



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
May 7, 2008**

TO: Mayor and City Council

FROM: Karen L. Majors, Assistant City Manager Community and Economic Development

SUBJECT: Public Hearing on the Final Disposition and Consideration of and Possible Action to Approve a Purchase and Sale Agreement between the City of Martinez and Goldenberg et al for 630 Court Street

DATE: April 30, 2008

RECOMMENDATION: Hold public hearing and consider adopting resolution approving the final disposition of the 630 Court Street property, authorizing the Mayor to execute a purchase and sale agreement with Goldenberg and Associates and reallocating up to \$100,000 from the Ferry Pier Removal Project to the 630 Court Street Hazardous Materials Contingency Account.

BACKGROUND: The Sharkey Building, commonly referred to as 630 Court Street, was purchased by the City of Martinez from Contra Costa County several years ago for the sole purpose of finding a private developer to rehabilitate and retrofit the building and provide new tenants that will serve as a catalyst for downtown revitalization efforts. The property had not been in active use for many years and is in need of rehabilitation and repair. The City of Martinez issued Requests for Proposals (RFPs) on several occasions soliciting proposals to return this property to active use. In February, 2007, the City sent its third RFP. Proposals were due and opened on April, 2007. The 630 Court Street City Council Sub-Committee reviewed the proposals and interviewed each of the four development teams and ultimately recommended selection of Goldenberg and Associates. Their proposal included the rehabilitation, retrofit and expansion of the property including lowering and enlarging the existing basement, a street side café, and a stepped back third story. The enlarged basement, possible street side cafe and first floor are proposed to be used a restaurant. The second floor and possible stepped back third story addition are proposed to be leased as office space

The City Council approved an Exclusive Negotiating Rights Agreement (ENRA) with Goldenberg in June, 2007. The ENRA has been extended twice to provide the developer additional time to undertake and analyze structural and hazardous materials investigations and city staff the time needed to complete the City's lengthy property disposition process. The developer's soil analysis determined that the expansion of the basement and the addition of a stepped back third story are technically and financially feasible. However its hazardous materials investigation identified some groundwater and soil contamination that can be addressed as part of the basement expansion but will increase some construction costs. The purchase and sale

agreement proposes an offset to the purchase price, or a portion thereof, for these remediation costs. The City Council and staff have completed all the required steps to sell the property. A purchase and sale agreement has been drafted by city staff pursuant to recommendations from the 630 Court Street City Council Sub-Committee and direction previously provided by the City Council.

The major provisions of the proposed purchase and sale agreement are as follows:

1) Goals/Intent of the Agreement: 1) The City of Martinez purchased 630 Court Street in its existing condition from Contra Costa County in 2004, believing that if renovated in a manner consistent with the Downtown Specific Plan, it would be a catalyst for similar actions with other properties in the Downtown Specific Plan area due to its location and character. 2) The City has previously negotiated with 4 other developers over the last 3 years to identify a development team willing and able to develop the property consistent with the City's vision and possessing the financial capacity to undertake this landmark project. 3) Goldenberg and Associates were selected during the most recent Request for Proposal (RFP) process because of its vision, experience, understanding of the community, and restaurant operator commitment. 4) The Goldenberg proposal includes retrofit and rehabilitation of the existing structure, expansion of the building to fully utilize the basement and the addition of a possible street side café and stepped back third story. 5) Goldenberg proposes to use the basement and first floor as a restaurant and the second and proposed third story for office use. 6) Goldenberg acknowledges that it will need to apply for any and all required entitlements from the City and other governmental entities in order to complete the project as set forth in the RFP.

2) **Deposit:** \$25,000 and will be applied to the purchase price when escrow closes.

3) **Purchase Price:** \$200,000

4) **Hazardous Materials Remediation Purchase Price Offset:** Based upon expenditures for hazardous materials remediation, agreed upon in advance by the City, the purchase price will be offset by the costs necessary to remediate hazardous materials found in the soil and ground water beneath the site. If these costs exceed the \$200,000 purchase price, the City agrees to provide up to an additional \$100,000.00 to cover unexpected remediation costs. Any additional costs will be borne solely by Goldenberg.

5) **Project Entitlements that must be completed prior to the close of escrow:** The developer is required by the purchase agreement to obtain all required project entitlements and approvals from the City and all other governmental entities. City approvals include: Design Review Committee 1, Planning Commission, Use Permit, CEQA compliance, encroachment permit (necessary to allow sidewalk dining), and building permits including seismic retrofit.

6) **Other Developer Requirements Prior to the Close of Escrow:** Developer must also submit proof of the following prior to the close of escrow: partnership agreement, restaurant lease, financing commitments, and construction contract for the rehabilitation and expansion work.

6) **Close of Escrow / transfer of ownership:** Property ownership will be transferred to the developer at the close of escrow, however the purchase price will remain in escrow and be disbursed as the work directly attributable to environmental remediation is completed with the City's approval.

7) **Secretary of Interior Standards:** The developer will design all exterior modifications in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

8) **City commitment to assist developer with entitlements:** The City commits to assisting the developer with all entitlements including development of a Mills Act program (property tax rebate program for qualified renovations of historic buildings).

FISCAL IMPACT: As stated above the purchase price of the property is \$200,000, however thru escrow the purchase price will be offset by costs directly attributable to the hazardous materials remediation required to reuse the site. This proposed agreement also includes a provision that commits the City to expending up to an additional \$100,000 if the remediation costs exceed the \$200,000 purchase price offset. This contingent amount will be reallocated from the Ferry Pier Removal Project to a new 630 Court Street Hazardous Material Contingency Account..

ACTION: Hold the Public Hearing and consider adoption of the attached resolution approving the final disposition of the 630 Court Street Property, authorizing the Mayor to execute the purchase and sale agreement and reallocating \$100,000 from the Ferry Pier Removal Project to cover remediation costs if needed.

ATTACHMENTS:

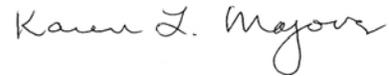
- 1) Proposed Resolution
- 2) Proposed Purchase and Sale Agreement

APPROVED BY:



City Manager

APPROVED BY:



Assistant City Manager Community & Economic Development

RESOLUTION NO. -08

RESOLUTION APPROVING THE FINAL DISPOSITION OF 630 COURT STREET, AUTHORIZING THE MAYOR TO EXECUTE THE PURCHASE AND SALE AGREEMENT AND REALLOCATING UP TO \$100,000 FUNDS FROM THE FERRY PIER REMOVAL PROJECT TO THE 630 COURT STREET HAZARDOUS MATERIALS CONTINGENCY ACCOUNT

WHEREAS, 630 Court Street was purchased by the City of Martinez from Contra Costa County for the sole purpose of finding a qualified developer to rehabilitate, retrofit and re-tenant the building to serve as a catalyst project in the City's downtown revitalization efforts, and

WHEREAS, in order to comply with the City's property disposition process pursuant to Chapter 12.40 of the Martinez Municipal Code, the City council set a public hearing on the addition of 630 Court Street to the Inventory of Real Property, and potential disposition for 7:00 PM on April 2, 2008. City staff noticed the public hearing in the Martinez Gazette, sent notices to property owners within 300 feet of the Sharkey Building and posted public hearing notices at City Hall; and

WHEREAS, the City Council approved the addition of 630 Court Street to the City's Inventory of Real Property and the potential disposition on April 2, 2008 finding that said disposition is for the common benefit of the citizens of Martinez, is required by the public interest and convenience and is in compliance with applicable law, and

WHEREAS, the City Manager was authorized to negotiate a purchase and sale agreement with Goldenberg and Associates consistent with the proposal submitted to the City of Martinez in response to the RFP.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Martinez approves the final disposition of 630 Court Street, authorizes the Mayor to execute the purchase and sale agreement and reallocates up to \$100,000 of the Ferry Pier Removal Project to the 630 Court Street Hazardous Materials Contingency Account.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of the resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the day of ,2008 by the following vote:

AYES :

NOES :

ABSENT :

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

ATTACHMENT 2

**THE PURCHASE AND SALE AGREEMENT FOR 630 COURT STREET WILL
BE DISTRIBUTED SEPARATELY ON FRIDAY, MAY 2, 2008**

AGREEMENT OF PURCHASE AND SALE

This Agreement for Purchase and Sale ("Agreement") is dated as of May __, 2008, for identification purposes only, and is entered into by and between Goldenberg and Associates, Inc., a California Corporation ("Buyer") and the City of Martinez, a California general law city ("Seller"), who hereby agree as follows:

ARTICLE 1. GENERAL

1.01 The Purchase Property. Seller is the owner of the real property located at 630 Court Street, Martinez, California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, along with certain related easements of record, if any, and all improvements located thereon (collectively, the "Property"). Seller desires to sell and Buyer desires to buy the Property, on the terms and conditions set forth herein.

1.02 Seller's Acquisition of Title. The Seller acquired its interest in the Property from the County of Contra Costa. Seller represents that it has never occupied the Property or used it for any purpose except that the City has leased the Property to the Martinez Art Association ("Association") for the display of art by the members of the Association, and has permitted use of the Property for miscellaneous storage.

1.03 Intent of the Parties. The Property is strategically located in Downtown Martinez at the corner of Court and Main Streets across the street from the Contra Costa County administrative, finance and court facilities and at the eastern end of downtown. The City of Martinez (City) purchased the property in its existing condition from Contra Costa County in 2004, believing that if restored and reused in the manner described herein, the Property holds great promise as a catalyst for further higher quality development in and around the downtown. The City has previously negotiated with 4 other developers over the last 3 years to identify a development team to develop the property consistent with the City's vision for this site and enter into a purchase and sale agreement.

Buyer was selected during the most recent Request for Proposal (RFP) process because of their vision, experience, understanding of the community and restaurant operator commitment. Buyer's proposal for 630 Court Street, as submitted during the RFP process included the retrofit and rehabilitation of the existing structure, expansion of the building to fully utilize the basement, addition of a street side café and a stepped back third story. Buyer proposes to use the basement and first floor as a restaurant and the second and proposed third story for office use. Buyer and Seller acknowledge that Buyer will be required to apply for any and all required entitlements from the City and other appropriate governmental entities in order to effectuate the proposal set forth in the RFP selected by the City Council.

1.04 Effective Date. For purposes of this Agreement, the term "Effective Date" shall be the latter date that both Buyer and Seller have fully executed and initialed all appropriate provisions of this Agreement.

///

ARTICLE 2. PURCHASE AND SALE

2.01 Purchase and Sale. Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller on the terms and conditions specified in this Agreement.

2.02 Price. The purchase price for the Property (the "Purchase Price") shall be Two Hundred Thousand Dollars (\$200,000.00). This purchase price shall be reduced by the amount and procedures set forth in this Agreement.

2.03 Deposit. Within three (3) business days following the Effective Date of this Agreement, Buyer shall deposit with Escrow Holder (defined below), the sum of Twenty Five Thousand Dollars (\$25,000.00), which sum shall be placed in an interest-bearing account, and such sum and the interest accrued on such amount prior to the release of such amount to Seller, or the return of such amount to Buyer, shall be referred to as the "Deposit". In the event that Buyer does not approve the condition of the Property, title and complete the other conditions specified in Sections 4.01-4.03 of this Agreement prior to the expiration of the Feasibility and Permitting Period, then, upon demand by Buyer to the Escrow Holder, the Deposit will be immediately returned to Buyer.

