay Conservation and Development Commission would not process a Major Permit Application for the Original Project until the U.S. Army Corps of Engineers (the “**Army Corps**”) had provided written confirmation that the Original Project did not require a regulatory permit from the Army Corps. The process of obtaining this written confirmation that the Project did not require an Army Corps permit was long and arduous.

Because removal of the Wharf will involve work in the waters of the Bay, it may trigger regulatory oversight by the Army Corps and other State and Federal regulatory agencies. Securing the approval of these oversight agencies may, in turn, involve a multi-year process. For this reason, it is critically important to envision a strategy to process the approvals that will be required to remove the Wharf and to provide for options so that the regulatory requirements can be accommodated. The concurrent processing strategy described above is intended to provide just such strategic options.

In pursuing this strategy, Project Applicant will designate the Alternative SFR Project (with removal of the Wharf) as the first choice and primary option going forward (“**Option A**”). The Proposed SFR Project will be processed as back-up “**Option B.**” Project Applicant will take an initial period of 90 days to further define and refine the elements of Option A and to undertake the feasibility analysis described above. The necessary revisions will then be made to the entitlement applications and the applications will be processed in such a manner that a sufficient period can be given to get approval of the Wharf removal, but have the option to fall back on Option B if difficulties are too great with Option B.

EXHIBIT C-1
ESTIMATED SCHEDULE OF PERFORMANCE

	Event	Timing/Status
1.	<u>Resolution.</u> City approves Resolution 168-22 and deal terms, directs notice to HCD of Exemption and authorizes City Manager to prepare Amendment in accordance with Resolution	Completed City Council on November 22, 2022
2.	<u>HCD Exemption.</u> HCD confirms exemption for SLA	Completed December 15, 2022
3.	<u>BYC Meetings.</u> Meetings with BYC groups, Exhibit C-2 to ALDA prepared	Zoom conferences commencing December 8 through 28th
4.	<u>Closing.</u> Closing and conveyance of Site to Developer	December 30, 2022
5.	<u>Right to Rescind.</u> Period for City Council to revoke transaction (Section 6.1.9.2); or for Developer to revoke due to title objections; and return Closing Deposit to Developer; (Section 3.3.2(ii))	75 day period from Closing (Event No. 4)
6.	<u>Feasibility Assessment of Wharf Elimination.</u> Period for Developer to evaluate feasibility of eliminating Wharf, and prepare preliminary alternative plan without wharf; Developer serves City with written notice that it intends to make Alternative Plan an Option	90 day period from Closing (Event No. 4)
7.	<u>Preparation of Development Plan.</u> Revise Development Plan as necessary to show two alternative scenarios (with and without Wharf) and submit to City	180 day period from end of Event No. 6
8.	<u>Processing of Entitlements.</u> Developer processes Entitlements, including CEQA documentation, through DRB, Planning Commission, and City Council, and receives City Entitlements; followed by review and approval by Bay Conservation and Development Commission (BCDC)	Initial 360 day period from end of Event No. 7
9.	<u>Extension of Initial Entitlement Period.</u> Extension upon mutual agreement due to delays in the processing of Entitlements (Section 6 (Section G of LDA Amendment))	One-year Extension Period from end of Initial Entitlement Period (Event No. 8)
10.	<u>Entitlement Challenge Period.</u> Challenge period for Project Entitlements	90 day period from end of Event No. 8 or Event No. 9
11.	<u>Report on Roadway.</u> Development of Report by City Engineer on condition of BYC Roadway, necessary improvements and cost; Report will be shared with Coordinating Committee	To be completed by May 2023
12.	<u>Design of Roadway Improvements.</u> Design of Roadway improvements to be prepared under direction of City Engineer	To be prepared concurrent with Entitlement process (see Event No. 7 and Event No. 8)
13.	<u>Construction of Roadway.</u> Construction of Roadway by Developer or City	If not as a part of Developer Project, then by City within five (5) years of end

		of Entitlement Challenge Period (Event No. 10)
14.	<u>Acceptance of Roadway.</u> Acceptance of Roadway by City	Upon completion of Event 10 but subject completion of all improvements being constructed
15.	<u>Payment of 1st Note.</u> Developer pays 1 st Note in two payments: <ul style="list-style-type: none"> • 1st Payment of \$2M and in addition, payment of Transfer Tax (approx. \$250,000); and • 2nd Payment of \$2M 	<ul style="list-style-type: none"> • 1st payment at end of Entitlement Challenge Period (Event No. 10); • 2nd payment concurrent with issuance of 1st Building Permit
16.	<u>Design Development Period.</u> Developer proceeds with design development plans for site, homes, utilities, streets, and landscaping	180 day period from end of Entitlement Challenge Period (Event No. 10)
17.	<u>Preconstruction and Construction Financing Period.</u> Developer prepares construction documents, including Final Plans and Specifications, for financing and construction	270 day period from end of Design Development Period (Event No. 16)
18.	<u>Processing and Approval.</u> City processes and approves construction permits for each phase of Developer's Four Phase Construction Program	Developer submits for construction permits as each phase is ready for construction; City to issue permits within 90 days of Developer submittal
19.	<u>Commencement of Construction.</u> Developer commences construction of Phase 1 of Four Phase Construction Program	Following end of Preconstruction and Financing Period (Event No. 17)
20.	<u>Payment of 2nd Note.</u> Developer pays 2 nd Note of \$5M	At issuance of 50 th building permit but no later than six (6) years from Closing
21.	<u>Offsite Improvements:</u> Developer commences construction of Offsite Improvements	In First Phase of Project in accordance with Land Disposition Agreement as amended
22.	<u>Construction Completion.</u> Completion of Project by Developer	4 1/2 Years from Commencement of Construction (Event No. 19)
23.	<u>Payment of Shared Appreciation Note.</u>	Upon occurrence of Event No. 24 or six (6) years from Closing (Event No. 4) unless Reverter
24.	<u>Reverter.</u> City has right (not obligation) to exercise reverter. If exercised, City has obligation to then resell property with proceeds <u>going</u> to City for costs, then Developer to recover costs and balance to City.	Trigger events: failure to timely (i) obtain entitlements, (ii) commence construction, (iii) continuously perform construction, (iv) pay notes when due and no later than six (6) years from Closing (Event No. 4)

City Manager shall have the right to grant extensions of any of the above deadlines up to 180 days, but greater extensions shall require Council approval.

EXHIBIT C-2

BRICKYARD COVE ROADWAY REHABILITATION AND TRANSFER PLAN AND NEIGHBORHOOD MITIGATION REQUIREMENTS

I. BRICKYARD COVE ROADWAY REHABILITATION AND TRANSFER PLAN

A. Background

Ferry Point was the original site of significant marine operations in the Richmond Area – ferry service began in 1900 and with a rail connection constructed through a tunnel, it became the western terminus of Santa Fe Railroads. The area became Richmond’s initial port terminal with a wharf and warehousing. Significant manufacturing was introduced with the operation of the Brickyard Kiln with the manufactured bricks barged from Ferry Point to San Francisco for the rebuilding of San Francisco after the 1906 earthquake. These operations continued until the 1960s when the manufacturing was succeeded by residential development.

Richmond’s greatest growth came during the second world war when the four marine terminals, including Terminal 1, were developed, and operated by Kaiser Steel. Port operations declined after the war and Terminal 1 closed in the late 1980s.

The Brickyard Cove neighborhood located east of the project site includes marinas and residential developments established in the 1970s, 1980s, and 1990s. These developments include Brickyard Landing, which comprises condominium complex buildings and private recreation facilities, and Seacliff Estates, a single family residential subdivision, Waterline a condominium complex as well as single-family homes along South Mallard Drive, Sandpiper Spit, and Sanderling Island (largely constructed of engineered fill and concrete pilings, and/or supported on platforms over water).

These projects took access through the single access point through the Ferry Point Tunnel to Ferry Point which was a dead-end road. The Subdivision Agreement approved in 1968 provided for the extension of Brickyard Cove Road (“BYC Road”) to serve the projects as a private roadway.

B. Pending New Development

In addition to the Terminal 1 184-unit project at Ferry Point, there are several other development projects which will access the roadway system: PG&E site (94 units) and Quarry (79 units). These projects may involve significant grading activities, and truck traffic during the period of construction. Besides needing to pay import fees and for roadway improvements these projects are likely to degrade the existing roadway as described below. If the street rehabilitation work were performed before the projects were constructed, the roadways would need subsequent repair. Accordingly, it would be reasonable to collect fees from the early developer(s) and require the last developer to perform the work.

C. Current Condition of Roadway and Needed Rehabilitation

The Subdivision Agreement for the area in November 15, 1968 contemplated that BYC Road would become public when it was connected to Canal Boulevard to allow traffic circulation; and though this happened in 1996, the City acceptance did not happen and in the intervening years, the road condition has deteriorated and does not meet current City standards. The City Engineer believes that the current

roadway serves a traffic index of approximately 3.5. The City's Streetlight database suggests an average annual daily traffic flow along BYC Road of about 1000 vehicles with 3% being large trucks. The projects of Terminal 1 and Tract 9604 (PG&E Site), could increase those figures by XX %. The design life of the roadway should be 20 years requiring a TI factor of 6.1, but with projected growth, a more reasonable factor would be a TI of 6.5. This would add about half an inch of asphalt or an additional 100 tons of asphalt in the deficient sections.

The suggestion of a deficient roadway structural section is confirmed by the presence of distress in the pavement. The geotechnical report (July 18, 2019) showed that pavement distress appeared within 6 years of the last maintenance treatment by the private owners. It does not appear that the roadway was built to a reasonable standard to ensure a design life of at least 20 years. The addition of two more development projects (and a third, the Quarry Project), will hasten the deterioration of the roadway, and the additional construction traffic involving an estimated [redacted] heavy trucks due to transporting construction and grading materials will impose impacts requiring mitigation. It is therefore recommended that a reconstruction of the roadway be undertaken as many of these trips will have to come the long way avoiding the Ferry Tunnel. However, this reconstruction condition may not prevail in the whole length of BYC Road.

There has been some suggestion that the roadway was put down over a limited military era base and that there will need to be additional effort required to manage the subgrade due to the preexisting conditions and the soil conditions. There is therefore a need for some additional investigation and testing including over the length of BYC Road to determine the overall work program. The investigation programs shall be paid for 1/3 each by Developer, City, and HOA. This will occur as development plans are refined.

In any event, the City Engineer based on current information recommends a program that includes reconstruction of BYC Road to meet City Standards so that it will have a 20 year design life; that this recommendation is caused in large part by the heavy truck construction traffic originating from the projects; and finally that the phasing of the work should be performed so that the reconstruction occurs in the last phase of construction, for both projects. An arrangement might be necessary where developers pay in lieu fees instead of performing the actual work if the phasing will not work out satisfactorily due to the developments' staging.

The City Engineer will work with both projects (Terminal 1, PG&E and the Quarry Project as to that section of the roadway) as well as residents to develop the construction phasing plan, recognizing concerns that there might be excessive roadway deterioration, and the need to maintain neighborhood access throughout the construction process. A resident Coordinating Committee shall be established for this purpose, as established elsewhere herein.

D. City Standards for Reconstruction Project and City Acceptance

It is expressly understood that these Projects will be responsible for the damage that they cause to the BYC Road surfaces due to their construction activities, and in this case due to the road deterioration, the reconstruction of BYC Road is required. This includes not only the full frontages along the projects, but also the extended areas which will be degraded by the construction activity. The City will not allow BYC Road to be rehabilitated until all developments are complete, although the degraded condition of the Roadway in the interim will need to be considered in the phasing plan. City acceptance of the private sections of BYC Road will require the following unless otherwise approved by the City Engineer:

1. All curb ramps shall be upgraded to current standards as illustrated in Caltrans Standard Plan A88A.
2. The City will define the location for repair to curbs and gutters.
3. All record monuments shall be located within the project area. These shall be protected in accordance with the [Business & Professions Code §8771](#); [Streets & Highways §732 & §732.5, §1492.5, §1810.5](#); and [Penal Code §605](#).
4. The traffic index for this roadway shall be 6.5. Therefore, the pavement section per the geotechnical report should be 4 inches of asphalt concrete over 6 inches of Class II aggregate base.
5. As described in the geotechnical report, the subgrade shall be scarified and recompacted to a depth of 12 inches upon removal of the pavement section. Should unstable subgrade be present, the applicant shall either cement treat to a depth of 12 inches or over excavate, place Class II, and install a geogrid.
6. The Project shall coordinate with public utilities such as PG&E, EBMUD, AT&T, and Comcast to determine if they have any capital improvements within the project area.
7. The Project shall review the storm drain and sanitary sewer videos within the project area to confirm if Veolia needs to upgrade pipelines. .
8. Traffic shall be allowed through the work zone at all times.
9. The cross section on sheet C-3 does not match the plans on sheet C-4. The lane width shall be 11 feet.
10. The Project shall install flexible delineators separating the bicycle and vehicle lanes.
11. The Project shall evaluate modifying the west leg of the crosswalk at Brickyard Way to determine if it can be aligned to be perpendicular. If determined feasible, the Project shall be responsible for making such changes to the crosswalk.
12. The Project shall adjust to grade all utilities within the paved area.
13. The roadway is posted at 25 mph but City will review traffic-calming measures.

E. Brickyard Roadway Plan: Financing and Transfer

Developer agrees to participate with City in the development of a Brickyard Roadway Plan (“BRP”) which will meet the criteria herein and will include cost estimates, financing, phasing participation by responsible developers, and acceptance of dedication by City. The BRP shall be developed to incorporate the following elements:

1. Roadway Condition. Analysis by City of roadway condition and costs to reconstruct roadway to meet City standards. A report (the “Report”) to be prepared by the City Engineer by May 2023 and will be shared with Coordinating Committee. The Report shall include a cost estimate for the option of adding a traffic circle on Brickyard Cove Road. City Engineer has reviewed the Plans submitted August 10, 2022 and finds (i) more review of roadway condition required; (ii) need assessment of entire length; and (iii) need to assess responsibilities. The preliminary cost estimate is \$600-700k.
2. Schedule. A schedule shall be developed for phasing of construction so that improvements are installed after completion of the projects requiring access to

Brickyard Cove Road so any new roadway improvements will not be damaged by later construction. The Report must also consider the survivability of the road surfaced due to the construction activity (roadway must be useable by residents). Map showing sections to be analyzed (Dornan, BYC, Yacht Club, West, East). Sections and current ownership will be shown in ALDA, Exhibit C. BYR Plan needs to cover all these areas.

3. Developer Obligations.
 - (a) Developer obligations for adjacent projects shall include, at a minimum:
 - (i) pay 100% of cost for the section of Brickyard Cove Road immediately adjacent to Project;
 - (ii) pay required Traffic Impact Fees;
 - (iii) repair any improvements damaged by its construction activity to meet City standards; and
 - (iv) participate in an integrated program for the whole roadway on fair share principles.
 - (b) Developer may perform the improvement as a part of its Project unless City determines that subsequent projects will deteriorate any improvements installed, in which case Developer will pay an in-lieu fee equivalent to its share. The improvements shall include paving, curb/gutter, sidewalks, lighting, and structures within the street (sewer, storm water, etc.), and landscaping and repair of any landscaping damaged in any way by construction traffic.
4. Funding. Based on the Report and included in the Report shall be a funding plan (“Funding Plan”).
 - (a) The Funding Plan shall include these elements:
 - (i) estimated cost based on when construction will occur; and
 - (ii) provide sufficient funding sources.
 - (b) All potential funding from developers of benefitted parcels;
 - (c) BYC Community (BYCHOA 1& 2, Brickyard Landing, Seacliff, Boardwalk Marina) will fund \$250,000 for all costs and liabilities related to both private sections of Brickyard Cove Road based on an allocation of costs mutually agreed to by BYC Community and payable at the time the work is commenced;
 - (d) This agreement in (c) above is expressly conditioned upon the approval of each of the entities identified therein; and
 - (e) Remainder from City.
5. Parkway Maintenance. HOAs shall be responsible for maintenance of irrigation and landscaping in parkway areas adjacent to their property and the street, but not the park or the Bay Trail.
6. City Acceptance - BYC Road. City shall accept dedication of the right of way as a public street upon the first to occur: approval of all entitlements for the Project and

expiration of challenge periods (the “Acceptance Date”) or five (5) years from Project Approvals (Project Approvals are final Council action on discretionary approvals). Additionally, if the improvements are not made by Developer, they shall be made by City within five (5) years of Project Approvals. The City may do it sooner if funding is obtained earlier.