2.04 Instructions Regarding Deposit. If Escrow Holder requires further written instructions as a condition to releasing the Deposit to either Seller or Buyer as required or permitted under this Agreement, Seller and Buyer shall promptly execute (and deliver to Escrow Holder) such additional instructions as are reasonably required by Escrow Holder.

2.05 Payment. The balance of the Purchase Price after applying the Deposit amount described in Section 2.03 above, plus or minus Prorations and Adjustments shall be paid into escrow by federally wired "immediately available" funds on or before the Closing Date. For the purpose of this paragraph, Prorations and Adjustments, shall include all Approved Environmental Costs incurred by Buyer prior to the Closing Date.

2.06 Payments of the Purchase Price from Escrow. The balance of the Purchase Price after applying Prorations and Adjustments shall remain in the interest bearing escrow account until the Escrow Holder receives a demand signed by both parties to make payment(s) to either party therefrom, in accordance with the provisions of this Agreement. Interest on the amount deposited by Buyer shall be prorated based on the final Purchase Price, after all adjustments provided for in this Agreement have been accounted applied.

ARTICLE 3. ESCROW, TRANSFER OF TITLE/ASSIGNMENTS AND TITLE INSURANCE

3.01 Opening. The purchase and sale of the Property shall be consummated by means of an escrow opened by Seller at First America Title, 1850 Mt. Diablo Blvd. Suite 300 Walnut Creek CA 94596, Attn: Pam Nicolini (telephone number: 925-927-2173) (referred to herein as the "Escrow Holder" and as the "Title Company"). When appropriate, Buyer and Seller shall execute escrow instructions prepared and reasonably requested by Escrow Holder, which escrow instructions shall conform to the terms of this Agreement. If there is any conflict between the terms of this Agreement and the escrow instructions, the terms of this Agreement shall prevail.

3.02 Close of Escrow. Escrow shall close (the “Closing Date” or “Close of Escrow”) thirty (30) calendar days after the expiration of the Feasibility and Permitting Period. Should the escrow fail to close on or before the Closing Date for any reason whatsoever, other than Seller’s breach of its obligations under this Agreement, and except as provided by this Agreement, there shall be no extension of time and the escrow and Buyer’s right to acquire and Seller’s obligation to sell the Property pursuant to the terms of this Agreement shall fully and unconditionally terminate subject to the other terms of this Agreement regarding the Deposit and obligations which specifically survive the termination of this Agreement. Should escrow fail to close on or before the Closing Date due to Seller’s breach, whether or not the Closing Date is extended shall be left to the sole discretion of Buyer. Notwithstanding the forgoing, the City Manager shall have the right to extend the Close of Escrow – beyond that which is provided in the Agreement – if, in the exercise of his/her sole and unfettered judgment, the circumstances warrant an extension, provided, however, that any such extension may not exceed 150 days.

3.03 Costs and Prorations.

(a) Buyer and Seller shall pay in equal amounts: (i) the escrow fee; (ii) all recording fees; (iii) all costs of drawing the Grant Deed; (iv) all notary fees; (v) any state, County or City documentary transfer and similar taxes imposed on the deed, and (vi) all other costs incurred by the Escrow Agent in order to close escrow under this Agreement.

(b) Buyer shall pay the premium for the CLTA Owner’s Title Policy. Buyer will also pay for the additional cost of obtaining an ALTA Extended Coverage policy if desired by Buyer and the cost of any survey necessary therefor, and any endorsements requested by Buyer.

(c) Each party shall pay its own attorneys’ fees. The parties shall share equally any other miscellaneous costs payable upon Close of Escrow that are not specifically allocated above.

(d) Real property taxes, special taxes, bonds and assessments allocable to the Property (including assessments imposed by any community facilities districts, community service districts, and other district financing, if any) (collectively “Taxes and Assessments”) shall be prorated between Buyer and Seller as of the Closing Date based on the latest available information. Seller shall pay all Taxes and Assessments to the extent (and only to the extent) applicable to the Property for the period prior to the Closing Date. Buyer shall be responsible for all Taxes and Assessments resulting from any supplemental assessments or reassessments resulting from the purchase of the Property by Buyer or any improvement to the Property before or after the Closing Date. All prorations shall be based on a thirty (30) day month and a three hundred sixty (360) day year.

3.04 Expenses Prorations. Except as provided by this Agreement, Buyer shall be responsible for all expenses of the Property, including, but not necessarily limited to, expenses relating to and incurred during the Due Diligence-Feasibility Period as set forth in the Agreement.

3.05 Escrow Cancellation; Cancellation Charges. Upon any termination of this Agreement and the Escrow, each party shall execute and deliver to Escrow Holder Escrow cancellation instructions within five (5) business days of such party’s receipt of such Escrow cancellation instructions from Escrow Holder. If either party terminates this Agreement and the

escrow by reason of the other party's breach, default or misrepresentation, then (without limiting the rights and remedies of the other party) such breaching, defaulting or misrepresenting party shall pay all Escrow cancellation charges. If this Agreement and the Escrow is terminated for any other reason, then the party terminating the Agreement shall pay all Escrow and Escrow cancellation charges. The provisions of this paragraph shall survive any termination of this Agreement.

3.06 Transfer of Title and Assignments. At the Close of Escrow and upon payment of the Purchase Price to Seller, Seller shall convey to Buyer all of Seller's right, title and interest in and to the Property by Grant Deed in the same form as commonly used by Escrow Holder (the "Grant Deed"), Buyer and Seller shall approve or disapprove all of the aforementioned documents within seven (7) business days from submittal of same to Seller and/or Buyer, respectively. Any failure by Buyer or Seller to object to any of the documents within seven (7) business days shall be treated as an approval of the documents.

(a) Title Policy. The Close of Escrow shall be conditioned upon Escrow Holder being prepared and committed as of the Close of Escrow to issue to Buyer its CLTA Owner's Policy of Title Insurance (the "Title Policy") with liability limits in the amount of \$200,000 insuring title to the Property as vested in Buyer, free and clear of all liens and encumbrances and other matters of record affecting title to the Property, except the following: (i) the printed exceptions common to such title policies; (ii) a lien, if any, to secure payment of non-delinquent real property taxes, special taxes, bonds and assessments; (iii) a lien, if any, of supplemental taxes assessed pursuant Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code; (iv) all matters which by this Agreement survive the Close of Escrow; (v) all instruments recorded by Escrow Holder in accordance with the terms of this Agreement; and (vi) all of the other exceptions to title, as reviewed and approved by Buyer, in its reasonable discretion, pursuant to this Agreement (collectively, the "Permitted Exceptions"). The premium for such CLTA Owner's Policy of Title Insurance, and the cost of any endorsements requested by Buyer shall be paid by Buyer.

(b) Option for Extended Coverage Title Policy. Buyer may, at its option, obtain an ALTA Extended Coverage Title Policy from the Title Company instead of a CLTA Standard Coverage Title Policy so long as: (i) such election does not expand the scope of any conditions to Buyer's obligations or delay or affect in any manner the title review period under Section 4.02, the Feasibility and Permitting Period, the Close of Escrow or any of Buyer's rights or obligations under this Agreement; (ii) Buyer obtains any survey required by the Title Company to issue the ALTA Extended Coverage Title Policy; and (iii) Buyer pays the difference between the premium for such ALTA Extended Coverage Title Policy and the premium for the CLTA Owner's Policy of Title Insurance and any and all additional costs of obtaining the ALTA Extended Coverage Title Policy, including the cost of any survey required by the Title Company to issue such ALTA Extended Coverage Title Policy. Seller shall execute such documents as are reasonably required by Escrow Holder, including without limitation, an Owner's Affidavit, to issue the ALTA Extended Coverage Title Policy.

3.07 Cash and Deed/Assignments. Pursuant to Section 2.05, Buyer shall deposit with Escrow Holder the balance of the Purchase Price. After the balance of the Purchase Price has been deposited, Buyer shall be able to request reimbursement of Approved Environmental Costs on a monthly basis. Escrow Holder shall pay any Approved Environmental Costs within 15 days of receiving a request for payment signed by Buyer and Seller.

Seller shall execute and deliver into escrow:

(i) the Grant Deed for the Property conveying title subject to the Permitted Exceptions;

(ii) the Bill of Sale;

(iii) an affidavit or qualifying statement which satisfies the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the “Non-Foreign Affidavit”);

(iv) a “Withholding Exemption Certificate, Form 590,” pursuant to California Revenue and Taxation Code Sections 18805 and 26131 or its equivalent stating either the amount of withholding required from Seller’s proceeds or that Seller is exempt from such withholding requirement (the “Withholding Exemption Certificate”);

(v) such other documents as may be reasonably required by the Title Company in order to issue the Title Policy, and Seller shall instruct Escrow Holder to record the Grant Deed at Close of Escrow and deliver to Buyer the Bill of Sale, the Non-Foreign Affidavit, and the Withholding Exemption Certificate at the Close of Escrow;

(vi) a memorandum of this Agreement, to be executed and acknowledged by all parties in a form and content meeting the approval of all parties, and to be recorded in the Contra Costa County Recorder’s Office simultaneously with the Grant Deed.

3.08 Seller’s Conditions to Close. Seller’s obligations to close escrow shall be conditioned upon the satisfaction of or written waiver by Seller of: (i) the timely performance of Buyer of each of Buyer’s obligations under this Agreement; (ii) the continuing accuracy of each of Buyer’s representations and warranties under this Agreement; (iii) Buyer’s timely written approval or waiver of the matters set forth in Sections 4.02 and 4.03 below; (iv) the full execution and delivery to escrow of the documents set forth in Section 3.07 above; (v) by the end of the Feasibility and Permitting Period, Buyer’s delivery to Seller of (a) a binding, written commitment in a form and of legal efficacy subject to the Seller’s reasonable approval from a source or sources of financing in which the source(s) has agreed to provide sufficient funding to pay for the costs Buyer has incurred and will incur to timely commence and complete the Buyer’s Remodeling Work (defined below); or (b) other evidence meeting the reasonable satisfaction of the Seller demonstrating that Buyer has the ability to pay for the costs Buyer has incurred and will incur to timely commence and complete the Buyer’s Remodeling Work; (vi) the application by Buyer for and approval of all land use entitlements, and permits necessary for Buyer’s Remodeling Work and occupancy of the Property for the uses generally described in Section 1.03 hereof and as to exterior improvements, in accordance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995) Weeks and Grimmer, including, but not limited to, Planning Commission and City Council Approvals, design review, compliance with the California Environmental Quality Act, use permit(s), license(s), variance(s), building permit(s), grading permit(s), and encroachment permit(s) and/or easements, as necessary or required by law (“City Approvals”) and related Government Approvals (defined below), from governmental agencies, necessary for Buyer’s Remodeling Work and occupancy of the Property for the uses generally

described in Section 1.03 hereof; (vii) by the end of the Feasibility and Permitting Period, Buyer's delivery to Seller of a binding, written lease agreement with a restaurateur for occupancy of the first floor of the Property immediately upon Buyer obtaining final building approvals and a certificate of occupancy for Buyer's Remodeling Work (the "Restaurant Lease"); and (viii) by the end of the Feasibility and Permitting Period, Buyer's delivery to Seller of a binding written construction contract with a licensed contractor, to complete the Buyer's Remodeling Work (the "Construction Contract").

Seller will make all reasonable efforts to assist Buyer in the streamlining of the City Approvals and Government Approvals and will work jointly with Buyer on developing a timeline for at least the following entitlement processes: design review, planning commission and city council approvals, encroachment permit(s) / license agreement, easements, if any, and certificates of occupancy. Notwithstanding the above, Buyer understands and agrees that Seller, is not committing to the approval of any or all of the necessary City Approvals or Government Approvals and that Buyer will apply for all said necessary City Approvals and Government Approvals consistent with all applicable Federal, State and Local governmental laws, rules and regulations and that the Seller shall be entitled to as much time as state and local law permit to process said City Approvals. However, if the City Approvals or Government Approvals are delayed for any reason beyond the control of the Buyer, then Buyer's deadlines will be extended in accordance with paragraph 4.04 below.

3.09 Buyer's Conditions to Close. Buyer's obligations to close escrow shall be conditioned upon the satisfaction of or written waiver by Buyer of: (i) the timely performance by Seller of each of Seller's obligations under this Agreement; (ii) the continuing accuracy of each of Seller's representations and warranties under this Agreement; (iii) the issuance of the Title Policies set forth in Section 3.06(a) and (b); (iv) Buyer's timely, written approval or waiver of approval of all matters set forth in Sections 4.02 and 4.03; and (v) the execution and delivery to Escrow of the documents set forth in Section 3.07 above.

3.10 Termination. If on the Closing Date, as the same may be extended pursuant to the terms of this Agreement, any material condition precedent to the obligations of either party under this Agreement remains unsatisfied and has not been waived by the party entitled hereunder to waive such condition, then this Agreement and the escrow may be terminated after the party wishing to terminate the Agreement and the escrow provides the other party with a written notice of the alleged material default or material default and provides the other party a 30 day period to cure any alleged material default or material default.

ARTICLE 4. FEASIBILITY AND PERMITTING PERIOD; BUYER'S TITLE REVIEW; BUYER'S DUE DILIGENCE

4.01 General. Buyer and Seller have previously entered into an Exclusive Right to Negotiate Agreement effective July 18, 2007 ("ERNA") and a Site Access Agreement effective August 17, 2007 ("SAA"). Pursuant to the ERNA and SAA, Buyer has had the previous opportunity to perform some inspections and investigation work relating to the Property. The parties recognize therefore that much of the document, title and other due diligence activity to be performed during the Feasibility and Permitting Period may have already been completed or has begun and is close to completion. The parties do not intend to duplicate or delay this already

completed work, but rather intend that during the Feasibility and Permitting Period the due diligence work which has begun will be concluded and other additional feasibility and permitting work will be undertaken and completed.

(a) Feasibility and Permitting Period. The term “Feasibility and Permitting Period” shall mean that period of time beginning upon the Effective Date and expiring at 5:00 p.m. (Pacific Standard Time) one-hundred and fifty days (150) calendar days thereafter, or as extended pursuant to the terms of this Agreement.

(b) Written Notice Required to Terminate: Effect of Termination. Except as provided in the penultimate sentence of Section 4.02(b), whenever in this Agreement Buyer’s approval or disapproval of a condition or other matter is required on or before a certain date, Buyer shall deliver written notice to Seller on or before 5:00 p.m. Pacific Standard Time on such date, stating either that: (i) Buyer approves such condition or matter, (ii) Buyer disapproves of such condition or matter, or (iii) Buyer waives such condition or matter as a condition to closing. Failure of Buyer to deliver said written notice(s) shall be deemed to be Buyer’s disapproval of such condition or matter. Whenever in this Agreement Buyer is deemed to have disapproved a condition or matter, or whenever in this Agreement Buyer is allowed to terminate this Agreement, upon Buyer’s termination in compliance with the provisions, conditions and requirements applicable to such termination right, this Agreement shall terminate and become null and void, the Deposit shall be returned to Buyer pursuant to Section 4.05 below, and neither Buyer nor Seller shall have any further or other rights, obligations or liability to the other under this Agreement except for any other obligation or liability of Buyer or Seller as contained in this Agreement which shall specifically survive any termination of this Agreement.

4.02 Title Review.

(a) Pursuant to the terms and conditions of this Section 4.02, Buyer shall have the right to approve or disapprove, in Buyer’s sole discretion, any and all matters of and exceptions to title of the Property, including the legal description, as disclosed by the Preliminary Report and all title exception matters referenced therein and in any update(s) thereto (collectively, the “Title Documents”):

(b) Within ten (10) calendar days after the Effective Date, Seller shall cause Escrow Holder to issue and deliver to Buyer the Title Documents. Buyer shall, in writing, notify Seller on or before thirty (30) days following the receipt of the Title Documents (“Title Approval Period”) of Buyer’s approval of the exceptions to the condition of title to the Property. As to any Title Documents that Buyer disapproves, Buyer shall give written notice thereof (“Title Objection Notice”) to Seller prior to the end of the Title Approval Period. Upon receipt by Seller of a Title Objection Notice given in a timely manner, Seller shall have three (3) business days from receipt of such Title Objection Notice within which to notify Buyer as to each properly disapproved matter either that: (i) Seller elects not to cause such disapproved matter to be removed as of the Closing Date, or (ii) Seller intends to either: (A) use commercially reasonable efforts to cause such disapproved matter to be removed or released prior to the Closing Date; or (B) cause the Title Company to insure or endorse over such disapproved matter. Failure by Seller to deliver any written notification of its election within such period shall be deemed to be an election not to cause any disapproved matters to be removed. If Seller elects not to cause any or all such disapproved

matters to be removed or insured over as aforesaid, Buyer shall have three (3) business days from receipt of written notice thereof (or three (3) business days from the date Seller is deemed to have elected not to remove any disapproved matter) to, in writing, either: (1) revoke its disapproval and proceed with the purchase of the Property without any reduction in the Purchase Price and taking the Property subject to such matter; or (2) terminate this Agreement. If Buyer timely disapproves of the Title Documents and elects to terminate this Agreement as a result thereof, the Deposit and all interest accrued thereon shall be immediately returned to Buyer. In the event Buyer fails to give such timely notice of election to terminate, then Buyer shall be deemed to have waived its objections to the Title Documents. If the Escrow Holder revises the Preliminary Report after Buyer's approval thereof to add or modify exceptions or to add or modify the conditions to obtaining any endorsement requested by Buyer during or after the Feasibility and Permitting Period and such additions or modifications are not approved by Buyer and are not removed by the Closing Date, Buyer shall be entitled, by written notice to Seller, to terminate this Agreement (subject to the obligations that specifically survive the termination of this Agreement) and cancel the escrow, and Buyer shall immediately thereafter receive a refund of the Deposit.

4.03 Due Diligence – Feasibility and Permitting Period. Buyer shall have the right during the Feasibility and Permitting Period to: (i) review all of the public documents the Seller possesses pertaining to the Property; (ii) conduct any and all surveys, inquiries, inspections, investigations, tests, engineering surveys and studies on, around or pertaining to the Property as Buyer may elect to make, conduct or maintain; (iii) conduct consultations and negotiations with persons of Buyer's choosing; (iv) conduct consultations and negotiations pertaining to any operator's agreement, tenant lease(s) or other third party document contemplated by the Agreement, or that Buyer determines necessary or desirable; (v) apply for and obtain all City Approvals and Government Approvals necessary for the use of the property as generally described in Section 1.03 hereof, and (vi) do all the things described in this Section 4.03 ("Due Diligence"), provided that said Due Diligence shall be subject to the terms and conditions specified herein.

(a) Seller warrants that it will conduct a reasonable search of Seller's records and has or will provide to Buyer all of the documents discovered in said search relating to the Property ("Seller's Documents") except the financial information submitted to the Seller by other developers who have submitted proposals to Seller relating to the Property. Seller has not and does not verify or warrant the accuracy of any statements or other information contained within the documents provided to Buyer by Seller. Seller shall provide Buyer with a Notice of Disclosure within forty five (45) calendar days of the effective date of this Agreement, confirming that its has disclosed all documents which its reasonable search has discovered ("Seller's Notice of Disclosure"). Buyer shall, in writing, notify Seller on or before thirty (30) days following the Seller's Notice of Disclosure, of Buyer's approval or disapproval of Seller's Documents. If for any reason Buyer has not delivered to Seller written notice of approval of the results of Seller's Documents or written waiver of the right to conduct said review or to approve the results thereof on or before the expiration of the thirtieth (30th) day following the Seller's Notice of Disclosure, then it shall be deemed that Buyer has disapproved the Seller's Documents, the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(b) During the Feasibility and Permitting Period, Buyer shall specifically review and approve or disapprove all existing conditions of the Property, including but not limited to, (i) the condition or safety of the Property or any improvements thereon, including, but not limited to, structural condition of interior bearing walls, walkways, landscaping, signs, water systems, fire extinguishing systems, plumbing, sewer, heating electrical systems, roofing, air-conditioning, foundations, soils and geology, lot size, Property boundaries, utilities, sprinkler systems, zoning and other governmental regulations and fees, and the suitability of the Property or its improvements for the use to which Buyer intends to put the Property; (ii) whether the building equipment is in working order; (iii) the ability or suitability of the Property for occupancy and the quality of its construction; (iv) whether the improvements are structurally sound, in good condition, seismically sound or in compliance with applicable Federal, State, County or City statutes, laws, codes, ordinances, rules or regulations and or/ all matters described herein. Buyer shall, in writing, notify Seller on or before forty fifth (45th) day prior to the Close of Escrow, of Buyer's approval or disapproval of the results of the investigation of the items identified in this section 4.03(b), and shall provide Seller with any non-privileged reports or other documents obtained by Buyer as a result of the investigations set forth in this section 4.03(b). If for any reason Buyer has not delivered to Seller written notice of approval of the results of Buyer's review relating to the items identified in this section 4.03(b) or written waiver of the right to conduct said review or to approve the results thereof on or before the expiration of the forty fifth (45th) day prior to Close of Escrow, then Seller shall provide Buyer a written notice of Buyer's failure to deliver such approval or disapproval. On or before the fifteenth (15th) day following Seller's notice to Buyer of such failure, if for any reason Buyer has still not delivered to Seller written notice of approval of the results of Buyer's review or written waiver of the right to conduct said review or to approve the results thereof it shall be deemed that Buyer has disapproved the results of Buyer's Due Diligence, the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(c) During the Feasibility and Permitting Period, Buyer shall specifically review and approve or disapprove conditions related to the Property concerning whether any person or entity who may have an interest the real property immediately adjacent to the Property is lawfully required to consent to or will consent to any improvements proposed by the Buyer which will affect any walls, structures or property in which said person(s) or entities may have an interest. Buyer shall, in writing, notify Seller on or before forty fifth (45th) day prior to the Close of Escrow, of Buyer's approval or disapproval of the results of the investigation of the items identified in this section 4.03(c), and shall provide Seller with any non-privileged reports or other documents obtained by Buyer as a result of the investigations set forth in this section 4.03(c). If for any reason Buyer has not delivered to Seller written notice of approval of the results of Buyer's review relating to the items identified in this section 4.03(c) or written waiver of the right to conduct said review or to approve the results thereof on or before the expiration of the forty fifth (45th) day prior to Close of Escrow, then Seller shall provide Buyer a written notice of Buyer's failure to deliver such approval or disapproval. On or before the fifteenth (15th) day following Seller's notice to Buyer of such failure, if for any reason Buyer has still not delivered to Seller written notice of approval of the results of Buyer's review or written waiver of the right to conduct said review or to approve the results thereof it shall be deemed that Buyer has disapproved the results of Buyer's Due Diligence and the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(d) During the Feasibility and Permitting Period, Buyer shall determine the nature and estimated cost of obtaining and complying with the City Approvals and shall further determine the nature and estimated cost of obtaining and complying with all permits, certificates, and approvals required by any other agency with jurisdiction, including, but not limited to, those relating to Hazardous Materials, if any, (collectively, “Government Approvals”) in order for the Buyer to effect the remodeling, rehabilitation, reconstruction and occupancy of the Property as generally described in Section 1.03 hereof (“Buyer’s Remodeling Work”). Except as otherwise provided by this Agreement, Buyer agrees to be responsible for (i) obtaining the City Approvals and Government Approvals and costs incurred to obtain same, (ii) paying fees necessary to obtain said City Approvals and Government Approvals, and (iii) completing work, construction, remodeling and/or installations required under and pursuant to the City Approvals and Government Approvals. Buyer shall, in writing, notify Seller on or before the expiration of the Feasibility and Permitting Period of Buyer’s approval or disapproval of the results of Buyer’s determinations concerning the nature and estimated cost of obtaining and complying with the City Approvals and Government Approvals. If for any reason Buyer has not delivered to Seller written notice of approval of the results of Buyer’s determinations or written waiver of the rights relating thereto, on or before the expiration of the Feasibility and Permitting Period, then it shall be deemed that Buyer has disapproved the results of Buyer’s Due Diligence and the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(e) During the Feasibility and Permitting Period, Buyer, shall apply for all applicable City Approvals and Government Approvals, pursue same to completion and obtain said City Approvals and Government Approvals by final decision or shall provide to Seller written notice of Buyer’s determination to withdraw it’s applications for said City Approvals and/or Government Approvals. If for any reason Buyer has not delivered to Seller written notice of approval of the City Approvals and the Government Approvals by the expiration of the Feasibility and Permitting Period, or has delivered to Seller written notice of Buyer’s determination to withdraw it’s applications for said City Approvals and/or Government Approvals, then it shall be deemed that Buyer has disapproved the City Approvals and/or Government Approvals and the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting only those obligations that survive termination).