7. Additional Commitments. City shall make best efforts (i) to include a traffic circle on Brickyard Cove Road, (ii) connection between Dornan and Brickyard Cove Road will narrow but meet City standards, (iii) Subject to HOA-1 approval the guard shack and cobblestones may remain for traffic calming, but maintenance of guard shack will be HOA-1 responsibility and City will grant license for maintenance. Best efforts will not require excess financial obligations of City.
8. Miscellaneous.
 - (a) The issue of improving Brickyard Cove Road and having City accept as a public street has been unresolved for a considerable time and the foregoing BRP would resolve the issue, but it remains an agreement between City and Terminal 1.
 - (b) City will bring the matter back to City Council for affirmation and commitment to community.
 - (c) Upon acceptance by City, with respect to private portions of Brickyard Cove Road, City shall be responsible for all claims and liabilities arising from usage of the public right-of-way incurred after the date of acceptance.

II. NEIGHBORHOOD MITIGATION REQUIREMENTS

A. Economic Issues

The economic analysis by Econ Land Group (“LEG”), concluded that the prior high-density project was not feasible in contrast to the current Project. The analysis has been published on the City’s website for the Project and is available to the public. The City has further requested that LEG work with Developer to release a proforma which shall give the public a fair understanding of project economics – general projected price range estimates of residential units and costs of shall be included.

B. Traffic

1. Emergency Access Plan. An emergency ingress/egress plan by emergency vehicles and the public to apply during construction shall be required for the affected communities (Brickyard Landing, Brickyard Cove #1, Brickyard Cove #2, Sea Cliff, Waterline, Richmond Yacht Club, Terminal One (Latitude), as a condition of approval of the Project and included in the Mitigation Measures. As it is understood that various factors currently impact such ingress/egress, such as rail operations, the City shall be involved with the development of the plan and shall provide a long-range focus so that (i) it will operate for the benefit of all the BYC Communities, and (ii) shall apply as future projects develop..
2. Traffic Management. A traffic management plan addressing trucking of fill, construction equipment and materials, to and from the Project and other concurrently developing sites, to include:
 - (a) number of trips, per day and per hour;

- (b) construction traffic, truck routes, including trucking of materials;
- (c) dust control measures; and
- (d) measures for cleaning of streets, parking lots, boats, structures, and residences within 48 hours of notice.

Additionally, a complaint hotline to Developer shall be established and included with the Mitigation Measures which shall require Developer to make a written record of complaints and the response taken. The record shall be available for public inspection.

- 3. Signage. Signage shall be posted to prohibit overnight parking on Brickyard Cove Road.

C. Housing Development

- 1. House Siting. House siting should achieve the following: (i) other than perimeter units, 3rd floor should not occupy more than 80% of 2nd floor of 50% of the stack of 64 units in central area which shall run in a north-south direction; (ii) if approved by the Yacht Club, the roof deck option will be eliminated for the four 3-story buildings starting from the northeast corner of the perimeter adjacent to the Yacht Club; (iii) all other east, southeast and south frontage (perimeter houses) shall be 2 and 3 stories (as depicted in Attachment 1 attached as Exhibit B). It is intended that the foregoing restrictions remain in effect for the Alternative Plan C2 below recognizing that the Plan will be revised through the design process (see Schedule in Exhibit C-1).
- 2. Alternative Plan. Developer shall develop alternative plan (“Alternative Plan”) whereby the Wharf is eliminated, JADU units made regular single-family units, and site plan modified to provide better view corridors and up to 10% of the units are eliminated. With the conversion of the JADU units, reduction in 3rd Floor area, and the reduction of units by 10%, there will be an as yet unclear impact on project economics. Developer is open to these ideas but intends that the total saleable square footage will not be more than 10% less than for the prior considered project. This is still being assessed. This plan will provide significantly enhanced parking including guest parking. Developer and City will utilize best efforts to assure that the Alternative Plan is developed dependent on obtaining permits to eliminate the wharf within an entitlement time frame which does not unreasonably delay the Project. Developer, within 60 days, shall assess (i) likelihood of obtaining permits, (ii) time frame and delay, (iii) net cost of removing wharf vs. reconstruction, and (iv) impacts on Project. If Developer elects not to proceed with alternative Project, City may revert the Property.
- 3. Review. The Project has been remanded back to the DRB and PC for full review and public participation. It is intended that this process be completed within six (6) months. However, given the period involved in seeking approvals to remove the wharf, it is contemplated that the initial period to determine viability will be 90 days and then 18 months for processing. City will grant a one-year extension, if necessary.
- 4. Design Standards. The provisions of Section 4.7.1 of the LDA shall continue to apply to the design of the Project and shall be applied by the DRB. BCARD will provide up three architects/designers to meet with Developer regarding compliance with these Design Standards prior to anything being submitted to DRB.

D. Housing Occupancy

No short-term rentals shall be permitted in the Project. Additionally, the Project CC&Rs shall contain provisions limiting rentals to no more than 25% of the units at a time, similar to the Seacliff Project. This shall be included in the ALDA.

E. Remediation

Significant remediation needs to be performed on the Project site. Developer commits to: (i) complete environmental characterization of the site as required by the RWQCB (actual reports on RWQCB's geotracker site) and provide the report concurrently to the BCARD; and (ii) fund up to \$50,000 to pay for an independent environmental remediation consultant(s) retained by BCARD to provide comments to RWQCB on behalf of BCARD concerning the carrying out of the remediation work. Invoices shall be sent to Developer and paid within 30 days.

F. CEQA

.City will reevaluate for the Project if all significant and cumulative impacts for projects in the area have been identified, assessed, and mitigated in accordance with California law. This will be presented to the Planning Commission as a part of the CEQA review process and thereafter to the City Council. Nothing herein waives the rights of the citizens to challenge the environmental findings.

G. Miscellaneous

1. Retaining Wall. The design, location, and aesthetics of the retaining wall and fence along the project and the Yacht Club's common property line shall be agreed by the Yacht Club and the Developer working together in good faith. Provided Developer gets all agency permits, Developer will pay for or reimburse the cost of the retaining wall and fence which shall be built, at a minimum, to the standards in accordance with the Yacht Club's Conditional Use Permit for West Lot. If no agreement is reached regarding the aesthetics/design/location of the fence and/or retaining wall, the Developer shall honor all provisions of the BCARD settlement agreement regarding the fence and wall.
2. Special Tax. Except as expressly provided herein, Cove residents shall not be charged with any special tax, assessment or other cost allocation to pay for construction or maintenance of any park, wharf, Terminal 1 landscaping, or lighting, or any Terminal One Bay Trail section along all sides of Terminal One property including the north section on BCR west of Yacht Club to Dornan Drive.

REVISED EXHIBIT F

GRANT DEED

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

Terminal One Development LLC
c/o Laconia Development LLC
1981 North Broadway, Suite 350
Walnut Creek, CA 94596
Attn. Robert Kagan/Paul Menzies

APN: 560-042-007
The undersigned grantor declares the County
documentary transfer taxes are equal to \$11,000

(Space above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code § 6103)

GRANT DEED

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the CITY OF RICHMOND, a municipal corporation and charter city ("**Grantor**") hereby grants to TERMINAL ONE DEVELOPMENT LLC, a Delaware limited liability company ("**Grantee**"), the real property in the City of Richmond , County of Contra Costa, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("**Property**").

As conditions of this conveyance, Grantee covenants by and for itself and any successors-in-interest for the benefit of Grantor as follows:

1. **Governing Documents.** The Property is being conveyed pursuant to that certain Land Disposition Agreement dated as August 6, 2014 by and between Grantor and Grantee as amended by that First Amendment to Land Disposition Agreement dated December 29, 2022 ("**LDA**"). The LDA is part of public records on file in the office of the City Clerk of the City of Richmond ("**City**"), located at 450 Civic Center Plaza, Suite 300, Richmond, California 94804, and is incorporated herein by this reference. Any capitalized terms not defined herein shall have the meanings ascribed to them in the LDA. Grantee covenants and agrees for itself and its successors and assigns to develop the Site in accordance with the LDA and thereafter to use, operate and maintain the Property in accordance with the LDA and this Deed. The Property is also conveyed subject to easements and rights-of-way of record and other matters of record. In the event of any conflict between this Deed and the LDA, the provisions of the LDA shall control. Notwithstanding the foregoing, the parties agree that the Entitlements and Permits actually issued by City shall control over the LDA.

Upon recordation of this Grant Deed, that certain Memorandum of Land Disposition Agreement by and between City of Richmond and Terminal One Development LLC. dated August 6, 2014, recorded August 21, 2014 in Official Records under Recorder's Serial Number 2014-0140681-00 is hereby terminated and of no further force and effect.

2. **Uses.** Grantee may only use the Property for residential uses and other uses consistent with the terms, covenants and conditions as set forth in the LDA. Grantee shall have no right to subdivide, separate, or partition the Property, except upon prior written consent of Grantor. Material breach of the terms, covenants, conditions, and provisions of the LDA not cured pursuant to the terms of the LDA shall be a material breach of this Deed. Grantee shall operate the business conducted by it on the Property in a prudent manner, exercising sound customary business practices.

3. **Term of Restriction.** Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor-in-interest to the Property that Grantee, such successors and such assigns, shall develop, operate, maintain or use the Property in accordance with the terms and conditions of the LDA and this Deed (unless expressly waived in writing by Grantor) for the term of twenty (20) years from the date of recordation of the Certificate of Completion (as defined in the LDA); provided that, however, the covenants contained in Sections 7 and 8 below shall remain in effect in perpetuity, shall continue for the term set forth therein.

4. **Rights of Reverter and Put.** Rights of reverter is set forth in Sections 6.1.9.1 and 6.1.9.2 of the LDA. Grantee has a right to put the Property back to Grantor pursuant to Section 6.9.2 of the LDA.

5. **Employment of Local Residents.** Grantee covenants that Grantee shall make reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the continuing operation of the Property by coordinating with local employment centers and agencies and advertising in local publications and online. Upon City's request from time to time, Grantee shall provide a written summary of its efforts under this Section. Grantee shall require any non-residential tenants of the Property to also comply with this covenant.

6. **Reservation of Existing Streets.** Grantor excepts and reserves any existing street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Property which might otherwise pass with a conveyance of the Property.

7. **Non-Discrimination.** Grantee covenants that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Property, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

8. **Form of Nondiscrimination Clauses in Agreements.** Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, age, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

- (a) **Deeds**: In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."
- (b) **Leases**: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:
- "That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."
- (c) **Contracts**: In contracts pertaining to conveyance of the realty the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

The foregoing covenants shall remain in effect in perpetuity.

9. Mortgage Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by and approved by Grantor pursuant to the LDA; provided, however, that any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise. The

foregoing shall limit any rights of holders of any mortgage, deed of trust, or other financing or security instrument set forth in the LDA.

10. Covenants to Run With the Land. The covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, and shall be binding upon Grantee, its heirs, successors and assigns to the Property, whether their interest shall be fee, easement, leasehold, beneficial or otherwise.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers or agents hereunto as of December 29, 2022.

GRANTOR:

CITY OF RICHMOND, a municipal corporation and charter city

By: _____
Eduardo Martinez, Vice Mayor

“ATTEST:

_____, _____ City Clerk

ACKNOWLEDGEMENT OF ACCEPTANCE

By its acceptance of this Grant Deed, Grantee hereby agrees as follows:

1. Grantee expressly understands and agrees that the terms of this Grant Deed shall be deemed to be covenants running with the land and shall apply to all of the Grantee's successors and assigns (except as specifically set forth in the Grant Deed).
2. The provisions of this Grant Deed are hereby approved and accepted.

Date: _____, 2022

"DEVELOPER"

TERMINAL ONE DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Zhenwu Wu
Manager

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Richmond, County of Contra Costa, State of California as legally described as follows:

PARCEL ONE:

That certain real property in the City of Richmond, County of Contra Costa, State of California, being portions of Lot 26-1/2 and 27, Section 23, and portions of Lots 6, 7 and 8, Section 26, Township 1 North, Range 5 West, Mount Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tidelands," filed June 11, 1917, in Rack Map No. 9, in the Office of the Recorder of Contra Costa County, California, being more particularly described as follows:

COMMENCING at San Pablo Rancho Exterior Boundary Stake No. 347 as shown on the map entitled "Map of the San Pablo Rancho, accompanying and forming a part of the final Report of the Referees in Partition," filed March 1, 1894, at No. 2, Map Rack, in the Office of the Recorder of Contra Costa County, California; THENCE along the northerly line of Lot 26 1/2 North 83°58'58" East 31.12 feet to a point of intersection of said Lot line and the easterly line of Dornan Drive (formerly known as South Garrard Boulevard) (60 foot wide) the center line of which is described as Parcel No. 2 in the deed from the Atchison, Topeka and Santa Fe Railway Company to the City of Richmond filed February 26, 1920 in Volume 355 of Deeds at Page 256, in the Office of the Recorder of Contra Costa County, California; THENCE continuing along the northerly line of Lot 26 1/2 North 83°58'58" East 187.44 feet to station 348 in said exterior boundary; THENCE continuing along said exterior boundary South 46°25'00" East 64.93 feet, said point being the **POINT OF BEGINNING**; THENCE continuing along last said exterior boundary line South 46°25'00" East 20.63 feet to a point on the exterior boundary of the San Pablo Rancho, as shown on said map of the San Pablo Rancho, said point also being on the northerly line of the parcel of land described in the deed from Atchison, Topeka and Santa Fe Railway Company to the City of Richmond, filed February 26, 1920, in Volume 359 of Deeds at Page 270 in the Office of the Recorder of Contra Costa County, California, said point also being on the southwesterly line of the parcel of land described in the grant of easement from the Atchison, Topeka and Santa Fe Railway Company to the City of Richmond, filed January 13, 1970, in volume 6043 of Official Records at Page 198 in the Office of the Recorder of Contra Costa County, California, to Exterior Boundary Stake No. 349 of said San Pablo Rancho; THENCE North 83°10'43" East 256.68 feet along said exterior boundary of the San Pablo Rancho, also being the northerly line of said parcel (359 D 270) and the southerly line of said easement (6043 O.R. 198), to Exterior Boundary Stake No. 350 of said San Pablo Rancho; THENCE North 67°53'22" East 27.32 feet along said exterior boundary of the San Pablo Rancho, also being the northerly line of said parcel (359 D 270) and the southerly line of said easement (6043 O.R. 198); THENCE North 84°52'40" East 44.09 feet to a point on a tangent curve concave to the north and having a radius of 623.69 feet; THENCE easterly an arc distance of 337.29 feet along said 623.69 foot radius curve, through a central angle of 30°59'08" to the westerly line of the parcel of land described in the grant of easement from Richmond Belt Railway to the City of Richmond,

CONTINUED ON NEXT PAGE

filed November 30, 1917, in Volume 310 of Deeds at Page 45, in the Office of the Recorder of Contra Costa County California, being on a non-tangent curve concave to the east and having a radius of 509.28 feet, the center of the circle of said curve bears South 83°48'38" East; THENCE southerly an arc distance of 84.35 feet along said 509.28 foot radius curve, also being along said westerly line of the Belt Railway easement (310 D 45), through a central angle of 09°29'22"; THENCE South 03°18'00" East 111.44 feet along said westerly line (310 D 45) to a point on a tangent curve concave to the west and having a radius of 409.28 feet; THENCE southerly an arc distance of 86.23 feet along said 409.28 foot radius curve, also being along said westerly line (310 D 45), through a central angle of 12°04'16", to the southwesterly corner of said easement (310 D 45), said corner being on the southerly line of said Lot 27, Section 23; THENCE South 89°46'20" East 65.31 feet along the southerly line of said easement (310 D 45), also being along the southerly line of Lot 27, Section 23, to a point on a non-tangent curve concave to the northwest and having a radius of 453.00 feet, the center of the circle of said curve bears North 81°46'18" West from said corner, said point as shown on the Record of Survey filed August 3, 1966, in Book 44 of Land Survey Maps at Page 3, in the Office of the Recorder of Contra Costa County, California; THENCE southwesterly an arc distance of 489.61 feet along said 453.00 foot radius curve, through a central angle of 61°55'34"; THENCE South 00°13'40" West 223.05 feet to a point on the southerly line of said Lot 6, Section 26; THENCE North 61°48'20" West 873.65 feet along said southerly line of Lot 6, Section 26, and the southerly line of said Lot 7, Section 26 to a point on the southerly extension of the westerly line of the aforementioned Dornan Drive; THENCE North 09°24'40" East 12.65 feet along said westerly line of Dornan Drive and its southerly extension; THENCE South 80°35'20" East 60.00 feet to the easterly line of said Dornan Drive; THENCE North 09°24'40" East 293.79 feet along said easterly line of Dornan Drive to a point on a tangent curve concave to the southeast and having a radius of 20.00 feet; THENCE northeasterly an arc distance of 31.42 feet along said 20.00 foot radius curve, through a central angle of 90°00'00"; THENCE South 80°35'20" East 38.15 feet to a point on a tangent curve concave to the north and having a radius of 415.00 feet; THENCE northeasterly an arc distance of 105.24 feet along said 415.00 foot radius curve, through a central angle of 14°31'47"; THENCE North 84°52'40" East 74.52 feet to the **POINT OF BEGINNING**.

(The bearing "North 09°24'40" East" between found monuments along Dornan Drive as shown on that certain survey entitled "Balanced Survey of Portion of the Exterior Boundary of the San Pablo Rancho, from S.P. Sta. 347 to S.P. Sta. 364," dated February 27, 1930, on file in the office of the East Bay Regional Park District, was used as the Basis of Bearings for this description.)

APN: 560-420-010

EXHIBIT M-1
FIRST NOTE
PURCHASE MONEY NOTE SECURED BY DEED OF TRUST

\$ 4,250,000 (“**Loan Amount**”)

December 29, 2022 (“**Note Date**”)

FOR VALUE RECEIVED, TERMINAL ONE DEVELOPMENT LLC, a Delaware limited liability company (“**Maker**”) hereby promises to pay to the order of the CITY OF RICHMOND, a municipal corporation and city charter or order (“**Holder**” or “**City**”) at a place designated by Holder, the principal sum of FOUR MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$4,250,000) (“**Note Amount**”), plus accrued interest (as specified below), or such lesser amount which shall from time to time be owing hereunder pursuant to the terms hereof.

Of the Note Amount, the Two Hundred Fifty Thousand Dollars (\$250,000) is the city transfer taxes which was calculated by the escrow. If, after the Note Date, it is determined that the actual transfer taxes should be less, City will endorse this Note to reduce the Note Amount by the difference. .

Pursuant to the LDA (as defined below), Maker acquired the “**Property**” (as defined in the LDA). This Note represents a portion of the purchase price for the Property.

This Note is secured by that certain Purchase Money Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith made by and among Maker as trustor, Holder as beneficiary, and Fidelity National Title Insurance Company as trustee, and recorded concurrently with the recordation of the Grant Deed (“**Trust Deed**”).

Reference is also made to the following additional agreements and documents involving Maker and Holder pertaining to the Property:

- i. The Grant Deed executed by Holder conveying the Property to Maker which is recorded concurrently with the recordation of the Deed of Trust securing this Note and which includes continuing covenants (“**Grant Deed**”).
- ii. That certain Land Disposition Agreement executed by on August 6, 2014 by and between Holder (as City) and Maker (as Developer) for the sale of the Property to Maker and its development by Maker, as amended by that certain First Amendment to Land Disposition Agreement dated December 29, 2022 (as so amended, the “**LDA**”).

The documents listed in subparagraphs (i) and (ii) above are referred to herein jointly as the “**City Agreements**” and individually as an “**City Agreement**.” The City Agreements are incorporated herein as though fully set forth.

Concurrently with this Note, Maker has executed the following Notes in favor of City

each also secured by a deed of trust against the Property as follows:

(i) that certain Purchase Money Note Secured by Deed of Trust in the principal amount of Five Million Dollars (\$5,000,000) ("**Second Note**") secured by that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith recorded concurrently with the Trust Deed but in second lien position against the Property ("**Second Trust Deed**"); and

(ii) that certain Shared Appreciation Note Secured by Deed of Trust in the maximum principal amount of Five Million Dollars (\$5,000,000) ("**Shared Appreciation Note**") secured by that certain Shared Appreciation Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date recorded concurrently with the Trust Deed but in third lien position against the Property ("**Shared Appreciation Trust Deed**").

The Second Note and Shared Appreciation Note are sometimes jointly referred to as the "**Concurrent Notes.**" The Second Trust Deed and the Shared Appreciation Trust Deed are sometimes joint referred to as the "**Concurrent Trust Deeds.**"

1. **Defined Terms.** Except as otherwise provided herein, the defined terms used in this Note shall have the same meaning as set forth in the LDA.
2. **Purpose of Loan.** This Note is a purchase money carry-back obligation for a portion of the purchase price related to the sale of the Property in accordance with the LDA.
3. **Effective Date.** This Note shall be effective as of the date that the Trust Deed is recorded in the Official Records of Contra Costa County against the Property ("**Effective Date**").
4. **Principal Amount.** The principal amount of this Note is FOUR MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$4,250,000) ("**Principal**").
5. **Interest.** Commencing as of the Effective Date, interest shall accrue on the principal at the rate of four percent (4%) per annum simple interest until paid in full.
6. **Payments.**
 - a. **Principal Payments.** The principal shall be due and payable as follows:
 - i. Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) shall be due and payable when all Entitlements have been issued for the Project pursuant to the LDA and all appeal periods have expired without legal challenge (the "**First Principal Payment**"); and
 - ii. The balance of the principal shall be due and payable upon the first to occur of:

Deed and subject to the terms in Section 11.8 of the LDA, if Trustor sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or, if Trustor sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or suffers its title to, or any interest in, the Property to be divested, whether voluntarily or involuntarily; or if there is a sale or transfer of beneficial interests in Trustor equal to fifty percent (50%) or more of the beneficial ownership interests of that entity outstanding at the date of this Deed of Trust; or if Trustor changes or permits to be changed the character or use of the Property; or if title to such Property becomes subject to any lien or charge, voluntary or involuntary, contractual or statutory, without Beneficiary's prior written consent, then Beneficiary, at Beneficiary's option, may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Deed of Trust."

11. **Collection Costs; Attorneys' Fees.** If, because of a default under this Note, an attorney is engaged by Holder to enforce or defend any provision of this Note, whether or not suit is filed hereon, then Maker shall pay upon demand reasonable attorneys' fees, expert witness fees and all costs so incurred by Holder together with interest thereon until paid at the applicable rate of interest payable hereunder, as if such fees and costs had been added to the principal owing hereunder.
12. **Waivers by Maker.** Maker and any and all endorsers, guarantors and persons liable or to become liable on this Note waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note.
13. **Severability.** The unenforceability or invalidity of any provision or provisions of this Note as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other provisions or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.
14. **Modifications.** Neither this Note nor any term hereof may be waived, amended, discharged, modified, changed or terminated orally; nor shall any waiver of any provision hereof be effective except by an instrument in writing signed by Maker and Holder.
15. **No Waiver by Holder.** No waiver of any breach, default or failure of condition under the terms of this Note shall be implied from any failure of the Holder of this Note to take, or any delay be implied from any failure by the Holder in taking action with respect to such breach, default or failure from any prior waiver of any similar or unrelated breach, default or failure.
16. **Usury.** Notwithstanding any provision in this Note, the total liability for payment in the nature of interest shall not exceed the limit imposed by applicable laws of the State of California.
17. **Governing Law.** This Note has been executed and delivered by Maker in the State of California and is to be governed and construed in accordance with the laws thereof.

- 18. Time of Essence.** Time is of the essence in the performance of the obligations and provisions set forth in this Note.
- 19. No Merger.** This Note is senior to Concurrent Notes from Maker to Holder. The debt represented by this Note is separate and distinct from the Concurrent Notes. It is the specific intention of the parties that (i) the obligations under this Note and the Trust Deed and the Concurrent Notes and Concurrent Deeds of Trust shall not be deemed merged; (ii) Beneficiary shall have all rights and remedies under each respective note and deed of trust; and (iii) Holder has the right to foreclose under the respective deeds of trust in any order it chooses.
- 20. Notices.** All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Note shall be in writing and shall be given by personal delivery, certified mail, return receipt requested, or overnight guaranteed delivery service and addressed as follows:

To Holder:	City of Richmond 450 Civic Center Plaza Suite 300 Richmond, CA 94804 Attn: Shasa Curl, City Manager
With a Copy to:	City of Richmond LLP 450 Civic Center Plaza Suite 300 Richmond, CA 94804 Attention: David Aleshire, City Attorney
To Maker:	Terminal One Development LLC c/o Laconia Development LLC 1981 North Broadway, Suite 350 Walnut Creek, CA 94596

Notices shall be effective upon the earlier of receipt or refusal of delivery. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent pursuant to this Note.

IN WITNESS WHEREOF, Maker has executed this Note as of the Note Date.

MAKER:

TERMINAL ONE DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Zhenwu Wu, Manager

EXHIBIT M-2
FIRST TRUST DEED

**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

CITY OF RICHMOND
450 Civic Center Plaza Suite 300
Richmond, California 94804
Attention: City Clerk

APN. 560-042-010

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEES PER GOV. CODE §27383

**PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

This PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust"), is made December 29,, 2022, between TERMINAL ONE DEVELOPMENT LLC, a Delaware limited liability company ("**TRUSTOR**"), whose address is 1981 North Broadway, Suite 350, Walnut Creek, CA 94596 and Fidelity National Title Insurance Company, a corporation ("**TRUSTEE**"), for the benefit of CITY OF RICHMOND, a California municipal corporation and charter city ("**BENEFICIARY**"). This Deed of Trust is subject to that certain Rider to Purchase Money Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing attached hereto and incorporated herein by reference.

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, Trustor's estate, dated on or about the date hereof, in that property in the City of Richmond, County of San Bernardino, State of California, described as on Exhibit A attached hereto and incorporated herein by reference ("**Property**") together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the original sum of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000) and payment of that certain deferred transfer tax obligation, each such payment with interest thereon according to the terms of that certain Purchase Money Promissory Note Secured by Deed of Trust of even date herewith made by Trustor, payable to order of Beneficiary, and extensions, modifications or renewals thereof; (2) the performance of each agreement of Trustor incorporated by reference or contained herein which specifically references that it is secured by this Deed of Trust; and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

This Deed of Trust is subject to the terms of the Rider to Deed of Trust attached hereto and incorporated herein by reference.

To protect the security of this Deed of Trust, and with respect to the Property, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and

all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Contra Costa	T-3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Contra Costa	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	SERIES 5 Book 1964, Page 149774				

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

TRUSTOR:

ONE TERMINAL DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Zhenwu Wu, Manager

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

4) To pay: at least ten (10) days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary of Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from the date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held

hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or be a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledges, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

TO _____, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes and of all indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

Please mail Deed of Trust, _____
Note and Reconveyance to _____

DO NOTE lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

**RIDER TO PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS RIDER TO PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“Rider”) is executed this 29th day of December 2022, by TERMINAL ONE DEVELOPMENT LLC, a Delaware limited liability company (“**Trustor**”) in favor of the CITY OF RICHMOND, a California municipal corporation and charter city (“**Beneficiary**”) who are the same parties to that certain Purchase Money Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing of even date herewith, to which this Rider is attached. This Rider is made a part of and is incorporated into said Deed of Trust. This Rider shall supersede any conflicting term or provision of the form Deed of Trust to which it is attached.

This Deed of Trust secures that certain Purchase Money Promissory Note Secured by Deed of Trust by and between Trustor (as Borrower) and Beneficiary (as Lender) of even date herewith in the principal amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000), and the additional payment of that certain deferred transfer tax obligation, as set forth therein, and any modifications, extensions or renewals (“**Note**”).

Reference is made to the following documents:

(i) Beneficiary sold the Property (as defined below) to Trustor pursuant to that certain Grant Deed which was recorded immediately prior to this Deed of Trust which contains numerous continuing covenants of Trustor (“**Grant Deed**”).

(ii) Beneficiary acquired the Property from Trustor pursuant to that certain Land Disposition Agreement dated August 6, 2014 as amended by that certain First Amendment to Land Disposition Agreement dated December 29, 2022 (as so amended, the “**LDA**”).

(iii) That certain Purchase Money Note Secured by Deed of Trust in the principal amount of Five Million Dollars (\$5,000,000) (“**Junior Note**”) secured by that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date therewith recorded concurrently with this Deed of Trust but which is in second lien position against the Property (“**Junior Trust Deed**”).

(iv) That certain Shared Appreciation Note Secured by Deed of Trust in the maximum principal amount of Five Million Dollars (\$5,000,000) (“**Shared Appreciation Note**”) secured by that certain Shared Appreciation Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date therewith and recorded concurrently with this Deed of Trust but in third lien position against the Property (“**Shared Appreciation Trust Deed**”).

The Grant Deed and LDA are sometimes jointly referred to as the “**City Agreements**” and individually as a “**City Agreement.**”

The Junior Note and Shared Appreciation Note are sometimes jointly referred to as the “**Concurrent Notes.**” The Junior Trust Deed and the Shared Appreciation Trust Deed are sometimes jointly referred to as the “**Concurrent Trust Deeds.**”

The parties hereto agree:

1. **Property.** The estate subject to this Deed of Trust is Trustor's fee estate in the real property legally described in this Deed of Trust ("**Property**"). In addition, Trustor grants to Beneficiary a security interest in all of Trustor's rights, title, and interest in and to the following:
 - (a) All present and future equipment (as those terms are defined in the California Commercial Code) and all other present and future personal property now or hereafter located at, upon or about the Property which is to be used solely in connection with or relating to the repair and maintenance of Property and/or the improvements thereon, including without limitation all present and future furniture, furnishings, fixtures, goods, tools, machinery, plumbing and plumbing material and supplies, concrete, lumber, hardware, electrical wiring and electrical material and supplies, heating and air conditioning material and supplies, roofing material and supplies, window material and supplies, doors, paint, drywall, insulation, cabinets, ceramic material and supplies, flooring, carpeting, appliances, fencing, landscaping and all other materials, supplies and property of every kind and nature.
 - (b) All present and future accounts, general intangibles, chattel paper, contract rights, deposit accounts, instruments and documents as those terms are defined in the California Commercial Code, now or hereafter relating or arising with respect to the Property and/or the improvements located thereon, including without limitation: (i) all rights to the payment of money, including escrow proceeds arising out of the sale or other disposition of all or any portion of the Property; (ii) all architectural, engineering, design and other plans, specifications and drawings relating to the development of the Property and/or any construction thereon; (iii) all use permits, occupancy permits, construction and building permits, and all other permits and approvals required by any governmental or quasi-governmental authority in connection with the development, construction, use, occupancy or operation of the Property; (iv) any and all agreements relating to the development, construction, use, occupancy and/or operation of the Property between Trustor and any contractor, subcontractor, project manager or supervisor, architect, engineer, laborer or supplier of materials; (v) all lease, rental or occupancy agreements and payments received thereunder; (vi) all insurance proceeds and condemnation awards arising out of or incidental to the ownership, development, construction, use, occupancy or operation of the Property; (vii) all reserves, deferred payments, deposits, refunds, cost savings, bonds, insurance policies and payments of any kind relating to the Property; and (viii) all water stock, if any, relating to any Property and all shares of stock or other evidence of ownership of any part of or interest in any Property that is owned by Trustor in common with others; and (ix) all supplements, modifications and amendments to the foregoing.
 - (c) All fixtures located upon or within the Property or now or hereafter attached to, installed in, or used or intended for use in connection with the Property, including without limitation any and all partitions, generators, screens, awnings, boilers, furnaces, pipes, plumbing, elevators, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, heating ventilating, air conditioning and air cooling equipment, and gas and electric machinery and equipment.

- (d) All present and future accessories, additions, attachments, replacements and substitutions of or to any or all of the foregoing.
 - (e) All cash and noncash proceeds and products of any and all of the foregoing, including without limitation all monies, deposit accounts, insurance proceeds and other tangible or intangible property received upon a sale or other disposition of any of the foregoing.
2. **Obligations Secured.** Trustor makes this grant and assignment for the purpose of securing the following obligations (“**Secured Obligations**”):
- (a) Payment to Beneficiary of all indebtedness at any time owing under the terms of the Note;
 - (b) Payment and performance of all obligations of Trustor under this Deed of Trust;
 - (c) Payment and performance of all future advances and other obligations of Trustor or any other person, firm, or entity with the approval of Trustor, may agree to pay and/or perform for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and
 - (d) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced.

Note: (i) The City Agreements are **not** secured by this Deed of Trust; however, a default by Trustor under a City Agreement shall be a default under this Deed of Trust. (ii) The Concurrent Notes are **not** secured by this Deed of Trust; however, a default by Trustor under a Concurrent Note shall be a default under this Deed of Trust.