(f) Prior to the expiration of the Feasibility and Permitting Period, Buyer shall deliver to Seller (i) a document or part of a document demonstrating the existence of the partnership commonly known as, Court Office Partners, and the authority of said partnership to proceed with the project as contemplated in this Agreement; (ii) binding, written commitment from a source or sources of financing in which the source(s) has agreed to provide sufficient funding to pay for the costs Buyer has incurred and will incur to timely commence and complete the Buyer’s Remodeling Work or such other evidence meeting the reasonable satisfaction of the Seller demonstrating that Buyer has the ability to pay for the costs Buyer has incurred and will incur to timely commence and complete the Buyer’s Remodeling Work (the “Financing Commitment”); (iii) deliver to Seller the Restaurant Lease; and (iv) deliver to Seller the Construction Contract. If for any reason Buyer has not delivered to Seller the documents identified in this paragraph 4.03(f) on or before the expiration of the Feasibility Period, then it shall be deemed that Buyer has disapproved said documents and the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting only those obligations that survive termination).

(g) No less than once every four weeks, Buyer shall contact Seller to provide Seller reports on the progress of Seller's Due Diligence pursuant to this subsection. For purposes of this Section, an e-mail summary to the Assistant City Manager of the City of Martinez shall be deemed sufficient. Seller agrees to cooperate with Buyer in obtaining the City Approvals, Government Approvals, and in applying for tax relief under the Mills Act, provided that such cooperation does not require payment of money, incurring debt and/or unreasonable expenditures of time. Under no circumstances shall said cooperation include or imply the City's granting the necessary City Approvals and/or permits for Buyer's Remodeling Work, it being expressly understood and agreed that the City reserves the panoply of its police powers, discretion and land use authority to approve or disapprove Buyer's Remodeling Work.

(h) Except as expressly provided in this Agreement relating to the Approved Environmental Costs, the cost of any Due Diligence, including but not limited to any surveys, inquiries, inspections, investigations, application fees, attorneys' fees, consultant costs, analysis and report costs, tests and/or studies shall be borne solely by Buyer. As part of the processing applications for City Approvals, Buyer shall be required to comply with the City's fee and cost recovery program. Buyer shall pay for all costs incurred in connection with the processing of the City Approvals and the Government Approvals including but not limited to, noticing all hearings, preparing and delivering the notices, staff reports, environmental documents and performing all other tasks required of the City under CEQA and the City's own land use (and other agencies') processing rules and regulations, along with all other costs incurred in applying for and obtaining the City Approvals and Government Approvals. Notwithstanding the above or as otherwise set forth in this Agreement, Buyer shall be entitled to a reduction of the Purchase Price, up to a maximum of Two Hundred Thousand Dollars (\$200,000.00) for the actual costs associated with environmental investigation (Phase I, II and etc.), remediation, and increase in construction costs, arising from or related to the existence of soil or groundwater contamination or Hazardous Substances at the Property, which are approved in advance by the Seller in accordance with the provisions hereof (the "Approved Environmental Costs"). For the purposes of this Agreement, "increase in construction costs" shall be defined as the difference between the costs of construction which is required to complete the Buyers Remodeling Work and any increase in such construction costs required due specifically to the existence of soil or groundwater contamination or Hazardous Substances at the Property. (By way of example only, if disposal of clean dirt costs \$10 per truck load as compared to disposal of contaminated dirt which costs \$100 per truck load, then the increase in the construction cost eligible for credit or reimbursement under this Agreement would be \$90 per truck load of contaminated dirt disposed of.) The Approved Environmental Costs which are approved by the Seller as of the Effective Date are set forth in Exhibit B. In order to be eligible to be credited toward a reduction in the Purchase Price or reimbursement, as set forth in this Agreement, any costs for environmental investigation or remediation or increases in construction costs attributable to the existence of soil or groundwater contamination or Hazardous Substances at the Property incurred after the Effective Date, must be approved by the City Manager, in writing, prior to being incurred. The City Manager, shall have five (5) business days to approve or disprove any such requested costs. If the City Manager, fails to respond, in writing, to a request for approval of said costs within three (3) business days, Buyer shall provide notice to the City Manager, of such failure (the "Environmental Cost Approval Notice"). If the City Manager fails to approve or disapprove of such requested costs within three (3) business days of the Environmental Cost Approval Notice, then it will be deemed that the said costs have been approved and such costs shall be deemed to be Approved Environmental Costs. Any denial by the City Manager of a request to

approve a cost related to reasonable environmental investigation or remediation or increases in construction costs arising from or relating to the existence of soil or groundwater contamination or Hazardous Substances at the Property by the City Manager shall set forth in detail the basis of any such denial. In the event that Buyer disagrees with any such denial by the City Manager, the parties shall jointly select an independent third party, experienced in construction costs and methods and environmental remediation (the "Environmental Cost Evaluator"). The Environmental Cost Evaluator shall review the request and the basis for denial and shall determine whether said costs should be approved or denied in accordance with the terms of this Agreement. The determination of the Environmental Cost Evaluator in this regard shall be final and binding on the parties hereto. Regardless of the actual amounts expended by Buyer relating to the reasonable environmental investigation or remediation or increases in construction costs arising from or relating to the existence of soil or groundwater contamination or Hazardous Substances at the Property, Buyer shall be entitled to no more than a Two Hundred Thousand Dollar (\$200,000.00) credit against the Purchase Price for Approved Environmental Costs. In the unlikely event that the credit amount against the Purchase Price is not sufficient to pay for all Approved Environmental Costs, Buyer shall be entitled to an additional reimbursement amount of One Hundred Thousand dollars (\$100,000.00) to pay for additional Approved Environmental Costs. Buyer shall only be entitled to the credit against the Purchase Price or additional reimbursement for Approved Environmental Costs pursuant to this section after the Close of Escrow. In the event that escrow fails to close, Buyer shall not be entitled to recover any of the Approved Environmental Costs incurred prior to or during the Permitting and Feasibility Period, from Seller. In the event that the City pays or reimburses Buyer for said Approved Environmental Costs, Buyer understands that the work related to the Approved Environmental Costs is a "public work" as defined in Chapter 1, Part 7 of Division 2 of the California Labor Code.

(i) In the event that escrow fails to close, Buyer shall restore or repair any damage to the Property that arises out of or relates to Buyer's or Buyer's representatives' inspection or testing of the Property.

4.04 Extension of Time Periods. Any failure or delay not within the Buyer's control, such as an act of god, fire or other casualty, or delays relating to City Approvals, Government Approvals, and/or delays based on investigations, permitting or lack of government resources shall not constitute a default or breach of any terms and conditions. Any such delays shall act as a tolling of any time periods or deadlines contained within this Agreement.

4.05 Return of Deposit. If Buyer timely disapproves or is deemed to have disapproved the Title Documents or any matter pertaining to the Due Diligence, then in such event(s), this Agreement shall terminate (except as to matters that specifically survive the termination of this Agreement), the escrow shall be cancelled, and the entire Deposit shall be immediately returned to Buyer. Conversely, if Buyer timely approves or waives objections to the Title Documents and all of the Due Diligence matters, then the Deposit, together with all interest thereon, shall become non-refundable (excepting only if Seller breaches its obligations to convey title to Buyer pursuant to the terms and subject to the conditions set forth in this Agreement), shall be deemed consideration for Seller entering into this Agreement, and shall immediately be paid to the Seller, and the Escrow Holder is hereby irrevocably so instructed.

///
///

ARTICLE 5. POSSESSION

Possession of the Property shall be given to Buyer upon the Close of Escrow unless otherwise negotiated between the parties and approved by the Seller, in writing. Access to the Property shall be provided upon the signing of this Agreement and such access shall be governed by the terms and conditions set forth in the access agreement attached hereto as Exhibit C.

ARTICLE 6. BROKERS

6.01 Buyer and Seller have not been represented by any broker and do not have any agency relationship with any real estate agents or brokers in connection with the sale of the Property, and Buyer and Seller shall not be responsible or have any liability therefore for any commission payable to any such broker or agent.

6.02 Buyer and Seller hereby agree to save, defend (with legal counsel reasonably acceptable to the indemnified party) and hold each other harmless from any real estate brokerage commission, finders fee, and all costs and expenses (including attorneys' fees) of investigating and defending any such claims, payable as to any broker, realtor or finder which such indemnifying party may engage or is claimed to have engaged in connection with the transaction set forth in this Agreement. The provisions of this paragraph shall survive any termination of this Agreement and Close of Escrow.

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

7.01 Seller's Representations and Warranties. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to buy the Property from Seller, Seller makes the following representations and warranties the continued truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder.

(a) Authority. Seller has full power and authority to enter into this Agreement and to complete the transaction contemplated by this Agreement.

(b) Binding Agreement. Seller's acceptance and performance of the terms and provisions of this Agreement have been duly authorized and approved by all necessary parties. Upon Seller's execution and delivery of this Agreement, this Agreement shall be binding and enforceable against Seller in accordance with its terms, and upon Seller's execution of the additional documents contemplated by this Agreement, they shall be binding and enforceable against Seller in accordance with their terms.

(c) Consents. To Seller's knowledge, neither the execution or delivery of this Agreement nor the consummation of the transaction is subject to any requirement that Seller obtain any consent, approval or authorization of, or make any declaration or filing with, any governmental authority or third party which has not been obtained or which, in any case or in the aggregate, if not obtained or made would render such execution, delivery or consummation illegal or invalid, or would result in the creation of any lien, charge or encumbrance upon the Property.