3. **Obligations.** The term “obligations” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, late charges and fees at any time accruing or assessed on any of the Secured Obligations. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of all of the foregoing documents.
4. **Cross Default.** An uncured default by Trustor under the terms and conditions of the Note, a Concurrent Note or a City Agreement shall be a default under this Deed of Trust.
5. **Mortgagee-in-Possession.** Neither the assignment of rents set forth in this Deed of Trust nor the exercise by Beneficiary of any of its rights or remedies hereunder shall be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. The appointment of a receiver for the Property by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Property by such receiver, shall not be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Property.

6. **No Cure.** In the event Beneficiary collects and receives any rents under this Deed of Trust upon any default hereof, such collection or receipt shall in no way constitute a cure of the default.
7. **Possession upon Default.** Upon the occurrence of a default, Beneficiary may, at its option, move ex parte for the appointment of a receiver for the Property, and without in any way waiving such default, have the receiver take possession of the Property and have, hold, manage, lease and operate the same, on such terms and for such period of time as Beneficiary may deem proper and the appointing court shall approve, and may collect and receive all rents and profits, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto as may seem proper to Beneficiary, and to apply such rents and profits to the payment of (a) the cost of all such alterations, renovations, repairs and replacements, and all costs and expenses incident to taking and retaining possession of the Property, and the management and operation thereof, and keeping the same properly insured; (b) all taxes, charges, claims, assessments, and any other liens which may be prior in lien or payment of the Note, and premiums for insurance, with interest on all such items; and (c) the indebtedness secured hereby, together with all costs and attorney's fees, in such order or priority as to any of such items as Beneficiary in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. Any amounts received by Trustor or its agents in the performance of any acts prohibited by the terms of this assignment, including, but not limited to, any amounts received in connection with any cancellation, modification or amendment of any lease prohibited by the terms of this assignment and any rents and profits received by Trustor after the occurrence of a default shall be held by Trustor as trustee for Beneficiary and all such amounts shall be accounted for to Beneficiary and shall not be commingled with other funds of the Trustor. Any person receiving any portion of such trust funds shall receive the same in trust for Beneficiary as if such person had actual or constructive notice that such funds were impressed with a trust in accordance therewith.
8. **Acceleration.** Subject to the provisions of Sections 13 and 14 of this Trust Deed and subject to the terms in Section 11.8 of the LDA, if Trustor sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or the LDA, if Trustor sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or suffers its title to, or any interest in, the Property to be divested, whether voluntarily or involuntarily; or if there is a sale or transfer of beneficial interests in Trustor equal to fifty percent (50%) or more of the beneficial ownership interests of that entity outstanding at the date of this Deed of Trust; or if Trustor changes or permits to be changed the character or use of the Property; or if title to such Property becomes subject to any lien or charge, voluntary or involuntary, contractual or statutory, without Beneficiary's prior written consent, then Beneficiary, at Beneficiary's option, may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Deed of Trust.
9. **Receiver.** In addition to any and all other remedies of Beneficiary set forth under this Deed of Trust or permitted at law or in equity, if a default shall have occurred,

Beneficiary, to the extent permitted by law and without regard to the value, adequacy or occupancy of the security for the Note and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Property and to collect all rents and profits and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction by ex parte application, subject to such notice as local rules of court may require. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the power herein contained shall be secured by this Deed of Trust.

- 10. Security Agreement and Fixture Filing.** This Deed of Trust also constitutes a security agreement with respect to all personal property in which Beneficiary is granted a security interest under Section 1 above, and Beneficiary shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as enacted in California ("**California Uniform Commercial Code**") as well as all other rights and remedies available at law or in equity. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Trustor and Beneficiary agree that the filing of a financing statement in the record normally having to do with personal property shall never be construed as in any way derogating from or impairing the lien of this Deed of Trust and the intention of Trustor and Beneficiary that everything used in connection with the operation or occupancy of the Property is and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property or goods which are or are to become fixtures, irrespective of whether (i) any such item is physically attached to the buildings and improvements on the Property; (ii) serial numbers are used for the better identification of certain equipment items capable of being filed by the Beneficiary; or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Such mention in the financing statements is declared to be for the protection of the Beneficiary in the event any court or judge shall at any time hold that notice of Beneficiary's priority of interest must be filed in the California Commercial Code records to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivision or entity of the federal government. Trustor covenants and agrees to reimburse Beneficiary for any costs incurred in filing such financing statement and any continuation statements.

Upon the occurrence of default hereunder, and after delivery of notice and the expiration of all applicable cure periods, Beneficiary shall have the right to cause any of the Property which is personal property and subject to the security interest of Beneficiary hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Beneficiary shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law, specifically including without limitation the right to proceed as to both the real property and the personal property contained within the Property as permitted by Uniform Commercial Code Section 9501(4), including conducting a unified sale thereof. Any such disposition may be conducted by an employee or agent of Beneficiary or Trustee. Any

person, including both Trustee and Beneficiary, shall be eligible to purchase any part or all of such property at any such disposition.

This Deed of Trust constitutes a fixture filing under Sections 9102 and 9502 of the California Uniform Commercial Code, as amended or recodified from time to time.

11. Notices, Demands, and Communications. Formal notices, demands, and communications between Trustor and Beneficiary shall be given by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To Holder: City of Richmond
450 Civic Center Plaza Suite 300
Richmond, CA 94804
Attn: Shasa Curl, City Manager

With a Copy to: City of Richmond
450 Civic Center Plaza Suite 300
Richmond, CA 94804
Attention: David Aleshire, City Attorney

To Maker: Terminal One Development LLC
c/o Laconia Development LLC
1981 North Broadway, Suite 350
Walnut Creek, CA 94596

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second (2nd) business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate by mail.

12. No Merger. This Deed of Trust is senior to the Junior Trust Deed and the Shared Appreciation Deed of Trust. The debt represented by the Note secured by this Deed of Trust is separate and distinct from the Concurrent Notes. It is the specific intention of the parties that (i) the obligations under the Concurrent Notes and Concurrent Deeds of Trust shall not be deemed merged; (ii) Beneficiary shall have all rights and remedies under each respective note and deed of trust; and (iii) Beneficiary has the right to foreclose the respective deeds of trust in any order it chooses.

IN WITNESS WHEREOF, Trustor has executed this Rider concurrently with this Deed of Trust to which it is attached.

TRUSTOR:

ONE TERMINAL DEVELOPMENT LLC,

a Delaware limited liability company

By: _____
Zhenwu Wu, Manager

EXHIBIT "A"

LEGAL DESCRIPTION

That certain real property in the City of Richmond, County of Contra Costa, State of California legally described as follows:

PARCEL ONE:

That certain real property in the City of Richmond, County of Contra Costa, State of California, being portions of Lot 26-1/2 and 27, Section 23, and portions of Lots 6, 7 and 8, Section 26, Township 1 North, Range 5 West, Mount Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tidelands," filed June 11, 1917, in Rack Map No. 9, in the Office of the Recorder of Contra Costa County, California, being more particularly described as follows:

COMMENCING at San Pablo Rancho Exterior Boundary Stake No. 347 as shown on the map entitled "Map of the San Pablo Rancho, accompanying and forming a part of the final Report of the Referees in Partition," filed March 1, 1894, at No. 2, Map Rack, in the Office of the Recorder of Contra Costa County, California; THENCE along the northerly line of Lot 26 ½ North 83°58'58" East 31.12 feet to a point of intersection of said Lot line and the easterly line of Dornan Drive (formerly known as South Garrard Boulevard) (60 foot wide) the center line of which is described as Parcel No. 2 in the deed from the Atchison, Topeka and Santa Fe Railway Company to the City of Richmond filed February 26, 1920 in Volume 355 of Deeds at Page 256, in the Office of the Recorder of Contra Costa County, California; THENCE continuing along the northerly line of Lot 26 ½ North 83°58'58" East 187.44 feet to station 348 in said exterior boundary; THENCE continuing along said exterior boundary South 46°25'00" East 64.93 feet, said point being the **POINT OF BEGINNING**; THENCE continuing along last said exterior boundary line South 46°25'00" East 20.63 feet to a point on the exterior boundary of the San Pablo Rancho, as shown on said map of the San Pablo Rancho, said point also being on the northerly line of the parcel of land described in the deed from Atchison, Topeka and Santa Fe Railway Company to the City of Richmond, filed February 26, 1920, in Volume 359 of Deeds at Page 270 in the Office of the Recorder of Contra Costa County, California, said point also being on the southwesterly line of the parcel of land described in the grant of easement from the Atchison, Topeka and Santa Fe Railway Company to the City of Richmond, filed January 13, 1970, in volume 6043 of Official Records at Page 198 in the Office of the Recorder of Contra Costa County, California, to Exterior Boundary Stake No. 349 of said San Pablo Rancho; THENCE North 83°10'43" East 256.68 feet along said exterior boundary of the San Pablo Rancho, also being the northerly line of said parcel (359 D 270) and the southerly line of said easement (6043 O.R. 198), to Exterior Boundary Stake No. 350 of said San Pablo Rancho; THENCE North 67°53'22" East 27.32 feet along said exterior boundary of the San Pablo Rancho, also being the northerly line of said parcel (359 D 270) and the southerly line of said easement (6043 O.R. 198); THENCE North 84°52'40" East 44.09 feet to a point on a tangent curve concave to the north and having a radius of 623.69 feet; THENCE easterly an arc distance of 337.29 feet along said 623.69 foot radius curve, through a central angle of 30°59'08" to the westerly line of the parcel of land described in the grant of easement from Richmond Belt Railway to the City of Richmond,

CONTINUED ON NEXT PAGE

filed November 30, 1917, in Volume 310 of Deeds at Page 45, in the Office of the Recorder of Contra Costa County California, being on a non-tangent curve concave to the east and having a radius of 509.28 feet, the center of the circle of said curve bears South 83°48'38" East; THENCE southerly an arc distance of 84.35 feet along said 509.28 foot radius curve, also being along said westerly line of the Belt Railway easement (310 D 45), through a central angle of 09°29'22"; THENCE South 03°18'00" East 111.44 feet along said westerly line (310 D 45) to a point on a tangent curve concave to the west and having a radius of 409.28 feet; THENCE southerly an arc distance of 86.23 feet along said 409.28 foot radius curve, also being along said westerly line (310 D 45), through a central angle of 12°04'16", to the southwesterly corner of said easement (310 D 45), said corner being on the southerly line of said Lot 27, Section 23; THENCE South 89°46'20" East 65.31 feet along the southerly line of said easement (310 D 45), also being along the southerly line of Lot 27, Section 23, to a point on a non-tangent curve concave to the northwest and having a radius of 453.00 feet, the center of the circle of said curve bears North 81°46'18" West from said corner, said point as shown on the Record of Survey filed August 3, 1966, in Book 44 of Land Survey Maps at Page 3, in the Office of the Recorder of Contra Costa County, California; THENCE southwesterly an arc distance of 489.61 feet along said 453.00 foot radius curve, through a central angle of 61°55'34"; THENCE South 00°13'40" West 223.05 feet to a point on the southerly line of said Lot 6, Section 26; THENCE North 61°48'20" West 873.65 feet along said southerly line of Lot 6, Section 26, and the southerly line of said Lot 7, Section 26 to a point on the southerly extension of the westerly line of the aforementioned Dornan Drive; THENCE North 09°24'40" East 12.65 feet along said westerly line of Dornan Drive and its southerly extension; THENCE South 80°35'20" East 60.00 feet to the easterly line of said Dornan Drive; THENCE North 09°24'40" East 293.79 feet along said easterly line of Dornan Drive to a point on a tangent curve concave to the southeast and having a radius of 20.00 feet; THENCE northeasterly an arc distance of 31.42 feet along said 20.00 foot radius curve, through a central angle of 90°00'00"; THENCE South 80°35'20" East 38.15 feet to a point on a tangent curve concave to the north and having a radius of 415.00 feet; THENCE northeasterly an arc distance of 105.24 feet along said 415.00 foot radius curve, through a central angle of 14°31'47"; THENCE North 84°52'40" East 74.52 feet to the **POINT OF BEGINNING**.

(The bearing "North 09°24'40" East" between found monuments along Dornan Drive as shown on that certain survey entitled "Balanced Survey of Portion of the Exterior Boundary of the San Pablo Rancho, from S.P. Sta. 347 to S.P. Sta. 364," dated February 27, 1930, on file in the office of the East Bay Regional Park District, was used as the Basis of Bearings for this description.)

APN: 560-420-010

EXHIBIT N-1
SECOND NOTE
PURCHASE MONEY NOTE SECURED BY DEED OF TRUST

\$ 5,000,000 (“**Loan Amount**”)

December 29, 2022 (“**Note Date**”)

FOR VALUE RECEIVED, TERMINAL ONE DEVELOPMENT LLC, a Delaware limited liability company (“**Maker**”) hereby promises to pay to the order of the CITY OF RICHMOND, a municipal corporation and city charter, or order (“**Holder**” or “**City**”) at a place designated by Holder, the principal sum of FIVE MILLION DOLLARS (\$5,000,000) (“**Note Amount**”), plus accrued interest (as specified below), or such lesser amount which shall from time to time be owing hereunder pursuant to the terms hereof.

This Note is secured by that certain Purchase Money Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith made by and among Maker as trustor, Holder as beneficiary, and Fidelity National Title Insurance Company as trustee, and recorded concurrently with the recordation of the Grant Deed (“**Trust Deed**”).

Reference is also made to the following additional agreements and documents involving Maker and Holder pertaining to the Property:

- i. The Grant Deed executed by Holder conveying the Property to Maker which is recorded concurrently with the recordation of the Deed of Trust securing this Note and which includes continuing covenants (“**Grant Deed**”).
- ii. That certain Land Disposition Agreement executed by on August 6, 2014 by and between Holder (as City) and Maker (as Developer) for the sale of the Property to Maker and its development by Maker as amended by that certain First Amendment to Land Disposition Agreement dated December 29, 2022 (as so amended the “**LDA**”).

The documents listed in subparagraphs (i) and (ii) above are referred to herein jointly as the “**City Agreements**” and individually as an “**City Agreement.**” The City Agreements are incorporated herein as though fully set forth.

Concurrently with this Note, Maker has executed the following Notes in favor of City each to also secured by a deed of trust against the Property:

(i) that certain Purchase Money Note Secured by Deed of Trust in the principal amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000) (“**Senior Note**”) secured by that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith recorded concurrently with the Trust Deed but in first lien position against the Property (“**Senior Trust Deed**”); and

(ii) that certain Shared Appreciation Note Secured by Deed of Trust in the maximum principal amount of Five Million Dollars (\$5,000,000) (“**Shared Appreciation**”).

Note) secured by that certain Shared Appreciation Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith made by and among Maker as trustor, Holder as beneficiary, and Fidelity National Title Insurance Company as trustee, and recorded concurrently with the Trust Deed but in third lien position against the Property ("**Shared Appreciation Trust Deed**").

The Senior Note and Shared Appreciation Note are sometimes jointly referred to as the "**Concurrent Notes**". The Senior Trust Deed and the Shared Appreciation Trust Deed are sometimes joint referred to as the "**Concurrent Trust Deeds**."

1. **Defined Terms.** Except as otherwise provided herein, the defined terms used in this Note shall have the same meaning as set forth in the LDA.
2. **Purpose of Loan.** This Note is a purchase money carry-back obligation for a portion of the purchase price related to the sale of the Property in accordance with the LDA.
3. **Effective Date.** This Note shall be effective as of the date that the Trust Deed is recorded in the Official Records of Contra Costa County against the Property ("**Effective Date**").
4. **Principal Amount.** The principal amount of this Note is FIVE MILLION DOLLARS (\$5,000,000) ("**Principal**").
5. **Interest.** Commencing as of the Effective Date, interest shall accrue on the principal at the rate of four percent (4%) per annum simple interest until paid in full.

6. **Payments.**

a. **Principal Payment.** The principal shall be due and payable upon the first to occur of:

(i) Issuance of the building permit for or which includes the fiftieth (50th) Residential Unit; or

(ii) December 15, 2028.

b. **Late Charge.** If Maker shall fail to make any payment, including the final combined principal and interest installment, within ten (10) days after the date the same is due and payable, a late charge by way of damages shall be immediately due and payable. Maker recognizes that default by Maker in making the payments herein agreed to be paid when due will result in the City incurring additional expense in servicing the loan, in loss to the City of the use of the money due and in frustration to the City in meeting its other financial and loan commitments. Maker agrees that, if for any reason Maker fails to pay the amounts due under this Note when due, the City hereof shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages. Maker therefore agree that a sum equal to five percent (5%) of each payment which becomes delinquent ("**Late Charge**") is a reasonable estimate of said damages to the City of this Note, which sum Maker agree to pay on demand. Prior to collecting any late charge hereunder, City shall comply with the provisions of California Civil Code Section 2954.5, as such section or any successor section may now or hereafter be in effect.

c. **Default Interest Rate.** Upon the occurrence of a default under this Note, the interest rate shall thereafter be eight percent (8%) per annum.

7. **Prepayment.** Maker may prepay this Note in whole or in part at any time without penalty.

8. **Cross-Default.**

a. **City Agreements.** An uncured default by Maker under the terms and conditions of either of the City Agreements shall be a default under this Note.

b. **Concurrent Notes and Trust Deeds.** An uncured default by Maker under the terms and conditions of either of the Concurrent Notes and/or the Concurrent Deeds of Trust shall be a default under this Note.

c. **Trust Deed.** An uncured default by Maker under the terms and conditions of the Trust Deed is a default under this Note.

9. **Acceleration on Default.** In the event Maker is in default under this Note, Holder may, at its option, declare this Note and the entire obligations hereby evidenced immediately due and payable and collectible then or thereafter as Holder may elect, regardless of the date of maturity, and notice of the exercise of said option is hereby expressly waived by Maker.

10. **Acceleration on Transfer or Encumbrance of Property.** The Trust Deed contains the following provision: "Subject to the provisions of Sections 13 and 14 of this Trust Deed and subject to the terms in Section 11.8 of the LDA, if Trustor sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or suffers its title to, or any interest in, the Property to be divested, whether voluntarily or involuntarily; or if there is a sale or transfer of beneficial interests in Trustor equal to fifty percent (50%) or more of the beneficial ownership interests of that entity outstanding at the date of this Deed of Trust; or if Trustor changes or permits to be changed the character or use of the Property; or if title to such Property becomes subject to any lien or charge, voluntary or involuntary, contractual or statutory, without Beneficiary's prior written consent, then Beneficiary, at Beneficiary's option, may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Deed of Trust."

11. **Collection Costs; Attorneys' Fees.** If, because of a default under this Note, an attorney is engaged by Holder to enforce or defend any provision of this Note, whether or not suit is filed hereon, then Maker shall pay upon demand reasonable attorneys' fees, expert witness fees and all costs so incurred by Holder together with interest thereon until paid at the applicable rate of interest payable hereunder, as if such fees and costs had been added to the principal owing hereunder.

12. **Waivers by Maker.** Maker and any and all endorsers, guarantors and persons liable or to become liable on this Note waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note.

13. **Severability.** The unenforceability or invalidity of any provision or provisions of this Note as to any persons or circumstances shall not render that provision or those provisions

unenforceable or invalid as to any other provisions or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.

14. **Modifications.** Neither this Note nor any term hereof may be waived, amended, discharged, modified, changed or terminated orally; nor shall any waiver of any provision hereof be effective except by an instrument in writing signed by Maker and Holder.
15. **No Waiver by Holder.** No waiver of any breach, default or failure of condition under the terms of this Note shall be implied from any failure of the Holder of this Note to take, or any delay be implied from any failure by the Holder in taking action with respect to such breach, default or failure from any prior waiver of any similar or unrelated breach, default or failure.
16. **Usury.** Notwithstanding any provision in this Note, the total liability for payment in the nature of interest shall not exceed the limit imposed by applicable laws of the State of California.
17. **Governing Law.** This Note has been executed and delivered by Maker in the State of California and is to be governed and construed in accordance with the laws thereof.
18. **Subordination.** Provided Maker is not in default, City agrees to subordinate the Trust Deed for construction financing for the Residential Units subject to the terms and conditions set forth in the Trust Deed.
19. **Time of Essence.** Time is of the essence in the performance of the obligations and provisions set forth in this Note.
20. **No Merger.** This Note is junior to the Senior Note and senior to the Shared Appreciation Note. The debt represented by this Note is separate and distinct from the Concurrent Notes. It is the specific intention of the parties that (i) the obligations under this Note and the Trust Deed and the Concurrent Notes and Concurrent Deeds of Trust shall not be deemed merged; (ii) Beneficiary shall have all rights and remedies under each respective note and deed of trust; and (iii) Holder has the right to foreclose under the respective deeds of trust in any order it chooses.
21. **Notices.** All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Note shall be in writing and shall be given by personal delivery, certified mail, return receipt requested, or overnight guaranteed delivery service and addressed as follows:

To Holder:

City of Richmond
450 Civic Center Plaza Suite 300
Richmond, CA 94804
Attn: Shasa Curl, City Manager

With a Copy to:

City of Richmond LLP
450 Civic Center Plaza Suite 300
Richmond, CA 94804
Attention: David Aleshire, City Attorney

To Maker:

Terminal One Development LLC
c/o Laconia Development LLC
1981 North Broadway, Suite 350
Walnut Creek, CA 94596

Notices shall be effective upon the earlier of receipt or refusal of delivery. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent pursuant to this Note.

IN WITNESS WHEREOF, Maker has executed this Note as of the Note Date.

MAKER:

TERMINAL ONE DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Zhenwu Wu, Manager

EXHIBIT N-2

SECOND TRUST DEED

**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

CITY OF RICHMOND
450 Civic Center Plaza Suite 300
Richmond, California 94804
Attention: City Clerk

APN. 560-042-010

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEES PER GOV. CODE §27383

**PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

This **PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** ("Deed of Trust"), is made December 29, 2022, between TERMINAL ONE DEVELOPMENT LLC, a Delaware limited liability company ("**TRUSTOR**"), whose address is 1981 North Broadway, Suite 350, Walnut Creek, CA 94596 and Fidelity National Title Insurance Company, a corporation ("**TRUSTEE**"), for the benefit of CITY OF RICHMOND, a California municipal corporation and charter city ("**BENEFICIARY**"). This Deed of Trust is subject to that certain Rider to Purchase Money Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing attached hereto and incorporated herein by reference.

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, Trustor's estate, dated on or about the date hereof, in that property in the City of Richmond, County of San Bernardino, State of California, described as on Exhibit A attached hereto and incorporated herein by reference ("**Property**") together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the original sum of Five Million Dollars (\$5,000,000) with interest thereon according to the terms of that certain Purchase Money Promissory Note Secured by Deed of Trust of even date herewith made by Trustor, payable to order of Beneficiary, and extensions, modifications or renewals thereof; (2) the performance of each agreement of Trustor incorporated by reference or contained herein which specifically references that it is secured by this Deed of Trust; and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

This Deed of Trust is subject to the terms of the Rider to Deed of Trust attached hereto and incorporated herein by reference.

To protect the security of this Deed of Trust, and with respect to the Property, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in

Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Contra Costa	T-3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Contra Costa	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	SERIES 5 Book 1964, Page 149774				

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

TRUSTOR:

ONE TERMINAL DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Zhenwu Wu, Manager

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

4) To pay: at least ten (10) days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary of Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from the date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held

hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or be a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledges, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

TO _____, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes and of all indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

Please mail Deed of Trust, _____
Note and Reconveyance to _____

DO NOTE lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

**RIDER TO PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS RIDER TO PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“Rider”) is executed this 29th day of December, 2022, by TERMINAL ONE DEVELOPMENT LLC, a Delaware limited liability company (“**Trustor**”) in favor of the CITY OF RICHMOND, a California municipal corporation and charter city (“**Beneficiary**”) who are the same parties to that certain Purchase Money Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing of even date herewith, to which this Rider is attached. This Rider is made a part of and is incorporated into said Deed of Trust. This Rider shall supersede any conflicting term or provision of the form Deed of Trust to which it is attached.

This Deed of Trust secures that certain Purchase Money Promissory Note Secured by Deed of Trust by and between Trustor (as Borrower) and Beneficiary (as Lender) of even date herewith in the principal amount of Five Million Dollars (\$5,000,000) and any modifications, extensions or renewals (“**Note**”).

Reference is made to the following documents:

(i) Beneficiary sold the Property (as defined below) to Trustor pursuant to that certain Grant Deed which was recorded immediately prior to this Deed of Trust which contains numerous continuing covenants of Trustor (“**Grant Deed**”).

(ii) Beneficiary acquired the Property from Trustor pursuant to that certain Land Disposition Agreement dated August 6, 2014 as amended by that certain First Amendment to Land Disposition Agreement dated December 29, 2022 (as so amended, the “**LDA**”).

(iii) That certain Purchase Money Note Secured by Deed of Trust in the principal amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000) (“**Senior Note**”) secured by that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date therewith recorded concurrently with this Deed of Trust but which is in first lien position against the Property (“**Senior Trust Deed**”).

(iv) That certain Shared Appreciation Note Secured by Deed of Trust in the maximum principal amount of Five Million Dollars (\$5,000,000) (“**Shared Appreciation Note**”) secured by that certain Shared Appreciation Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date therewith and recorded concurrently with this Deed of Trust but in third lien position against the Property (“**Shared Appreciation Trust Deed**”).

The Grant Deed and LDA are sometimes jointly referred to as the “**City Agreements**” and individually as a “**City Agreement**.”

The Senior Note and Shared Appreciation Note are sometimes jointly referred to as the “**Concurrent Notes**.” The Senior Trust Deed and the Shared Appreciation Trust Deed are sometimes jointly referred to as the “**Concurrent Trust Deeds**.”

The parties hereto agree:

1. **Property**. The estate subject to this Deed of Trust is Trustor's fee estate in the real property legally described in this Deed of Trust ("**Property**"). In addition, Trustor grants to Beneficiary a security interest in all of Trustor's rights, title, and interest in and to the following:

- (a) All present and future equipment (as those terms are defined in the California Commercial Code) and all other present and future personal property now or hereafter located at, upon or about the Property which is to be used solely in connection with or relating to the repair and maintenance of Property and/or the improvements thereon, including without limitation all present and future furniture, furnishings, fixtures, goods, tools, machinery, plumbing and plumbing material and supplies, concrete, lumber, hardware, electrical wiring and electrical material and supplies, heating and air conditioning material and supplies, roofing material and supplies, window material and supplies, doors, paint, drywall, insulation, cabinets, ceramic material and supplies, flooring, carpeting, appliances, fencing, landscaping and all other materials, supplies and property of every kind and nature.
- (b) All present and future accounts, general intangibles, chattel paper, contract rights, deposit accounts, instruments and documents as those terms are defined in the California Commercial Code, now or hereafter relating or arising with respect to the Property and/or the improvements located thereon, including without limitation: (i) all rights to the payment of money, including escrow proceeds arising out of the sale or other disposition of all or any portion of the Property; (ii) all architectural, engineering, design and other plans, specifications and drawings relating to the development of the Property and/or any construction thereon; (iii) all use permits, occupancy permits, construction and building permits, and all other permits and approvals required by any governmental or quasi-governmental authority in connection with the development, construction, use, occupancy or operation of the Property; (iv) any and all agreements relating to the development, construction, use, occupancy and/or operation of the Property between Trustor and any contractor, subcontractor, project manager or supervisor, architect, engineer, laborer or supplier of materials; (v) all lease, rental or occupancy agreements and payments received thereunder; (vi) all insurance proceeds and condemnation awards arising out of or incidental to the ownership, development, construction, use, occupancy or operation of the Property; (vii) all reserves, deferred payments, deposits, refunds, cost savings, bonds, insurance policies and payments of any kind relating to the Property; and (viii) all water stock, if any, relating to any Property and all shares of stock or other evidence of ownership of any part of or interest in any Property that is owned by Trustor in common with others; and (ix) all supplements, modifications and amendments to the foregoing.
- (c) All fixtures located upon or within the Property or now or hereafter attached to, installed in, or used or intended for use in connection with the Property, including without limitation any and all partitions, generators, screens, awnings, boilers, furnaces, pipes, plumbing, elevators, cleaning, call and

sprinkler systems, fire extinguishing apparatus and equipment, water tanks, heating ventilating, air conditioning and air cooling equipment, and gas and electric machinery and equipment.

- (d) All present and future accessories, additions, attachments, replacements and substitutions of or to any or all of the foregoing.
- (e) All cash and noncash proceeds and products of any and all of the foregoing, including without limitation all monies, deposit accounts, insurance proceeds and other tangible or intangible property received upon a sale or other disposition of any of the foregoing.

2. Obligations Secured. Trustor makes this grant and assignment for the purpose of securing the following obligations (“**Secured Obligations**”):

- (a) Payment to Beneficiary of all indebtedness at any time owing under the terms of the Note;
- (b) Payment and performance of all obligations of Trustor under this Deed of Trust;
- (c) Payment and performance of all future advances and other obligations of Trustor or any other person, firm, or entity with the approval of Trustor, may agree to pay and/or perform for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and
- (d) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced.

Note: (i) The City Agreements are **not** secured by this Deed of Trust; however, a default by Trustor under a City Agreement shall be a default under this Deed of Trust. (ii) The Concurrent Notes are **not** secured by this Deed of Trust; however, a default by Trustor under a Concurrent Note shall be a default under this Deed of Trust.

3. Obligations. The term “obligations” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, late charges and fees at any time accruing or assessed on any of the Secured Obligations. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of all of the foregoing documents.

4. Cross Default. An uncured default by Trustor under the terms and conditions of the Note, a Concurrent Note or a City Agreement shall be a default under this Deed of Trust.

5. Mortgagee-in-Possession. Neither the assignment of rents set forth in this Deed of Trust nor the exercise by Beneficiary of any of its rights or remedies hereunder shall be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. The appointment of a receiver for the Property

by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Property by such receiver, shall not be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Property.

6. **No Cure.** In the event Beneficiary collects and receives any rents under this Deed of Trust upon any default hereof, such collection or receipt shall in no way constitute a cure of the default.
7. **Possession upon Default.** Upon the occurrence of a default, Beneficiary may, at its option, move ex parte for the appointment of a receiver for the Property, and without in any way waiving such default, have the receiver take possession of the Property and have, hold, manage, lease and operate the same, on such terms and for such period of time as Beneficiary may deem proper and the appointing court shall approve, and may collect and receive all rents and profits, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto as may seem proper to Beneficiary, and to apply such rents and profits to the payment of (a) the cost of all such alterations, renovations, repairs and replacements, and all costs and expenses incident to taking and retaining possession of the Property, and the management and operation thereof, and keeping the same properly insured; (b) all taxes, charges, claims, assessments, and any other liens which may be prior in lien or payment of the Note, and premiums for insurance, with interest on all such items; and (c) the indebtedness secured hereby, together with all costs and attorney's fees, in such order or priority as to any of such items as Beneficiary in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. Any amounts received by Trustor or its agents in the performance of any acts prohibited by the terms of this assignment, including, but not limited to, any amounts received in connection with any cancellation, modification or amendment of any lease prohibited by the terms of this assignment and any rents and profits received by Trustor after the occurrence of a default shall be held by Trustor as trustee for Beneficiary and all such amounts shall be accounted for to Beneficiary and shall not be commingled with other funds of the Trustor. Any person receiving any portion of such trust funds shall receive the same in trust for Beneficiary as if such person had actual or constructive notice that such funds were impressed with a trust in accordance therewith.
8. **Acceleration.** Subject to the provisions of Sections 13 and 14 of this Trust Deed and subject to the terms in Section 11.8 of the LDA, if Trustor sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or suffers its title to, or any interest in, the Property to be divested, whether voluntarily or involuntarily; or if there is a sale or transfer of beneficial interests in Trustor equal to fifty percent (50%) or more of the beneficial ownership interests of that entity outstanding at the date of this Deed of Trust; or if Trustor changes or permits to be changed the character or use of the Property; or if title to such Property becomes subject to any lien or charge, voluntary or involuntary, contractual or statutory, without Beneficiary's prior written consent, then Beneficiary, at Beneficiary's option, may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due

and payable and may exercise all rights and remedies in this Deed of Trust.

9. **Receiver.** In addition to any and all other remedies of Beneficiary set forth under this Deed of Trust or permitted at law or in equity, if a default shall have occurred, Beneficiary, to the extent permitted by law and without regard to the value, adequacy or occupancy of the security for the Note and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Property and to collect all rents and profits and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction by ex parte application, subject to such notice as local rules of court may require. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the power herein contained shall be secured by this Deed of Trust

10. **Security Agreement and Fixture Filing.** This Deed of Trust also constitutes a security agreement with respect to all personal property in which Beneficiary is granted a security interest under Section 1 above, and Beneficiary shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as enacted in California ("**California Uniform Commercial Code**") as well as all other rights and remedies available at law or in equity. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Trustor and Beneficiary agree that the filing of a financing statement in the record normally having to do with personal property shall never be construed as in any way derogating from or impairing the lien of this Deed of Trust and the intention of Trustor and Beneficiary that everything used in connection with the operation or occupancy of the Property is and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property or goods which are or are to become fixtures, irrespective of whether (i) any such item is physically attached to the buildings and improvements on the Property; (ii) serial numbers are used for the better identification of certain equipment items capable of being filed by the Beneficiary; or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Such mention in the financing statements is declared to be for the protection of the Beneficiary in the event any court or judge shall at any time hold that notice of Beneficiary's priority of interest must be filed in the California Commercial Code records to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivision or entity of the federal government. Trustor covenants and agrees to reimburse Beneficiary for any costs incurred in filing such financing statement and any continuation statements.