(d) Litigation. To Seller's knowledge, there is no litigation, arbitration or administrative proceeding pending, threatened against Seller with respect to the Property nor is there any basis known to Seller for any such action or proceeding.

(e) Prior Agreement. Seller has not committed nor obligated itself in any manner whatsoever to sell the Property or any portion thereof to any party other than Buyer.

(f) Seller's Documents. To Seller's knowledge, and subject to Section 4.03(a), there exist no material errors, omissions or inaccuracies in any of the Seller's Documents furnished to Buyer, provided, however, that Seller makes no representation or warranty concerning the accuracy of any information contained in any document or report furnished by Seller to Buyer.

(g) Environmental Hazards/Hazardous Materials.

1. Seller represents and warrants that it purchased the Property on or about July 5, 2005, from the County of Contra Costa, but never used, improved or occupied the Property for any purpose except to permit the Martinez Art Association to periodically display and hold out for sale works of art on the Property and to permit miscellaneous storage of personal property at the Property. The City purchased the Property for the purpose of disposing of it for development to assist in the revitalization of the downtown area. Thus, the City's knowledge of the Property and its conditions is limited. Seller further represents that except as is disclosed in the investigations conducted by Brown and Caldwell at the Property, to Seller's knowledge no additional Hazardous Substances (defined below) exist on the Property which would violate any federal, state or local statutes, regulations, ordinances or other requirements. Additionally, to Seller's knowledge, since the date that the Seller acquired title to the Property the Property has not been used for the generation, manufacture, treating, refining, transporting, handling, producing, processing, storage or disposal of Hazardous Substances. "Used" shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

2. Except as otherwise provided in this Agreement, it shall be the sole responsibility of the Buyer, at the Buyer's sole expense, to investigate and determine the soil conditions of the Property and the suitability of such soil conditions for the improvements to be constructed by the Buyer. If the soil conditions or any other condition of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the sole responsibility and obligation of the Buyer to take such action as may be necessary to place the soil and other conditions of the Property in a condition suitable for the development of the Property.

3. Buyer warrants and represents that the Property and its improvements shall not be used to generate, Release, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Substances (defined below) or solid waste, except in compliance with all applicable federal, state, and local laws, rules and regulations, City Approvals or Government Approvals. For the purposes of this Agreement, "Hazardous Substances" shall include, without limitation, asbestos, polychlorinated biphenyls, and petroleum (including crude oil or any fraction thereof), and materials or substances defined as "hazardous waste", "hazardous substances", "hazardous materials", "pollutants", or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials

Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq.; any environmental law promulgated by the State of California; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws. "Release" shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

(h) Notice of Violations, Condition of Property and Condemnation. To Seller's knowledge, Seller has received no notice from any governmental authority of any pending or threatened (i) zoning, building, fire or health code violations or violations of other governmental regulations concerning the Property that has not previously been corrected, or (ii) any condemnation of the Property or any part of the Property; provided, however, that by making these representations the Seller is not warranting that the Property meets current zoning or building code requirements or is otherwise in compliance with all applicable laws and regulations. To the contrary, the parties understand and acknowledge that the building on the Property is listed as an unreinforced masonry building ("URM") by the City and that URM's are considered by the Seller to be at significantly higher risk of causing injury, death or property damages in the event of an earthquake than non-URM's. Buyer further acknowledges and agrees that any improvement or development of the Property and/or building must comply with the seismic standards set forth in the 2004 International Building Code or comparable standard adopted or approved by the City. Buyer acknowledges that until such time as the seismic retrofit of the Property's improvements is completed, the physical condition of the Property's improvements pose a greater risk of death, injury and property damage in the event of an earthquake than a non-URM and that Buyer is assuming the risk involved in occupying, constructing and/or using the Property's improvements prior to such retrofit. Buyer further hereby acknowledges and agrees that the Property likely does not meet other building and safety code requirements and may not be in compliance with various other laws, including without limitation, the Americans With Disabilities Act.

(i) Close of Escrow. As a condition to Buyer's obligations herein to close escrow but not as a covenant of Seller to ensure their continuing truth and accuracy, the representations and warranties of Seller set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and of such time.

(j) Other than those expressly made herein, Seller has not made any express or implied representations, guarantees, promises, statements, assurances or warranties as to the suitability for any purpose or the profitability of owning and operating any or all of the Property, or as to the physical condition thereof, or as to the net or gross acreage contained therein, or as to the zoning thereof, or any other past, present or future matter whatsoever, or as to the completeness or accuracy of any report issued by any third party. Whenever Seller's warranty or representation is qualified by the phrase "to Seller's knowledge" or "to Seller's actual knowledge" or any similar phrase implying a limitation on the basis of knowledge, it is intended to indicate that during the ownership of the Property by Seller, no information has come to the attention of the City Manager, Don Blubaugh or Assistant City Manager, Karen Majors that would give them actual knowledge of the existence of a state of facts contrary to that indicated in the warranty or representation. However, Seller has not undertaken any independent investigation to determine the existence or non-existence of such facts, and no inference as to Seller's knowledge of the existence or non-

existence of such facts should be drawn from the fact that Seller has owned the Property and/or not undertaken such an investigation. The parties further agree that Seller is under no obligation or duty to undertake any such investigation. Except as provided in this Agreement, Buyer acknowledges that except as to those representations and warranties made and given by Seller as contained in this Agreement, no other representations or warranties have been made and that the Property is being purchased on an “AS IS WITH ALL FAULTS” basis. Buyer further acknowledges that, as of the Closing Date, Buyer (1) will have had a full, complete and unfettered right to inspect the Property to its entire satisfaction, and (2) shall have investigated, to Buyer’s complete satisfaction, all items, matters and conditions described in Sections 4.02 and 4.03. Except as provided in this Agreement, Buyer further acknowledges that it is entering into this Agreement on the basis of Buyer’s own investigation of the physical and environmental conditions of the Property, and except as provided by the Agreement, Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its own investigations. Buyer further acknowledges and agrees that it has investigated and has knowledge of operative governmental laws, regulations and requirements (including but not limited to those pertinent to the Governmental Approvals, City Approvals and/or building code, disability access, zoning, environmental and land use laws and regulations) (collectively, “Applicable Laws”) to which the Property is or may be subject and accepts the Property solely upon the basis of Buyer’s review and determination of the applicability and effect of such Applicable Laws. Except as provided by this Agreement, Buyer further acknowledges that Seller, its agents and employees and other persons acting on Seller’s behalf have made no representations or warranty of any kind in connection with any matter relating to the physical or environmental condition of, value of, fitness of, suitability of or Applicable Laws pertinent to the Property upon which Buyer has relied directly or indirectly for any purpose.

(k) Warranties Survive Close of Escrow. The above warranties and representations made by Seller shall survive Close of Escrow.

7.02 Buyer’s Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes and gives the following representations and warranties, the continued truth, accuracy and completeness of which shall constitute a condition precedent to Seller’s obligations hereunder:

(a) Authority and Binding Effect. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement.

(b) Condition of Property This Agreement affords Buyer a reasonable period of time to perform such due diligence as Buyer believes is reasonably necessary to make the decision to consummate the transactions described in this Agreement. Except as to the representations, warranties, and obligations made by Seller as contained and qualified in this Agreement, Buyer is relying and shall rely solely upon its own investigation and inspection of the Property and the improvements thereon and upon the aid and advice of Buyer’s independent expert(s) in purchasing the Property, and (except as otherwise specifically provided to the contrary in this Agreement) shall

take title to the Property without any other warranty, express or implied, by Seller or any employee or agent of Seller.

(c) Buyer Experience. Buyer represents and warrants to Seller that Buyer is acquiring the Property for commercial or business use, has knowledge and experience in financial and business matters that enable Buyer to evaluate the merits and risks of the transactions herein contemplated, and has bargained for and obtained a purchase price and agreement on terms which make the limitations of Buyer's recourse against Seller acceptable. Buyer warrants and represents that Buyer is an experienced purchaser and/or owner/manager/operator of property similar to the size and function of the Property, and is familiar with matters that typically impact the operation and management of similar restaurant, entertainment, and/or office property.

(d) Close of Escrow. The representations and warranties of Buyer set forth in this Agreement shall be true on and as of the Closing Date as if those representations and warranties were made on and of such time.

(e) Waiver of Protest of Assessment District: Buyer warrants and represents that it and its successors shall not protest and hereby waive the right to protest the formation or continuation of any assessment or business improvement district formed for the purpose of providing (i) parking, landscaping or other capital improvements and/or the maintenance thereof, (ii) services and activities promoting business in the Martinez Downtown area, and/or (iii) any other thing permitted by law; provided, however, that Buyer reserves the right to protest the amount of any assessment, levy or fee imposed or assessed as a result of the establishment or continuation of such district(s).

_____ (f) Warranties Survive Close of Escrow. The above warranties and representations made by Buyer shall survive Close of Escrow.

7.03 Discovery of Inaccuracy.

(a) Notice. If, after the date of this Agreement, either party discovers any inaccuracy in any representation or warranty under this Agreement, whether made by that party or the other party, the discovering party shall promptly notify the other party in a written notice setting forth the particular representation or warranty which is inaccurate, and the nature of the inaccuracy discovered.

(b) Right to Terminate. If the inaccuracy in any representation or warranty under this Agreement is material, then the party in whose favor the representation or warranty runs (the "Benefitted Party") shall have the right to terminate this Agreement within sixty (60) calendar days of learning of such inaccuracy by giving written notice to the other party (the "Representing Party"). Failure of the Benefitted Party to terminate this Agreement within such 60-day period shall be deemed a waiver of the right to terminate, but not a waiver of any other right or remedy available at law or equity. If the Representing Party had no knowledge of the inaccuracy on the date of execution of this Agreement, then the Benefitted Party's sole remedy shall be to terminate this Agreement (and if the Benefitted Party is Buyer the Deposit shall be returned to Buyer upon Buyer's termination due to an inaccuracy in any representation or warranty by Seller and if the Benefitted Party is Seller, Seller shall have the remedies specified in Section 9.01), and the parties

shall have no further obligation to each other except as to those obligations that specifically survive the termination of this Agreement.

(c) Other Rights. If the Representing Party did have knowledge of the inaccuracy on the date of execution of this Agreement, then the Benefitted Party shall also have all other rights and remedies afforded by law and equity.

7.04 Buyer's Indemnification. Buyer, on behalf of itself as well as Buyer's successors and assigns, hereby agrees to indemnify, defend and hold harmless Seller and Seller's agents, personal representatives, employees, spouses, heirs, partners, officers, directors, officials, successors and assigns (collectively, "Sellers Representatives"), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct, contingent or consequential, incurred or suffered by or asserted or awarded against Seller or Sellers Representatives relating to or arising from (i) the ownership, operation or possession of the Property by Buyer or Buyer's Representatives (defined below) subsequent to the Close of Escrow, (ii) the acts or omissions of Buyer or Buyer's Representatives (iii) any entry on the Property by Buyer or Buyer's Representatives, (iv) Buyer's performance of its Due Diligence, including, but not limited to any act or omission by Buyer or Buyer's Representatives in the course of performing the inspections, testings or inquiries provided for in this Agreement (v) any material breach of any covenant, representation or warranty of Buyer contained in this Agreement, (vi) Buyer's or Buyer's agents' violation of any federal, state or local law, ordinance or regulation, occurring or allegedly occurring with respect to the Property (vii) any Release of Hazardous Substances (as defined in this Agreement) at the Property subsequent to the Close of Escrow by Buyer or Buyer's Representatives in direct violation of paragraph 7.01(g)(1) of this Agreement, and/or (viii) any service contracts, leases and/or any tenant security deposit which accrued subsequent to the Close of Escrow, and in each instance, except to the extent such matters arise from the sole negligence or the willful misconduct of Seller or Seller's Representatives breach of a representation, warranty or obligations in this Agreement. Buyer waives all claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs) against Seller or Seller's Representatives related to the structural integrity of the Building.