Upon the occurrence of default hereunder, and after delivery of notice and the expiration of all applicable cure periods, Beneficiary shall have the right to cause any of the Property which is personal property and subject to the security interest of Beneficiary hereunder to be sold at any one or more public or private sales as permitted

by applicable law, and Beneficiary shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law, specifically including without limitation the right to proceed as to both the real property and the personal property contained within the Property as permitted by Uniform Commercial Code Section 9501(4), including conducting a unified sale thereof. Any such disposition may be conducted by an employee or agent of Beneficiary or Trustee. Any person, including both Trustee and Beneficiary, shall be eligible to purchase any part or all of such property at any such disposition.

This Deed of Trust constitutes a fixture filing under Sections 9102 and 9502 of the California Uniform Commercial Code, as amended or recodified from time to time.

11. Notices, Demands, and Communications. Formal notices, demands, and communications between Trustor and Beneficiary shall be given by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To Holder: City of Richmond
450 Civic Center Plaza Suite 300
Richmond, CA 94804
Attn: Shasa Curl, City Manager

With a Copy to: City of Richmond
450 Civic Center Plaza Suite 300
Richmond, CA 94804
Attention: David Aleshire, City Attorney

To Maker: Terminal One Development LLC
c/o Laconia Development LLC
1981 North Broadway, Suite 350
Walnut Creek, CA 94596

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second (2nd) business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate by mail.

12. No Merger. This Deed of Trust is senior to Shared Appreciation Deed of Trust and junior to the Senior Trust Deed. The debt represented by the Note secured by this Deed of Trust is separate and distinct from the Concurrent Notes. It is the specific intention of the parties that (i) the obligations under the Concurrent Notes and Concurrent Deeds of Trust shall not be deemed merged; (ii) Beneficiary shall have all rights and remedies under each respective note and deed of trust; and (iii) Beneficiary has the right to foreclose the respective deeds of trust in any order it chooses.

13. Subordination. Beneficiary agrees to subordinate this Deed of Trust, to a deed of trust securing a construction loan made to Trustor for financing the construction of the Residential Units (as defined in the LDA). The City Manager of Beneficiary is hereby authorized and directed to execute such subordination agreements and/or other documents as may be reasonably requested by the construction lender and approved by the City Attorney. The execution of such agreements is subject to the requirement that such agreements contain written provisions which the City Manager finds are consistent with the standard requirements imposed by the construction lender and commonly required for construction financing of similar projects in Contra Costa County and the subordination requirements set forth in this provision.

Beneficiary shall only be required to subordinate this Deed of Trust to a construction loan provided the following requirements are satisfied:

- a. Trustor is not in default under any obligations to the Beneficiary including, but not limited to, the Note, this Deed of Trust, the City Agreements and the Concurrent Notes and Concurrent Trust Deeds.
- b. The senior lien shall be a construction loan with the proceeds to be used solely for construction of the Residential Units, related site improvements and infrastructure required under the LDA, and site stabilization and remediation, with no land draw permitted. The loan agreement shall mandate a construction disbursement control system providing for period disbursements based upon submission of mechanic lien releases and inspection reports confirming the completion of the work. The lender's approved loan budget shall be subject to the reasonable initial review and approval of Beneficiary, as a condition to subordination to the construction loan, and Trustor shall use commercially reasonable efforts to obtain for Beneficiary a copy of the senior lender's appraisal for the proposed construction project.
- c. The interest rate and other terms shall be commercially reasonable for similar projects in Contra Costa County.
- d. The senior lender agrees to provide Beneficiary with any notices of default which are provided by the senior lender to Trustor and to provide Beneficiary with the right (but not the obligation) to cure any default within the same period afforded Trustor for cure.
- e. Beneficiary will execute a subordination agreement for recordation as reasonably required by a title company to provide title insurance for the senior loan.
- f. A request for notice of delinquency and a request for notice of default shall be recorded concurrently with the subordination agreement.
- g. Concurrently with the recordation of the subordination agreement, Beneficiary's loan title policy shall be updated as required by Beneficiary at Trustor's cost and expense insuring this Deed of Trust is junior only to the specified approved senior loan.
- h. Beneficiary shall be provided complete executed copies of all senior loan documents,

subject to such commercially reasonable confidentiality requirements and procedures as the senior lender may require of Beneficiary.

- i. Beneficiary shall be reimbursed for all reasonable out-of-pocket costs (including attorney fees) incurred with respect to the review, approval and execution of the subordination agreement.

Beneficiary shall be entitled to prompt reimbursement from Trustor for any costs associated with curing a default on a senior lien. If not paid by Trustor, such sum shall be added to the Note and secured by the Deed of Trust.

14. Partial Releases. At any time, from time-to-time, provided that no default exists under the Note or this Deed of Trust, Trustor shall be entitled to partial release of a portion of the Property which is a completed residential unit (a "**Residential Unit**"), upon and subject to the following conditions:

- a. Any portion of the Property to be released must be a legal parcel in accordance with the Subdivision Map Act.
- b. The Project CC&Rs (as required by the City as part of the entitlements) have been recorded against the entire Property.
- c. Trustor shall provide to Beneficiary a fully executed copy of the executed purchase and sale agreement for the sale of the applicable Residential Unit to a homebuyer for Beneficiary's review and approval (which shall not be unreasonably withheld) ("**Homebuyer PSA**").
- d. The release price for each Residential Unit shall be One Hundred Thousand Dollars (\$100,000) ("**Release Price**").
- e. Concurrently with any partial release under this Deed of Trust, the same Residential Unit must also be released from the Shared Appreciation Trust Deed pursuant to the terms thereof.
- f. The portions of the Property remaining subject to this Deed of Trust shall have adequate ingress and egress and direct access to dedicated public streets and utilities.
- g. The following procedures shall be used for all releases:
 - i. Trustor's written request for the release must give the legal description of the Residential Unit to be released and must request Beneficiary to deposit its authorization for the partial release and its demand for payment and conditions including a specified escrow, which must be a title company or escrow company qualified and licensed to do an escrow business in California. The request must state the name and address of the escrow holder where the authorization for the partial release and demand are to be sent, the name of the escrow officer, and the escrow number.

- ii. A new title policy or applicable endorsement as required by Beneficiary to the original loan title policy issued to Beneficiary must be issued as a condition to the release.
- iii. To protect the buyer of the Residential Unit from delay in closing the pending sale of the Residential Unit, Beneficiary will use reasonably diligent commercial efforts to expedite deposit of the authorization for the partial release and its demand in the escrow, but Beneficiary shall be obligated to do so only if Beneficiary has received from Trustor satisfactory evidence that all of the conditions to the release set forth herein have been satisfied.
- iv. No release by Beneficiary will affect any of Trustor's obligations under this Deed of Trust or the other loan documents, except to the extent that payment is actually received by Beneficiary. Any payments made by Trustor to Beneficiary for the release will be credited against the indebtedness secured by this Deed of Trust only upon actual receipt of the funds by Beneficiary. Checks received by Beneficiary will not be considered as payment until they are collected. Trustor will be fully responsible for the proper performance of Beneficiary's demand by the escrow holder.
- v. Trustor will pay all reasonable out-of-pocket costs and expenses incurred in connection with any releases, including, but not limited to, any and all trustee's fees, reconveyance fees, recording fees, premiums for title insurance endorsements, Beneficiary's costs in connection with such release(s), and escrow fees.

IN WITNESS WHEREOF, Trustor has executed this Rider concurrently with this Deed of Trust to which it is attached.

TRUSTOR:

ONE TERMINAL DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Zhenwu Wu, Manager

EXHIBIT "A"

LEGAL DESCRIPTION

That certain real property in the City of Richmond, County of Contra Costa, State of California legally described as follows:

PARCEL ONE:

That certain real property in the City of Richmond, County of Contra Costa, State of California, being portions of Lot 26-1/2 and 27, Section 23, and portions of Lots 6, 7 and 8, Section 26, Township 1 North, Range 5 West, Mount Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tidelands," filed June 11, 1917, in Rack Map No. 9, in the Office of the Recorder of Contra Costa County, California, being more particularly described as follows:

COMMENCING at San Pablo Rancho Exterior Boundary Stake No. 347 as shown on the map entitled "Map of the San Pablo Rancho, accompanying and forming a part of the final Report of the Referees in Partition," filed March 1, 1894, at No. 2, Map Rack, in the Office of the Recorder of Contra Costa County, California; THENCE along the northerly line of Lot 26 1/2 North 83°58'58" East 31.12 feet to a point of intersection of said Lot line and the easterly line of Dornan Drive (formerly known as South Garrard Boulevard) (60 foot wide) the center line of which is described as Parcel No. 2 in the deed from the Atchison, Topeka and Santa Fe Railway Company to the City of Richmond filed February 26, 1920 in Volume 355 of Deeds at Page 256, in the Office of the Recorder of Contra Costa County, California; THENCE continuing along the northerly line of Lot 26 1/2 North 83°58'58" East 187.44 feet to station 348 in said exterior boundary; THENCE continuing along said exterior boundary South 46°25'00" East 64.93 feet, said point being the **POINT OF BEGINNING**; THENCE continuing along last said exterior boundary line South 46°25'00" East 20.63 feet to a point on the exterior boundary of the San Pablo Rancho, as shown on said map of the San Pablo Rancho, said point also being on the northerly line of the parcel of land described in the deed from Atchison, Topeka and Santa Fe Railway Company to the City of Richmond, filed February 26, 1920, in Volume 359 of Deeds at Page 270 in the Office of the Recorder of Contra Costa County, California, said point also being on the southwesterly line of the parcel of land described in the grant of easement from the Atchison, Topeka and Santa Fe Railway Company to the City of Richmond, filed January 13, 1970, in volume 6043 of Official Records at Page 198 in the Office of the Recorder of Contra Costa County, California, to Exterior Boundary Stake No. 349 of said San Pablo Rancho; THENCE North 83°10'43" East 256.68 feet along said exterior boundary of the San Pablo Rancho, also being the northerly line of said parcel (359 D 270) and the southerly line of said easement (6043 O.R. 198), to Exterior Boundary Stake No. 350 of said San Pablo Rancho; THENCE North 67°53'22" East 27.32 feet along said exterior boundary of the San Pablo Rancho, also being the northerly line of said parcel (359 D 270) and the southerly line of said easement (6043 O.R. 198); THENCE North 84°52'40" East 44.09 feet to a point on a tangent curve concave to the north and having a radius of 623.69 feet; THENCE easterly an arc distance of 337.29 feet along said 623.69 foot radius curve, through a central angle of 30°59'08" to the westerly line of the parcel of land described in the grant of easement from Richmond Belt Railway to the City of Richmond,

CONTINUED ON NEXT PAGE

filed November 30, 1917, in Volume 310 of Deeds at Page 45, in the Office of the Recorder of Contra Costa County California, being on a non-tangent curve concave to the east and having a radius of 509.28 feet, the center of the circle of said curve bears South 83°48'38" East; THENCE southerly an arc distance of 84.35 feet along said 509.28 foot radius curve, also being along said westerly line of the Belt Railway easement (310 D 45), through a central angle of 09°29'22"; THENCE South 03°18'00" East 111.44 feet along said westerly line (310 D 45) to a point on a tangent curve concave to the west and having a radius of 409.28 feet; THENCE southerly an arc distance of 86.23 feet along said 409.28 foot radius curve, also being along said westerly line (310 D 45), through a central angle of 12°04'16", to the southwesterly corner of said easement (310 D 45), said corner being on the southerly line of said Lot 27, Section 23; THENCE South 89°46'20" East 65.31 feet along the southerly line of said easement (310 D 45), also being along the southerly line of Lot 27, Section 23, to a point on a non-tangent curve concave to the northwest and having a radius of 453.00 feet, the center of the circle of said curve bears North 81°46'18" West from said corner, said point as shown on the Record of Survey filed August 3, 1966, in Book 44 of Land Survey Maps at Page 3, in the Office of the Recorder of Contra Costa County, California; THENCE southwesterly an arc distance of 489.61 feet along said 453.00 foot radius curve, through a central angle of 61°55'34"; THENCE South 00°13'40" West 223.05 feet to a point on the southerly line of said Lot 6, Section 26; THENCE North 61°48'20" West 873.65 feet along said southerly line of Lot 6, Section 26, and the southerly line of said Lot 7, Section 26 to a point on the southerly extension of the westerly line of the aforementioned Dornan Drive; THENCE North 09°24'40" East 12.65 feet along said westerly line of Dornan Drive and its southerly extension; THENCE South 80°35'20" East 60.00 feet to the easterly line of said Dornan Drive; THENCE North 09°24'40" East 293.79 feet along said easterly line of Dornan Drive to a point on a tangent curve concave to the southeast and having a radius of 20.00 feet; THENCE northeasterly an arc distance of 31.42 feet along said 20.00 foot radius curve, through a central angle of 90°00'00"; THENCE South 80°35'20" East 38.15 feet to a point on a tangent curve concave to the north and having a radius of 415.00 feet; THENCE northeasterly an arc distance of 105.24 feet along said 415.00 foot radius curve, through a central angle of 14°31'47"; THENCE North 84°52'40" East 74.52 feet to the **POINT OF BEGINNING**.

(The bearing "North 09°24'40" East" between found monuments along Dornan Drive as shown on that certain survey entitled "Balanced Survey of Portion of the Exterior Boundary of the San Pablo Rancho, from S.P. Sta. 347 to S.P. Sta. 364," dated February 27, 1930, on file in the office of the East Bay Regional Park District, was used as the Basis of Bearings for this description.)

APN: 560-420-010

EXHIBIT O-1
SHARED APPRECIATION NOTE
SHARED APPRECIATION NOTE SECURED BY DEED OF TRUST

\$ 5,000,000 (“**Maximum Note Amount**”)

December 29, 2022 (“**Note Date**”)

FOR VALUE RECEIVED, TERMINAL ONE DEVELOPMENT LLC, a Delaware limited liability company (“**Maker**”) hereby promises to pay to the order of the CITY OF RICHMOND, a municipal corporation and city charter, or order (“**Holder**” or “**City**”) at a place designated by Holder, the principal amount equal to the lesser of: (i) sum of FIVE MILLION DOLLARS (\$5,000,000), or (ii) an amount equal to Fifteen Percent (15%) of the difference between (a) the actual total sales prices of the Residential Units of the Project as it is finally entitled (“**Actual Total Sales Prices**”), and (b) the total sales prices of the Residential Units as projected by Developer at commencement of construction (“**Projected Total Sales Prices**”) and reported to the City by Developer’s affidavit specifying the Projected Total Sales Prices which shall be subject to Land ECON Group review and reasonable approval (“**Note Amount**”), plus any accrued interest (as specified below), or such lesser amount which shall from time to time be owing hereunder pursuant to the terms hereof.

This Note is secured by that certain Shared Appreciation Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith made by and among Maker as trustor, Holder as beneficiary, and Fidelity National Title Insurance Company as trustee, and recorded concurrently with the recordation of the Grant Deed (“**Trust Deed**”).

Reference is also made to the following additional agreements and documents involving Maker and Holder pertaining to the Property:

- i. The Grant Deed executed by Holder conveying the Property to Maker which is recorded concurrently with the recordation of the Deed of Trust securing this Note and which includes continuing covenants (“**Grant Deed**”).
- ii. That certain Land Disposition Agreement executed by on August 6, 2014 by and between Holder (as City) and Maker (as Developer) for the sale of the Property to Maker and its development by Maker as amended by that certain First Amendment to Land Disposition Agreement dated December 29, 2022 (as so amended, the “**LDA**”).

The documents listed in subparagraphs (i) and (ii) above are referred to herein jointly as the “**City Agreements**” and individually as an “**City Agreement**.” The City Agreements are incorporated herein as though fully set forth.

Concurrently with this Note, Maker has executed the following Notes in favor of City each to also secured by a deed of trust against the Property:

(i) that certain Purchase Money Note Secured by Deed of Trust in the principal amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000) ("**First Note**") secured by that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith recorded concurrently with the Trust Deed but in first lien position against the Property ("**First Trust Deed**"); and

(ii) that certain Purchase Money Note Secured by Deed of Trust in the principal amount of Five Million Dollars (\$5,000,000) ("**Second Note**") secured by that certain with Assignment of Rents, Security Agreement and Fixture Filing of even date therewith recorded concurrently with the Trust Deed but in second lien position against the Property ("**Second Trust Deed**").