Upon consummation of the closing hereunder, the foregoing indemnity shall be deemed to be restated and made again as of the Closing Date and shall survive the Close of Escrow and the delivery and recording of the Grant Deed.

7.05 Seller's Indemnification. Seller, on behalf of itself as well as Seller's successors and assigns, hereby agrees to indemnify, defend and hold harmless Buyer and Buyer's agents, personal representatives, partners, officers, directors, officials, employee, spouses, heirs, successors and assigns (collectively, "Buyer's Representatives"), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct, contingent or consequential, incurred or suffered by or asserted or awarded against Buyer or Buyer's Representatives relating to or arising from (i) the ownership or operation of the Property by Seller or Seller's predecessors, successors or assigns prior to the Close of Escrow, (ii) the acts or omissions of Seller or Seller's Representatives, (iii) any material breach of any covenant,

representation or warranty of Seller contained in this Agreement (except to the extent that this Agreement states that Buyer is not relying on same), (iv) the violation of any federal, state or local law, ordinance or regulation, occurring or allegedly occurring with respect to the Property during Seller's ownership, prior to the Close of Escrow, (v) the existence and/or Release of hazardous materials or Hazardous Substances (as defined in this Agreement) handled, transported, generated, disposed of, or released from, emanating from, or in the vicinity of the Property prior to the Close of Escrow; or (vi) any service contracts, leases and/or any tenant security deposit claims which accrued during Seller's ownership prior to the Close of Escrow, and in each instance, except to the extent such matters arise from the sole negligence or the willful misconduct of Buyer or Buyer's Representatives breach of a representation, warranty or obligations in this Agreement. Seller waives all claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs) against Buyer or Buyer's Representatives related to or arising from the contamination at, emanating from or in the vicinity of the Property prior to Close of Escrow. Notwithstanding the above, the Seller's indemnification of Buyer related to the Hazardous Substances at the Property shall be limited to One Hundred Thousand Dollars (\$100,000) over and above the Two Hundred Thousand Dollar (\$200,000) credit on the purchase price as set forth in this Agreement. The limitation on the indemnification related to Hazardous Substances at the Property is not intended to limit any indemnification of Hazardous Substances which are not located on the Property at the time of the Close of Escrow.

Upon consummation of the closing hereunder, the foregoing indemnity shall be deemed to be restated and made again as of the Closing Date and shall survive the Close of Escrow and the delivery and recordation of the Deed.

ARTICLE 8. CONSTRUCTION

8.01 Cost of Construction

Except as expressly provided herein related to Approved Environmental Costs, the cost of developing the Property and constructing all improvements thereon shall be borne by the Buyer.

8.02 Construction Schedule

After the conveyance of title to the Property, the Buyer shall promptly begin and thereafter diligently pursue to completion the construction and the development of the Property. The Buyer shall begin construction and development, complete same, and obtain a Certificate of Occupancy within one hundred and eighty (180) days of the Closing Date or such reasonable extension of said date as may be granted by the City Manager for the Seller. Such reasonable extension requests shall not be unreasonably withheld.

8.03 Bodily Injury, Property Damage and Workers' Compensation Insurance

Prior to the commencement of construction on the Property or any portion thereof, the Buyer shall furnish or cause to be furnished to the Seller duplicate originals or appropriate certificates and endorsements of policies for comprehensive general liability insurance with single combined limits of \$2,000,000 for any occurrence and \$1,000,000 property damage, naming the

Seller as additional or coinsureds. The Buyer shall also furnish or cause to be furnished to the Seller evidence satisfactory to the Seller that any contractor with whom it has contracted for the performance of work on the Property carries workers' compensation insurance as required by law, including a waiver of subrogation endorsement in favor of the Seller.

8.04 Taxes, Assessments, Encumbrances and Liens

(a) The Buyer shall pay when due all real estate taxes and assessments assessed and levied on the Property for any period subsequent to Close of Escrow. Prior to the issuance of a Certificate of Completion, the Buyer shall not place or allow to be placed on the Property any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement. The Buyer shall remove or have removed any levy or attachment made on the Property (or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a foreclosure or other sale thereunder. Nothing herein contained shall be deemed to prohibit the Buyer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Buyer in respect thereto.

(b) The Buyer understands that under certain conditions, its control of the Property or any portion thereof under this Agreement may give rise to the imposition of a possessory interest tax on said property, and in such event, the Buyer agrees to pay when due any such possessory interest tax.

8.05 Certificate of Occupancy

(a) Promptly after the completion of the construction and development by the Buyer at the Property, in accordance with the approved plans therefore and in compliance with all Federal, State and Local laws rules and regulations respecting the construction and development of the Property and inspection thereof, the Seller shall furnish the Buyer with a Certificate of Occupancy upon written request from the Buyer. Any certificate of occupancy shall be in such form as to permit it to be recorded in the Office of the County Recorder of Contra Costa County.

(b) A Certificate of Occupancy shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Property and of full compliance with the terms hereof.

ARTICLE 9 USE OF THE PROPERTY

9.01 Uses

(a) The ground floor of the Property shall only be used for restaurant and entertainment uses as generally described in section 1.03 hereof and for no other purpose without the express written approval of the Seller in the form of the approval of a Conditional Use Permit in accordance with the Martinez Municipal Code for a minimum of fifteen (15) years after the Close of Escrow or as otherwise agreed to by Seller in writing.

(b) The Buyer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, the Buyer, its successors and assignees

shall devote the Property to the uses specified in this Agreement, the Martinez General Plan, any applicable Specific Plan, the Martinez Municipal Code and the Grant Deed for the periods of time specified therein. The foregoing covenants in this Section 9.01(a) shall run with the land.

9.02 Obligation to Refrain From Discrimination

To the extent required by law, the Buyer covenants by and for itself alone 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, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Buyer itself 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, sub-lessees or vendees of the Property.

9.03 Effect and Duration of Covenants

Except as otherwise provided, the covenants contained in this Agreement and the covenants contained in the Grant-Deed shall remain in effect in perpetuity. The covenants established in this Agreement and the covenants contained in the Grant Deed shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Seller and Buyer and any of their respective successor in interest.

9.04 Rights of Access–Public Improvements and Facilities

The Seller, for itself and for other public agencies, at their sole risk and expense, reserves the right to enter the Property or any part thereof at all reasonable times and with as little interference as possible for the purposes of inspection, construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Property, if any. Any such entry shall be made only after reasonable notice to the Buyer. Except as provided by law, Seller shall repair any damage to the Building or Property by the exercise or use of this right of access. By this Agreement, the Seller shall not relinquish any of its police powers and other authority to enter real property to ensure compliance with the laws it is charged with enforcing.

ARTICLE 10 DEFAULTS, REMEDIES AND TERMINATION

10.01 Defaults – General

(a) Subject to the extensions of time set forth in this Agreement, failure or delay by either party to perform any material term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

(b) The non-defaulting party shall give written notice of default to the party in default specifying the default complained of by the non-defaulting party. Except as required to protect against further damages and except as otherwise expressly provided in this Agreement, the non-defaulting party may not institute proceedings against the party in default until thirty (30) days after

giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(d) Any failure or delay not within the party's or parties' control, such as an act of god, fire or other casualty, or delays relating to City Approvals, Government Approvals, and/or delays based on investigations, permitting or lack of government resources shall not constitute a default or breach of any terms and conditions. Any such delays shall act as a tolling of any time periods or deadlines contained within this Agreement.

10.02 Legal Actions

(a) Institution of Legal Actions

In addition to any other rights or remedies, either party may institute, after the expiration of the specific time periods set forth herein, legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Contra Costa, State of California, in an appropriate municipal court in that County or in the appropriate Federal District Court in the State of California.

(b) Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

(c) Acceptance of Service of Process

In the event that any legal action is commenced by the Buyer against the Seller, service of process on the Seller shall be made by personal service upon the City Clerk of the City of Martinez or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Seller against the Buyer, service of process on the Buyer shall be made by personal service upon Howard Goldenberg or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

10.03 Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall

not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

10.04 Damages

If the Buyer or the Seller defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such default.

10.05 Specific Performance

If the Buyer or the Seller defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days of service of the notice of default, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement.

10.06 Remedies and Rights of Termination Prior to Conveyance of the Property to the Buyer

(a) Termination by the Buyer

In the event that prior to conveyance of title of the Property to the Buyer:

- (i) The Seller does not tender conveyance of the Property or possession thereof in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within thirty (30) days after written demand by the Buyer; or
- (ii) The Buyer, despite a good faith effort to do so, is unable to obtain required City Approvals or related Government Approvals; or
- (iii) The Buyer, despite a good faith effort to do so, is unable to obtain the required Restaurant Lease or Construction Contract; or
- (iv) The Seller is in material breach or material default with respect to any other obligation of the Seller under this Agreement,

then this Agreement may, at the option of the Buyer, be terminated by written notice thereof to the Seller. Upon such termination, neither the Seller nor the Buyer shall have any further rights against or liability to the other under this Agreement, and the Seller shall return the Deposit to the Buyer as provided herein.

(b) Termination by the Seller

In the event that prior to conveyance of title to the Property to the Buyer:

- (i) The Buyer fails to maintain the amount of the Deposit as required by this Agreement unless such Deposit has been reduced by Approved Environmental Costs; or
- (ii) The Buyer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein in violation of this Agreement; or
- (iii) The Buyer does not submit evidence of financing and project commitment for acquisition and development of the Property in satisfactory form; or
- (iv) The Buyer does not pay the Purchase Price as required by this Agreement or Escrow documents; or
- (v) The Buyer fails to obtain the required City Approvals, Government Approvals, Restaurant Lease or Construction Contract; or
- (vi) The Buyer is in material breach or material default with respect to any other obligation of the Buyer under this Agreement; and
- (vii) If any default or failure referred to in subdivision (i)-(vi) shall not be cured or commenced to be cured within thirty (30) days after the date of written demand by the Seller,

then this Agreement, and any rights of the Buyer or any assignee or transferee of this Agreement pertaining thereto or arising therefrom with respect to the Seller, may, at the option of the Seller, be terminated by the Seller by written notice thereof to the Buyer.

ARTICLE 11. MISCELLANEOUS

11.01 Interpretation. This Agreement has been executed in Contra Costa County, California. Venue and jurisdiction for any litigation arising out of or in connection with this Agreement shall be in Contra Costa County, California. This Agreement shall be construed and enforced pursuant to the laws of the State of California. The captions of the Articles and Sections in this Agreement are for convenience only. The provisions hereof shall be binding upon and inure to the benefit of the successors and assigns of Seller and Buyer.