The First Note and Second Note are sometimes jointly referred to as the "**Concurrent Notes**". The First Trust Deed and the Second Trust Deed are sometimes joint referred to as the "**Concurrent Trust Deeds.**"

1. **Defined Terms.** Except as otherwise provided herein, the defined terms used in this Note shall have the same meaning as set forth in the LDA.
2. **Purpose of Loan.** This Note is a purchase money carry-back obligation for a portion of the purchase price related to the sale of the Property in accordance with the LDA.
3. **Effective Date.** This Note shall be effective as of the date that the Trust Deed is recorded in the Official Records of Contra Costa County against the Property ("**Effective Date**").
4. **Principal Amount.**
 - a. "**Principal Amount.**" The principal amount of this Note is equal to the lesser of: (i) sum of FIVE MILLION DOLLARS (\$5,000,000), or (ii) an amount equal to Fifteen Percent (15%) of the difference between (a) Actual Total Sales Prices and the Projected Total Sales Prices and reported to the City by Developer's affidavit and approved by City as set forth above.
 - b. **Accounting.** Maker shall provide Holder with a monthly accounting report as to the sales of Residential Units which shall include the gross sales amount for all the Residential Units. Holder shall have the right to audit Maker's books and records upon reasonable notice.
5. **Interest.** The Principal Amount shall not bear interest, provided however, upon the occurrence of a default under this Note, the Principal Amount shall bear interest at eight percent (8%) per annum.
6. **Payments.** Commencing as of the Effective Date and continuing until paid in full, when the total of actual sales prices of Residential Units exceeds the Projected Total Sales Prices, Fifteen Percent (15%) of the sales price of each Residential Unit subsequently sold ("**Partial Payments**") will be placed in a neutral escrow account to which both Maker and Holder are parties. If and when the total in the escrow account equals or

exceeds the sum of Five Million (\$5,000,000), the sum of Five Million (\$5,000,000) will be released from the escrow account to Holder, any amount in excess of Five Million Dollars (\$5,000,000) will be released from the escrow account to Maker, and the escrow account will be closed. Upon sale of the last Residential Unit without any of the escrow funds having been previously released to City, the total balance of the escrow account, if any, shall be released from the escrow account to Holder and the escrow account shall be closed.

7. **Prepayment.** Maker may prepay the maximum amount of this Note at any time without penalty.
8. **Cross-Default.**
 - a. **City Agreements.** An uncured default by Maker under the terms and conditions of either of the City Agreements shall be a default under this Note.
 - b. **Concurrent Notes and Trust Deeds.** An uncured default by Maker under the terms and conditions of either of the Concurrent Notes and/or the Concurrent Deeds of Trust shall be a default under this Note.
 - c. **Trust Deed.** An uncured default by Maker under the terms and conditions of the Trust Deed is a default under this Note.
9. **Acceleration on Default.** In the event Maker is in default under this Note, Holder may, at its option, declare this Note and the Maximum Principal Amount immediately due and payable and collectible then or thereafter as Holder may elect, regardless of the date of maturity, and notice of the exercise of said option is hereby expressly waived by Maker.
10. **Acceleration on Transfer or Encumbrance of Property.** The Trust Deed contains the following provision: "Subject to the provisions of Sections 13 and 14 of this Trust Deed and subject to the terms in Section 11.8 of the LDA, if Trustor sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or, if Trustor sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or suffers its title to, or any interest in, the Property to be divested, whether voluntarily or involuntarily; or if there is a sale or transfer of beneficial interests in Trustor equal to fifty percent (50%) or more of the beneficial ownership interests of that entity outstanding at the date of this Deed of Trust; or if Trustor changes or permits to be changed the character or use of the Property; or if title to such Property becomes subject to any lien or charge, voluntary or involuntary, contractual or statutory, without Beneficiary's prior written consent, then Beneficiary, at Beneficiary's option, may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Deed of Trust."
11. **Collection Costs; Attorneys' Fees.** If, because of a default under this Note, an attorney is engaged by Holder to enforce or defend any provision of this Note, whether

or not suit is filed hereon, then Maker shall pay upon demand reasonable attorneys' fees, expert witness fees and all costs so incurred by Holder together with interest thereon until paid at the applicable rate of interest payable hereunder, as if such fees and costs had been added to the principal owing hereunder.

12. **Waivers by Maker.** Maker and any and all endorsers, guarantors and persons liable or to become liable on this Note waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note.
13. **Severability.** The unenforceability or invalidity of any provision or provisions of this Note as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other provisions or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.
14. **Modifications.** Neither this Note nor any term hereof may be waived, amended, discharged, modified, changed or terminated orally; nor shall any waiver of any provision hereof be effective except by an instrument in writing signed by Maker and Holder.
15. **No Waiver by Holder.** No waiver of any breach, default or failure of condition under the terms of this Note shall be implied from any failure of the Holder of this Note to take, or any delay be implied from any failure by the Holder in taking action with respect to such breach, default or failure from any prior waiver of any similar or unrelated breach, default or failure.
16. **Usury.** Notwithstanding any provision in this Note, the total liability for payment in the nature of interest shall not exceed the limit imposed by applicable laws of the State of California.
17. **Governing Law.** This Note has been executed and delivered by Maker in the State of California and is to be governed and construed in accordance with the laws thereof.
18. **Subordination.** Provided Maker is not in default, City agrees to subordinate the Trust Deed for construction financing for the Residential Units subject to the terms and conditions set forth in the Trust Deed.
19. **Time of Essence.** Time is of the essence in the performance of the obligations and provisions set forth in this Note.
20. **No Merger.** This Note is junior to the Concurrent Notes. The debt represented by this Note is separate and distinct from the Concurrent Notes. It is the specific intention of the parties that (i) the obligations under this Note and the Trust Deed and the Concurrent Notes and Concurrent Deeds of Trust shall not be deemed merged; (ii) Beneficiary shall have all rights and remedies under each respective note and deed of trust; and (iii) Holder has the right to foreclose under the respective deeds of trust in any order it chooses.
21. **Notices.** All notices, demands, requests, elections, approvals, disapprovals, consents

or other communications given under this Note shall be in writing and shall be given by personal delivery, certified mail, return receipt requested, or overnight guaranteed delivery service and addressed as follows:

To Holder: City of Richmond
450 Civic Center Plaza Suite 300
Richmond, CA 94804
Attn: Shasa Curl, City Manager

With a Copy to: City of Richmond
450 Civic Center Plaza Suite 300
Richmond, CA 94804
Attention: David Aleshire, City Attorney

To Maker: Terminal One Development LLC
c/o Laconia Development LLC
1981 North Broadway, Suite 350
Walnut Creek, CA 94596

Notices shall be effective upon the earlier of receipt or refusal of delivery. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent pursuant to this Note.

IN WITNESS WHEREOF, Maker has executed this Note as of the Note Date.

MAKER:

TERMINAL ONE DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Zhenwu Wu, Manager

EXHIBIT O-2
THIRD TRUST DEED

**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

CITY OF RICHMOND
450 Civic Center Plaza
Richmond, California 94804
Attention: City Clerk

APNs. 560-042-010

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEES PER GOV. CODE §27383

**SHARED APPRECIATION DEED OF TRUST WITH ASSIGNMENT OF
RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

This **SHARED APPRECIATION DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (“**Deed of Trust**”), is made December 29, 2022, between **TERMINAL ONE DEVELOPMENT LLC**, a Delaware limited liability company (“**TRUSTOR**”), whose address is 1981 North Broadway, Suite 350, Walnut Creek, CA 94596 and **Fidelity National Title Insurance Company**, a corporation (“**TRUSTEE**”), for the benefit of **CITY OF RICHMOND**, a California municipal corporation and charter city (“**BENEFICIARY**”). This Deed of Trust is subject to that certain Rider to Shared Appreciation Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing attached hereto and incorporated herein by reference.

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, Trustor’s estate, dated on or about the date hereof, in that property in the City of Richmond, County of San Bernardino, State of California, described as on **Exhibit A** attached hereto and incorporated herein by reference (“**Property**”) together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of maximum sum of Five Million Dollars (\$5,000,000) with any interest thereon according to the terms of that certain Shared Appreciation Promissory Note Secured by Deed of Trust of even date herewith made by Trustor, payable to order of Beneficiary, and extensions, modifications or renewals thereof; (2) the performance of each agreement of Trustor incorporated by reference or contained herein which specifically references that it is secured by this Deed of Trust; and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

This Deed of Trust is subject to the terms of the Rider to Deed of Trust attached hereto and incorporated herein by reference.

To protect the security of this Deed of Trust, and with respect to the Property, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in

Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Contra Costa	T-3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Contra Costa	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	SERIES 5 Book 1964, Page 149774				

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

TRUSTOR:

ONE TERMINAL DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Zhenwu Wu, Manager

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

4) To pay: at least ten (10) days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary of Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from the date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held

hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or be a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledges, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

TO _____, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes and of all indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

Please mail Deed of Trust, _____
Note and Reconveyance to _____

DO NOTE lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

RIDER TO SHARED APPRECIATION DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS RIDER TO SHARED APPRECIATION DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“Rider”) is executed this 29th day of December, 2022, by TERMINAL ONE DEVELOPMENT LLC, a Delaware limited liability company (“**Trustor**”) in favor of the CITY OF RICHMOND, a California municipal corporation and charter city (“**Beneficiary**”) who are the same parties to that certain Shared Appreciation Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing of even date herewith, to which this Rider is attached. This Rider is made a part of and is incorporated into said Deed of Trust. This Rider shall supersede any conflicting term or provision of the form Deed of Trust to which it is attached.

This Deed of Trust secures that certain Shared Appreciation Promissory Note Secured by Deed of Trust by and between Trustor (as Borrower) and Beneficiary (as Lender) of even date herewith in the maximum principal sum of Five Million Dollars (\$5,000,000) and any modifications, extensions or renewals (“**Note**”).

Reference is made to the following documents:

(i) Beneficiary sold the Property (as defined below) to Trustor pursuant to that certain Grant Deed which was recorded immediately prior to this Deed of Trust which contains numerous continuing covenants of Trustor (“**Grant Deed**”).

(ii) Beneficiary acquired the Property from Trustor pursuant to that certain Land Disposition Agreement dated August 6, 2014 as amended by that certain First Amendment to Land Disposition Agreement dated December 29, 2022 (“**LDA**”).

(iii) That certain Purchase Money Note Secured by Deed of Trust in the principal amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000) (“**First Note**”) secured by that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date therewith recorded concurrently with this Deed of Trust but which is in first lien position against the Property (“**First Trust Deed**”).

(iv) That certain Purchase Money Note Secured by Deed of Trust in the principal amount of Five Million Dollars (\$5,000,000) (“**Second Note**”) secured by that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date therewith recorded concurrently with this Deed of Trust but which is in second lien position against the Property (“**Second Trust Deed**”).

The Grant Deed and LDA are sometimes jointly referred to as the “**City Agreements**” and individually as a “**City Agreement**.”

The First Note and Second Note are sometimes jointly referred to as the “**Concurrent Notes**.” The First Trust Deed and Second Trust Deed are sometimes jointly referred to as the “**Concurrent Trust Deeds**.”

The parties hereto agree:

1. **Property.** The estate subject to this Deed of Trust is Trustor’s fee estate in the real property legally described in this Deed of Trust (“**Property**”). In addition, Trustor grants

to Beneficiary a security interest in all of Trustor's rights, title, and interest in and to the following:

- (a) All present and future equipment (as those terms are defined in the California Commercial Code) and all other present and future personal property now or hereafter located at, upon or about the Property which is to be used solely in connection with or relating to the repair and maintenance of Property and/or the improvements thereon, including without limitation all present and future furniture, furnishings, fixtures, goods, tools, machinery, plumbing and plumbing material and supplies, concrete, lumber, hardware, electrical wiring and electrical material and supplies, heating and air conditioning material and supplies, roofing material and supplies, window material and supplies, doors, paint, drywall, insulation, cabinets, ceramic material and supplies, flooring, carpeting, appliances, fencing, landscaping and all other materials, supplies and property of every kind and nature.
- (b) All present and future accounts, general intangibles, chattel paper, contract rights, deposit accounts, instruments and documents as those terms are defined in the California Commercial Code, now or hereafter relating or arising with respect to the Property and/or the improvements located thereon, including without limitation: (i) all rights to the payment of money, including escrow proceeds arising out of the sale or other disposition of all or any portion of the Property; (ii) all architectural, engineering, design and other plans, specifications and drawings relating to the development of the Property and/or any construction thereon; (iii) all use permits, occupancy permits, construction and building permits, and all other permits and approvals required by any governmental or quasi-governmental authority in connection with the development, construction, use, occupancy or operation of the Property; (iv) any and all agreements relating to the development, construction, use, occupancy and/or operation of the Property between Trustor and any contractor, subcontractor, project manager or supervisor, architect, engineer, laborer or supplier of materials; (v) all lease, rental or occupancy agreements and payments received thereunder; (vi) all insurance proceeds and condemnation awards arising out of or incidental to the ownership, development, construction, use, occupancy or operation of the Property; (vii) all reserves, deferred payments, deposits, refunds, cost savings, bonds, insurance policies and payments of any kind relating to the Property; and (viii) all water stock, if any, relating to any Property and all shares of stock or other evidence of ownership of any part of or interest in any Property that is owned by Trustor in common with others; and (ix) all supplements, modifications and amendments to the foregoing.
- (c) All fixtures located upon or within the Property or now or hereafter attached to, installed in, or used or intended for use in connection with the Property, including without limitation any and all partitions, generators, screens, awnings, boilers, furnaces, pipes, plumbing, elevators, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks,

heating ventilating, air conditioning and air cooling equipment, and gas and electric machinery and equipment.

- (d) All present and future accessories, additions, attachments, replacements and substitutions of or to any or all of the foregoing.
- (e) All cash and noncash proceeds and products of any and all of the foregoing, including without limitation all monies, deposit accounts, insurance proceeds and other tangible or intangible property received upon a sale or other disposition of any of the foregoing.

2. **Obligations Secured.** Trustor makes this grant and assignment for the purpose of securing the following obligations ("**Secured Obligations**"):

- (a) Payment to Beneficiary of all indebtedness at any time owing under the terms of the Note;
- (b) Payment and performance of all obligations of Trustor under this Deed of Trust;
- (c) Payment and performance of all future advances and other obligations of Trustor or any other person, firm, or entity with the approval of Trustor, may agree to pay and/or perform for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and
- (d) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced.

Note: (i) The City Agreements are **not** secured by this Deed of Trust. However, a default by Trustor as Grantee under a City Agreement shall be a default under this Deed of Trust. (ii) The Concurrent Notes are **not** secured by this Deed of Trust. However, a default by Trustor under a Concurrent Note shall be a default under this Deed of Trust.

3. **Obligations.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, late charges and fees at any time accruing or assessed on any of the Secured Obligations. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of all of the foregoing documents.

4. **Cross Default.** An uncured default by Trustor under the terms and conditions of the Note, a Concurrent Note or a City Agreement shall be a default under this Deed of Trust.

5. **Mortgagee-in-Possession.** Neither the assignment of rents set forth in this Deed of Trust nor the exercise by Beneficiary of any of its rights or remedies hereunder shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. The appointment of a receiver for the Property by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Property by such receiver, shall not be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise liable in any manner with respect to the

Property.