11.02 Time of Essence. Time is of the essence in this Agreement and of the escrow set forth in this Agreement.

11.03 Integration. This Agreement and its exhibits contain the entire agreement between Seller and Buyer, superseding any and all prior written or oral agreements between Seller and Buyer concerning the subject matter contained in this Agreement, and Seller and Buyer hereby release each other from any and all rights, obligations and claims under such prior agreements. Except that this agreement does not replace or supersede, the terms and conditions set forth in the Right of Entry Agreement entered into between Buyer and Seller related to the Property. To the

extent that there is a conflict between the Right of Entry Agreement and this Agreement, this Agreement will control.

11.04 Additional Documents. (Intentionally deleted).

_____ 11.05 Notice. Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given as of the following: (i) on the date of personal service on Seller or Buyer; (ii) on the third business day after mailing, if the document is mailed by registered or certified mail, return receipt requested; (iii) one day after being sent by professional or overnight courier or messenger service guaranteeing one-day delivery, with receipt confirmed by the courier; or (iv) on the date of transmission if sent by telegram, telex, telecopy or other means of electronic transmission resulting in written copies, with receipt confirmed (and with a copy of such notice, demand or communication deposited on the same day in a United States post office with first class postage prepaid and addressed to the party or parties). Any such notice shall be delivered or addressed to Seller or Buyer at the addresses set forth below or at the most recent address specified by the addressee through written notice under this Section 11.05. Failure to give notice in accordance with any of the foregoing methods shall not defeat the effectiveness of notice actually received by the addressee.

To Buyer: Howard Goldenberg
 Court Office Partners, L/P
 Care of Goldenberg & Associates, Inc.
 101 Hillside Avenue
 Piedmont, California 94611

With copies to: John R. Till
 Paladin Law Group, LLP
 1196 Boulevard Way, Suite 10
 Walnut Creek, CA 94595
 Tel: 925.947.5700
 Fax: 925.935.8488
 Email: jtill@PaladinLaw.com

To Seller: City Clerk
 City of Martinez
 525 Henrietta Street
 Martinez, CA 94553
 Tel: 925.372.3512

 Fax: 925.228.3753

 Assistant City Manager, Community and Economic Development
 City of Martinez
 525 Henrietta Street
 Martinez, CA 94553

 Tel: 925.372.3514
 Fax: 925.372.0257

With copies to: Walter & Pistole
670 W. Napa St., Suite F
Sonoma, CA 95476
Attn: Jeffrey Walter
Tel: 707 996 9690
Fax: 707 996 9603
Email: jwalter@walterpistole.com

11.06 Attorneys' Fees: Prejudgment Interest. If the services of an attorney are required by Seller or Buyer to secure the performance of this Agreement or otherwise upon the breach or default of Seller or Buyer, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Agreement or the rights and duties of any person in relation thereto, the prevailing party shall be entitled to reasonable attorneys' and expert fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of the Agreement's provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

11.07 Recordation of Agreement. Upon execution of this Agreement, Buyer and Seller shall execute and acknowledge a Memorandum of Agreement in a form and content meeting the approval of all parties (the "Memorandum") and will deliver the Memorandum to Escrow Holder to be recorded against the Property in the Official Records of the Contra Costa County Recorder's Office at Close of Escrow.

11.08 Assignment. Buyer may assign Buyer's rights under this Agreement to purchase the Property prior to the Close of Escrow to an entity formed by Buyer (and other members and/or partners) to acquire title to the Property. Any other assignment prior to Close of Escrow may only be done with the prior written approval of the City.

11.09 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions in this Agreement shall remain in full force and effect.

11.10 1031 Exchange. Buyer may prefer to consummate this transaction through an exchange pursuant to Internal Revenue Code Section 1031 and the regulations promulgated thereunder, rather than by a direct purchase and sale of the Property. Each party hereby agrees that it shall assist and cooperate with the other in effecting the transaction contemplated hereby as an exchange if the Buyer so desires, so long as the exchanging party bears all costs and expenses of such exchange and the other party is not required to take title to any other real property (even for an instant). The exchanging party shall indemnify and hold the other party harmless from any additional cost, liability and expense that may be incurred in cooperating and assisting the exchanging party in such an exchange.

11.11 Legal Advice. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or

against any party based upon any attribution of such party as the sole source of the language in question.

11.12 Rule of Construction. Buyer and Seller have each read and fully understand the terms of this Agreement, and each has had the opportunity to have this Agreement reviewed by its own counsel. The rule of construction providing that ambiguities in an agreement shall be construed against the party drafting the same shall not apply.

11.13 Dates. If any dates hereunder fall on a Saturday, Sunday or legal holiday, such date shall be the next following business day.

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

11.15 Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

11.16 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties thereto, to any person or entity other than the parties hereto. This agreement does not intend to create any third party beneficiaries.

11.17 Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

11.18 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

11.19 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

11.20 No Offer. The parties agree that no offer and acceptance can occur until the parties mutually execute this document hereto, it being understood that the delivery of this document does not constitute an offer of any kind.

11.21 Dependency and Survival of Provisions. Except as otherwise provided herein, the respective covenants, agreements, obligations and undertakings of each party hereunder (whether to be performed before or after the Close of Escrow) shall be construed as dependent upon and given in consideration of those of the other party and shall survive the Close of Escrow and delivery of the Grant Deed or termination of this Agreement for any reason.

11.22 Damage or Destruction. If the Property is destroyed or materially damaged between the Effective Date and the Close of Escrow, and the cost to repair the damage or destruction is greater than \$100,000.00, then Buyer may, upon written notice to Seller within thirty (30) days

following receipt of notice from Seller of such damage or destruction, elect to terminate this Agreement. If this Agreement is so terminated, then Buyer's Deposit shall be immediately returned to Buyer. If Buyer fails to timely terminate this Agreement as aforementioned, or if the estimated cost to repair or replace the damage or destruction is equal to or less than \$100,000.00, then Buyer and Seller shall remain bound under this Agreement.

11.23 Condemnation. If the Property, or any portion thereof is taken by eminent domain, or any proceeding for the same is commenced, prior to the Close of Escrow (collectively, "Taking"), then Buyer shall have the option to proceed with this transaction and to receive an assignment of any condemnation award, or terminate this Agreement and the escrow established hereby by written notice delivered to Seller upon the earlier of: (a) the Closing Date or (b) within fifteen (15) days after Buyer is notified in writing by Seller of the Taking. Failure of Buyer to timely deliver said notice shall be deemed a conclusive waiver of Buyer's rights to terminate this Agreement on the basis of a Taking. If Buyer exercises its right to terminate this Agreement in accordance with the requirements of this Section, then the Deposit shall be returned to Buyer.

11.24 Exhibits

The following exhibits are attached hereto and incorporated by this reference.

- _____ Exhibit A Legal Description of Real Property
- _____ Exhibit B. Approved Environmental Costs Prior to Effective Date.
- _____ Exhibit C. Environmental Access Agreement

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement on the dates indicated below.

SELLER:

BUYER:

THE CITY OF MARTINEZ

GOLDENBERG AND ASSOCIATES, Inc., a California Corporation

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

Approved as to form:

Approved as to form:

By: _____
Jeffrey A. Walter, City Attorney

By: _____
Attorney for Buyer

EXHIBIT A

Order No. 615-7939
Policy No. O-2228-000244763

EXHIBIT "A" LEGAL DESCRIPTION

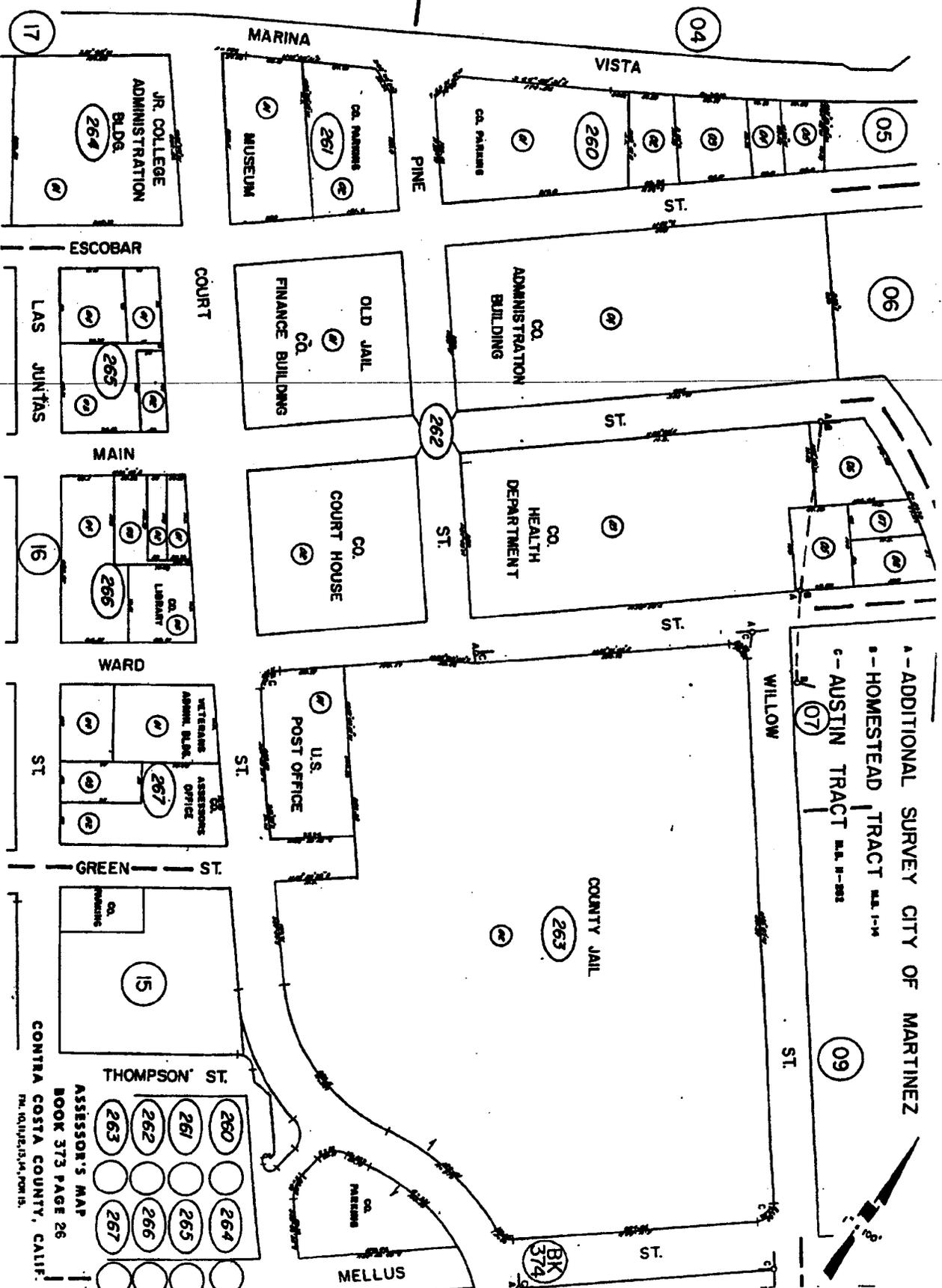
THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF MARTINEZ, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF BLOCK 329 OF THE ADDITIONAL SURVEY OF TOWN OF MARTINEZ, AS PER MAPS THEREOF FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF CONTRA COSTA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 329; THENCE NORTHERLY ALONG THE WEST LINE OF COURT STREET 101 FEET; THENCE WESTERLY AND PARALLEL WITH THE NORTH LINE OF MAIN STREET 30 FEET; THENCE SOUTHERLY AND PARALLEL WITH THE WEST LINE OF COURT STREET 101 FEET TO THE NORTH LINE OF MAIN STREET; THENCE EAST ALONG THE NORTH LINE OF MAIN STREET, 30 FEET TO THE POINT OF BEGINNING.