6. **No Cure.** In the event Beneficiary collects and receives any rents under this Deed of Trust upon any default hereof, such collection or receipt shall in no way constitute a cure of the default.
7. **Possession upon Default.** Upon the occurrence of a default, Beneficiary may, at its option, move ex parte for the appointment of a receiver for the Property and without in any way waiving such default, have the receiver take possession of the Property and have, hold, manage, lease and operate the same, on such terms and for such period of time as Beneficiary may deem proper and the appointing court shall approve, and may collect and receive all rents and profits, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto as may seem proper to Beneficiary, and to apply such rents and profits to the payment of (a) the cost of all such alterations, renovations, repairs and replacements, and all costs and expenses incident to taking and retaining possession of the Property, and the management and operation thereof, and keeping the same properly insured; (b) all taxes, charges, claims, assessments, and any other liens which may be prior in lien or payment of the Note, and premiums for insurance, with interest on all such items; and (c) the indebtedness secured hereby, together with all costs and attorney's fees, in such order or priority as to any of such items as Beneficiary in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. Any amounts received by Trustor or its agents in the performance of any acts prohibited by the terms of this assignment, including, but not limited to, any amounts received in connection with any cancellation, modification or amendment of any lease prohibited by the terms of this assignment and any rents and profits received by Trustor after the occurrence of a default shall be held by Trustor as trustee for Beneficiary and all such amounts shall be accounted for to Beneficiary and shall not be commingled with other funds of the Trustor. Any person receiving any portion of such trust funds shall receive the same in trust for Beneficiary as if such person had actual or constructive notice that such funds were impressed with a trust in accordance therewith.
8. **Acceleration.** Subject to the provisions of Sections 13 and 14 of this Trust Deed and subject to the terms of Section 11.8 of the LDA, if Trustor sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or suffers its title to, or any interest in, the Property to be divested, whether voluntarily or involuntarily; or if there is a sale or transfer of beneficial interests in Trustor equal to fifty percent (50%) or more of the beneficial ownership interests of that entity outstanding at the date of this Deed of Trust; or if Trustor changes or permits to be changed the character or use of the Property; or if title to such Property becomes subject to any lien or charge, voluntary or involuntary, contractual or statutory, without Beneficiary's prior written consent, then Beneficiary, at Beneficiary's option, may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Deed of Trust.
9. **Receiver.** In addition to any and all other remedies of Beneficiary set forth under this Deed of Trust or permitted at law or in equity, if a default shall have occurred,

Beneficiary, to the extent permitted by law and without regard to the value, adequacy or occupancy of the security for the Note and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Property and to collect all rents and profits and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction by ex parte application subject to such notice as local rules of court may require. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the power herein contained shall be secured by this Deed of Trust.

- 10. Security Agreement and Fixture Filing.** This Deed of Trust also constitutes a security agreement with respect to all personal property in which Beneficiary is granted a security interest under Section 1 above, and Beneficiary shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as enacted in California ("**California Uniform Commercial Code**") as well as all other rights and remedies available at law or in equity. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Trustor and Beneficiary agree that the filing of a financing statement in the record normally having to do with personal property shall never be construed as in any way derogating from or impairing the lien of this Deed of Trust and the intention of Trustor and Beneficiary that everything used in connection with the operation or occupancy of the Property is and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property or goods which are or are to become fixtures, irrespective of whether (i) any such item is physically attached to the buildings and improvements on the Property; (ii) serial numbers are used for the better identification of certain equipment items capable of being filed by the Beneficiary; or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Such mention in the financing statements is declared to be for the protection of the Beneficiary in the event any court or judge shall at any time hold that notice of Beneficiary's priority of interest must be filed in the California Commercial Code records to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivision or entity of the federal government. Trustor covenants and agrees to reimburse Beneficiary for any costs incurred in filing such financing statement and any continuation statements.

Upon the occurrence of default hereunder, and after delivery of notice and the expiration of all applicable cure periods, Beneficiary shall have the right to cause any of the Property which is personal property and subject to the security interest of Beneficiary hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Beneficiary shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law, specifically including without limitation the right to proceed as to both the real property and the personal property contained within the Property as permitted by Uniform Commercial Code Section 9501(4), including conducting a unified sale thereof. Any such disposition may be conducted by an employee or agent of Beneficiary or Trustee. Any

person, including both Trustee and Beneficiary, shall be eligible to purchase any part or all of such property at any such disposition.

This Deed of Trust constitutes a fixture filing under Sections 9102 and 9502 of the California Uniform Commercial Code, as amended or recodified from time to time.

- 11. Notices, Demands, and Communications.** Formal notices, demands, and communications between Trustor and Beneficiary shall be given by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To Holder: City of Richmond
450 Civic Center Plaza Suite 300
Richmond, CA 94804
Attn: Shasa Curl, City Manager

With a Copy to: City of Richmond
450 Civic Center Plaza Suite 300
Richmond, CA 94804
Attention: David Aleshire, City Attorney

To Maker: Terminal One Development LLC
c/o Laconia Development LLC
1981 North Broadway, Suite 350
Walnut Creek, CA 94596

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second (2nd) business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate by mail.

- 12. No Merger.** This Deed of Trust is senior to Shared Appreciation Deed of Trust and junior to the Senior Trust Deed. The debt represented by the Note secured by this Deed of Trust is separate and distinct from the Concurrent Notes. It is the specific intention of the parties that (i) the obligations under the Concurrent Notes and Concurrent Deeds of Trust shall not be deemed merged; (ii) Beneficiary shall have all rights and remedies under each respective note and deed of trust; and (iii) Beneficiary has the right to foreclose the respective deeds of trust in any order it chooses.
- 13. Subordination.** Beneficiary agrees to subordinate this Deed of Trust, to a deed of trust securing a construction loan made to Trustor for financing the construction of the Residential Units (as defined in the LDA). The City Manager of Beneficiary is hereby authorized and directed to execute such subordination agreements and/or other documents as may be reasonably requested by the construction lender and approved by the City Attorney. The execution of such agreements is subject to the requirement that such agreements contain written provisions which the City Manager finds are

consistent with the standard requirements imposed by the construction lender and commonly required for construction financing of similar projects in Contra Costa County and the subordination requirements set forth in this provision.

Beneficiary shall only be required to subordinate this Deed of Trust to a construction loan provided the following requirements are satisfied:

- a. Trustor is not in default under any obligations to the Beneficiary including, but not limited to, the Note, this Deed of Trust, the City Agreements, the Concurrent Notes and Concurrent Trust Deeds.
- b. The senior lien shall be a construction loan with the proceeds to be used solely for construction of the Residential Units, related site improvements and infrastructure required under the LDA, and site stabilization and remediation, with no land draw permitted. The loan agreement shall mandate a construction disbursement control system providing for period disbursements based upon submission of mechanic lien releases and inspection reports confirming the completion of the work. The lender's approved loan budget shall be subject to the reasonable initial review and approval of Beneficiary, as a condition to subordination to the construction loan, loan, and Trustor shall use commercially reasonable efforts to obtain for Beneficiary a copy of the senior lender's appraisal for the proposed construction project.
- c. The interest rate and other terms shall be commercially reasonable for similar projects in Contra Costa County.
- d. The senior lender agrees to provide Beneficiary with any notices of default which are provided by the senior lender to Trustor and to provide Beneficiary with the right (but not the obligation) to cure any default within the same period afforded Trustor for cure.
- e. Beneficiary will execute a subordination agreement for recordation as reasonably required by a title company to provide title insurance for the senior loan.
- f. A request for notice of delinquency and a request for notice of default shall be recorded concurrently with the subordination agreement.
- g. Concurrently with the recordation of the subordination agreement, Beneficiary's loan title policy shall be updated as required by Beneficiary at Trustor's cost and expense insuring this Deed of Trust is junior only to the specified approved senior loan.
- h. Beneficiary shall be provided complete executed copies of all senior loan documents, subject to such commercially reasonable confidentiality requirements and procedures as the senior lender may require of Beneficiary.
- i. Beneficiary shall be reimbursed for all reasonable out-of-pocket costs (including attorney fees) incurred with respect to the review, approval and execution of the subordination agreement.

Beneficiary shall be entitled to prompt reimbursement from Trustor for any costs associated with curing a default on a senior lien. If not paid by Trustor, such sum shall be added to the Note and secured by the Deed of Trust.

- 14. Partial Releases.** At any time, from time-to-time, provided that no default exists under the Note or this Deed of Trust, Trustor shall be entitled to partial release of a portion of the Property which is a completed residential unit (a "**Residential Unit**"), upon and subject to the following conditions:
- a. Any portion of the Property to be released must be a legal parcel in accordance with the Subdivision Map Act.
 - b. The Project CC&Rs (as required by the City as part of the entitlements) have been recorded against the entire Property.
 - c. Trustor shall provide to Beneficiary a fully executed copy of the executed purchase and sale agreement for the sale of the applicable Residential Unit to a homebuyer for Beneficiary's review and approval (which shall not be unreasonably withheld) ("**Homebuyer PSA**").
 - d. The release price for each Residential Unit shall be paid as specified in Section 6 of the Note secured hereby ("**Release Price**").
 - e. Concurrently with any partial release under this Deed of Trust, the same Residential Unit must also be released from the Second Trust Deed pursuant to the terms thereof.
 - f. The portions of the Property remaining subject to this Deed of Trust shall have adequate ingress and egress and direct access to dedicated public streets and utilities.
 - g. The following procedures shall be used for all releases:
 - i. Trustor's written request for the release must give the legal description of the Residential Unit to be released and must request Beneficiary to deposit its authorization for the partial release and its demand for payment and conditions including a specified escrow, which must be a title company or escrow company qualified and licensed to do an escrow business in California. The request must state the name and address of the escrow holder where the authorization for the partial release and demand are to be sent, the name of the escrow officer, and the escrow number.
 - ii. A new title policy or applicable endorsement as required by Beneficiary to the original loan title policy issued to Beneficiary must be issued as a condition to the release.
 - iii. To protect the buyer of the Residential Unit from delay in closing the pending sale of the Residential Unit, Beneficiary will use reasonably

diligent commercial efforts to expedite deposit of the authorization for the partial release and its demand in the escrow, but Beneficiary shall be obligated to do so only if Beneficiary has received from Trustor satisfactory evidence that all of the conditions to the release set forth herein have been satisfied.

- iv. No release by Beneficiary will affect any of Trustor's obligations under this Deed of Trust or the other loan documents, except to the extent that payment is actually received by Beneficiary. Any payments made by Trustor to Beneficiary for the release will be credited against the indebtedness secured by this Deed of Trust only upon actual receipt of the funds by Beneficiary. Checks received by Beneficiary will not be considered as payment until they are collected. Trustor will be fully responsible for the proper performance of Beneficiary's demand by the escrow holder.
- v. Trustor will pay all reasonable out-of-pocket costs and expenses incurred in connection with any releases, including, but not limited to, any and all trustee's fees, reconveyance fees, recording fees, premiums for title insurance endorsements, Beneficiary's costs in connection with such release(s), and escrow fees.

15. Related Party Sales. Any sale of a Residential Unit to an affiliate of Trustor, or to a party related to Trustor, or to any person in ownership or control of Trustor, shall be at a price not less than the then-current fair market value of such Residential Unit. Beneficiary shall have the right to require a certification from Trustor representing and warranting the absence of any such related party relationship with respect to any Residential Unit sale that appears to Beneficiary to be at a price below then-current fair market value.

IN WITNESS WHEREOF, Trustor has executed this Rider concurrently with this Deed of Trust to which it is attached.

TRUSTOR:

ONE TERMINAL DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Zhenwu Wu, Manager

EXHIBIT "A"

LEGAL DESCRIPTION

That certain real property in the City of Richmond, County of Contra Costa, State of California legally described as follows:

PARCEL ONE:

That certain real property in the City of Richmond, County of Contra Costa, State of California, being portions of Lot 26-1/2 and 27, Section 23, and portions of Lots 6, 7 and 8, Section 26, Township 1 North, Range 5 West, Mount Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tidelands," filed June 11, 1917, in Rack Map No. 9, in the Office of the Recorder of Contra Costa County, California, being more particularly described as follows:

COMMENCING at San Pablo Rancho Exterior Boundary Stake No. 347 as shown on the map entitled "Map of the San Pablo Rancho, accompanying and forming a part of the final Report of the Referees in Partition," filed March 1, 1894, at No. 2, Map Rack, in the Office of the Recorder of Contra Costa County, California; THENCE along the northerly line of Lot 26 1/2 North 83°58'58" East 31.12 feet to a point of intersection of said Lot line and the easterly line of Dornan Drive (formerly known as South Garrard Boulevard) (60 foot wide) the center line of which is described as Parcel No. 2 in the deed from the Atchison, Topeka and Santa Fe Railway Company to the City of Richmond filed February 26, 1920 in Volume 355 of Deeds at Page 256, in the Office of the Recorder of Contra Costa County, California; THENCE continuing along the northerly line of Lot 26 1/2 North 83°58'58" East 187.44 feet to station 348 in said exterior boundary; THENCE continuing along said exterior boundary South 46°25'00" East 64.93 feet, said point being the **POINT OF BEGINNING**; THENCE continuing along last said exterior boundary line South 46°25'00" East 20.63 feet to a point on the exterior boundary of the San Pablo Rancho, as shown on said map of the San Pablo Rancho, said point also being on the northerly line of the parcel of land described in the deed from Atchison, Topeka and Santa Fe Railway Company to the City of Richmond, filed February 26, 1920, in Volume 359 of Deeds at Page 270 in the Office of the Recorder of Contra Costa County, California, said point also being on the southwesterly line of the parcel of land described in the grant of easement from the Atchison, Topeka and Santa Fe Railway Company to the City of Richmond, filed January 13, 1970, in volume 6043 of Official Records at Page 198 in the Office of the Recorder of Contra Costa County, California, to Exterior Boundary Stake No. 349 of said San Pablo Rancho; THENCE North 83°10'43" East 256.68 feet along said exterior boundary of the San Pablo Rancho, also being the northerly line of said parcel (359 D 270) and the southerly line of said easement (6043 O.R. 198), to Exterior Boundary Stake No. 350 of said San Pablo Rancho; THENCE North 67°53'22" East 27.32 feet along said exterior boundary of the San Pablo Rancho, also being the northerly line of said parcel (359 D 270) and the southerly line of said easement (6043 O.R. 198); THENCE North 84°52'40" East 44.09 feet to a point on a tangent curve concave to the north and having a radius of 623.69 feet; THENCE easterly an arc distance of 337.29 feet along said 623.69 foot radius curve, through a central angle of 30°59'08" to the westerly line of the parcel of land described in the grant of easement from Richmond Belt Railway to the City of Richmond,

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filed November 30, 1917, in Volume 310 of Deeds at Page 45, in the Office of the Recorder of Contra Costa County California, being on a non-tangent curve concave to the east and having a radius of 509.28 feet, the center of the circle of said curve bears South 83°48'38" East; THENCE southerly an arc distance of 84.35 feet along said 509.28 foot radius curve, also being along said westerly line of the Belt Railway easement (310 D 45), through a central angle of 09°29'22"; THENCE South 03°18'00" East 111.44 feet along said westerly line (310 D 45) to a point on a tangent curve concave to the west and having a radius of 409.28 feet; THENCE southerly an arc distance of 86.23 feet along said 409.28 foot radius curve, also being along said westerly line (310 D 45), through a central angle of 12°04'16", to the southwesterly corner of said easement (310 D 45), said corner being on the southerly line of said Lot 27, Section 23; THENCE South 89°46'20" East 65.31 feet along the southerly line of said easement (310 D 45), also being along the southerly line of Lot 27, Section 23, to a point on a non-tangent curve concave to the northwest and having a radius of 453.00 feet, the center of the circle of said curve bears North 81°46'18" West from said corner, said point as shown on the Record of Survey filed August 3, 1966, in Book 44 of Land Survey Maps at Page 3, in the Office of the Recorder of Contra Costa County, California; THENCE southwesterly an arc distance of 489.61 feet along said 453.00 foot radius curve, through a central angle of 61°55'34"; THENCE South 00°13'40" West 223.05 feet to a point on the southerly line of said Lot 6, Section 26; THENCE North 61°48'20" West 873.65 feet along said southerly line of Lot 6, Section 26, and the southerly line of said Lot 7, Section 26 to a point on the southerly extension of the westerly line of the aforementioned Dornan Drive; THENCE North 09°24'40" East 12.65 feet along said westerly line of Dornan Drive and its southerly extension; THENCE South 80°35'20" East 60.00 feet to the easterly line of said Dornan Drive; THENCE North 09°24'40" East 293.79 feet along said easterly line of Dornan Drive to a point on a tangent curve concave to the southeast and having a radius of 20.00 feet; THENCE northeasterly an arc distance of 31.42 feet along said 20.00 foot radius curve, through a central angle of 90°00'00"; THENCE South 80°35'20" East 38.15 feet to a point on a tangent curve concave to the north and having a radius of 415.00 feet; THENCE northeasterly an arc distance of 105.24 feet along said 415.00 foot radius curve, through a central angle of 14°31'47"; THENCE North 84°52'40" East 74.52 feet to the **POINT OF BEGINNING**.

(The bearing "North 09°24'40" East" between found monuments along Dornan Drive as shown on that certain survey entitled "Balanced Survey of Portion of the Exterior Boundary of the San Pablo Rancho, from S.P. Sta. 347 to S.P. Sta. 364," dated February 27, 1930, on file in the office of the East Bay Regional Park District, was used as the Basis of Bearings for this description.)

APN: 560-420-010