A.P.N. 373-265-002

Important: This plat is not a survey. It is merely furnished as a convenience to locate the land in relation to adjoining streets and other lands and not to guarantee any dimensions, distances, bearings or acreage.



- A - ADDITIONAL SURVEY CITY OF MARTINEZ
- B - HOMESTEAD TRACT M.S. 1-14
- C - AUSTIN TRACT M.S. 2-202

ASSASSIN'S MAP
 BOOK 373 PAGE 26
 COSTA COUNTY, CALIF.
 P.M. 10/12/2014 FOR 15



Brown and Caldwell
 10540 White Rock Road, Suite 180
 Rancho Cordova, CA 95670
 Tel: (916) 444-0123, Fax: (916) 635-8805

INVOICE

To : Goldenberg & Associates, Inc.
 101 Hillside Avenue
 Piedmont, CA 94611

Project No : 133769

Invoice No : 1765309

Date : October 19, 2007

Attention: J. Allen Sayles

Subject : Martinez Court Street

Contact : Megan L Cambridge , PM

Billing Period : Inception through September 27, 2007

Invoiced By : Wendy A Power

Progress Billing No :

Reference : Authorization Dated : 8/24/2007

LABOR

Class/ Employee Name	Hours	Rate	Cost Amount	Multiplier	Billing Amount
Senior Engineer					
Jason Grant	5.00	\$ 44.01	\$ 220.05	3.2000	704.16
Project Coordinator II					
Angela Romero	0.75	\$ 24.23	\$ 18.17	3.2000	58.14
Jacqueline R Bates	3.00	\$ 24.84	\$ 74.52	3.2000	238.46
Supervising Scientist					
Megan L Cambridge	2.25	\$ 52.00	\$ 117.00	3.2000	374.40
Corp Health & Safety Director					
James A Bucha	1.00	\$ 58.70	\$ 58.70	3.2000	187.84
Office/Support Services IV					
Timothy L Hendrickson	20.00	\$ 17.67	\$ 353.40	3.2000	1,130.88
Sub-Total Labor	32.00		\$ 841.84		\$ 2,693.88
APC at \$8.00 per Hour	32.00				\$ 256.00
Total Labor					\$ 2,949.88

REGULAR EXPENSES

Account / Vendor Name	Billing Amount
Subconsultants	
O/S CONSULT - DRILLER	
PRECISION SAMPLING, INC.	\$ 809.00
Sub-Total Subconsultants	\$ 809.00
Markup on Subconsultants @ 10.00%	\$ 80.90
Total Subconsultants	\$ 889.90
Outside Services	
O/S SVS-EQUIPMENT RENTAL	
ENVIRONMENTAL INSTRUMENTS CO	\$ 237.93

PAYMENT REMIT ADDRESS: Brown and Caldwell, P.O. Box 45208, San Francisco, CA 94145-0208

Payment is due within 30 days of receipt of invoice, interest on the unpaid balance will accrue beginning with the 31st day at the rate of 1.5 percent per month or the maximum interest permitted by law, whichever is lesser.





Brown and Caldwell
 10540 White Rock Road, Suite 180
 Rancho Cordova, CA 95670
 Tel: (916) 444-0123, Fax: (916) 635-8805

INVOICE

To : Goldenberg & Associates, Inc.
 101 Hillside Avenue
 Piedmont, CA 94611

Project No : 133769

Invoice No : 1765309

Date : October 19, 2007

Attention: J. Allen Sayles

REGULAR EXPENSES

Account / Vendor Name

Billing Amount

O/S SVS-OTHER ALLOWABLE

AIR TOXICS, LTD.	\$ 302.00
Sub-Total Outside Services	\$ 539.93
Markup on Outside Services @ 10.00%	\$ 53.99
Total Outside Services	\$ 593.92

Other Direct Costs

GASOLINE

Timothy L Hendrickson \$ 15.28

MILEAGE

Jason Grant \$ 15.52

PERMIT/LICENSE

CONTRA COSTA ENVIRONMENTAL \$ 444.00

FIELD SUPPLIES

Jason Grant \$ 6.38
 Timothy L Hendrickson \$ 27.11

Total Other Direct Costs \$ 508.29

Total Regular Expenses \$ 1,992.11

Total Expenses \$ 1,992.11

Amount Due this Invoice \$ 4,941.99

Summary of Account

Invoiced To Date :	\$ 4,941.99	Contract Ceiling :	\$ 8,900.00
Total Paid To Date :	\$ 0.00	Invoiced To Date :	\$ 4,941.99
Balance Outstanding :	\$ 4,941.99	Remaining Balance :	\$ 3,958.01

PAYMENT REMIT ADDRESS: Brown and Caldwell, P.O. Box 45208, San Francisco, CA 94145-0208

Payment is due within 30 days of receipt of invoice, interest on the unpaid balance will accrue beginning with the 31st day at the rate of 1.5 percent per month or the maximum interest permitted by law, whichever is lesser.





Brown and Caldwell
 10540 White Rock Road, Suite 180
 Rancho Cordova, CA 95670
 Tel: (916) 444-0123, Fax: (916) 635-8805

INVOICE

To : Goldenberg & Associates, Inc.
 101 Hillside Avenue
 Piedmont, CA 94611

Project No : 133769

Invoice No : 1767421

Date : November 19, 2007

Attention: J. Allen Sayles

REGULAR EXPENSES

<u>Account / Vendor Name</u>	<u>Billing Amount</u>
Subconsultants	
O/S CONSULT - ANALYTICAL SERVICES	
TESTAMERICA LABORATORIES, INC	\$ 1,420.00
Sub-Total Subconsultants	\$ 1,420.00
Markup on Subconsultants @ 10.00%	\$ 142.00
Total Subconsultants	\$ 1,562.00
Outside Services	
O/S SVS-EQUIPMENT RENTAL	
EQUIPCO RENTALS	\$ 250.00
Sub-Total Outside Services	\$ 250.00
Markup on Outside Services @ 10.00%	\$ 25.00
Total Outside Services	\$ 275.00
Other Direct Costs	
FIELD SUPPLIES	
EQUIPCO SALES & SERVICE	\$ 32.48
Total Other Direct Costs	\$ 32.48
Total Regular Expenses	\$ 1,869.48
Total Expenses	\$ 1,869.48
Amount Due this Invoice	\$ 4,687.38

Summary of Account

Invoiced To Date :	\$ 9,629.37	Contract Ceiling :	\$ 13,150.00
Total Paid To Date :	<u>\$ 0.00</u>	Invoiced To Date :	<u>\$ 9,629.37</u>
Balance Outstanding :	<u>\$ 9,629.37</u>	Remaining Balance :	<u>\$ 3,520.63</u>

PAYMENT REMIT ADDRESS: Brown and Caldwell, P.O. Box 45208, San Francisco, CA 94145-0208

Payment is due within 30 days of receipt of invoice, interest on the unpaid balance will accrue beginning with the 31st day at the rate of 1.5 percent per month or the maximum interest permitted by law, whichever is lesser





Brown and Caldwell
 10540 White Rock Road, Suite 180
 Rancho Cordova, CA 95670
 Tel: (916) 444-0123, Fax: (916) 635-8805

INVOICE

To : Goldenberg & Associates, Inc.
 101 Hillside Avenue
 Piedmont, CA 94611

Project No : 133769

Invoice No : 1770390

Date : January 10, 2008

Attention: J. Allen Sayles

Subject : Martinez Court Street Contact : Megan L Cambridge , PM
 Billing Period : October 26, 2007 through December 27, 2007 Invoiced By : Wendy A Power
 Progress Billing No : 3
 Reference : Authorization Dated : 8/24/2007

LABOR

Class/ Employee Name	Hours	Rate	Cost Amount	Multiplier	Billing Amount
Senior Engineer					
Jason Grant	18.00	\$ 44.01	\$ 792.18	3.2000	2,534.98
Project Coordinator II					
Angela Romero	0.25	\$ 24.23	\$ 6.06	3.2000	19.39
Jacqueline R Bates	0.25	\$ 25.96	\$ 6.49	3.2000	20.77
Jacqueline R Bates	1.25	\$ 24.84	\$ 31.05	3.2000	99.36
Supervising Scientist					
Megan L Cambridge	6.50	\$ 52.00	\$ 338.00	3.2000	1,081.60
Scientist II					
Sabina Giri	1.00	\$ 32.21	\$ 32.21	3.2000	103.07
Accountant I					
Wendy A Power	0.50	\$ 18.02	\$ 9.01	3.2000	28.83
Sub-Total Labor	27.75		\$ 1,215.00		\$ 3,888.00
APC at \$8.00 per Hour	27.75				\$ 222.00
Total Labor					\$ 4,110.00

REGULAR EXPENSES

Account / Vendor Name	Billing Amount
Outside Services	
O/S SVS-DATA PROC/INQUIRY	
ENVIRONMENTAL DATA RESOURCES INC	\$ 650.00
Sub-Total Outside Services	\$ 650.00
Markup on Outside Services @ 10.00%	\$ 65.00
Total Outside Services	\$ 715.00
Total Regular Expenses	\$ 715.00
Total Expenses	\$ 715.00

PAYMENT REMIT ADDRESS: Brown and Caldwell, P.O. Box 45208, San Francisco, CA 94145-0208

Payment is due within 30 days of receipt of invoice, interest on the unpaid balance will accrue beginning with the 31st day at the rate of 1.5 percent per month or the maximum interest permitted by law, whichever is lesser.





Brown and Caldwell
 10540 White Rock Road, Suite 180
 Rancho Cordova, CA 95670
 Tel: (916) 444-0123, Fax: (916) 635-8805

INVOICE

To : Goldenberg & Associates, Inc.
 101 Hillside Avenue
 Piedmont, CA 94611

Project No : 133769

Invoice No : 1770390

Date : January 10, 2008

Attention: J. Allen Sayles

Amount Due this Invoice

\$ 4,825.00

Summary of Account

Invoiced To Date : \$ 14,454.37
 Total Paid To Date : \$(9,629.37)
 Balance Outstanding : \$ 4,825.00

Contract Ceiling : \$ 13,150.00
 Invoiced To Date : \$ 14,454.37
 Remaining Balance : \$(1,304.37)

PAYMENT REMIT ADDRESS: Brown and Caldwell, P.O. Box 45208, San Francisco, CA 94145-0208

Payment is due within 30 days of receipt of invoice, interest on the unpaid balance will accrue beginning with the 31st day at the rate of 15 percent per month or the maximum interest permitted by law, whichever is lesser





Brown and Caldwell
 10540 White Rock Road, Suite 180
 Rancho Cordova, CA 95670
 Tel: (916) 444-0123, Fax: (916) 635-8805

INVOICE

To : Goldenberg & Associates, Inc.
 101 Hillside Avenue
 Piedmont, CA 94611

Project No : 133769

Invoice No : 1771980

Date : February 01, 2008

Attention: J. Allen Sayles

Summary of Account

Invoiced To Date :	\$	15,401.10	Contract Ceiling :	\$	13,150.00
Total Paid To Date :	\$	<u>(9,629.37)</u>	Invoiced To Date :	\$	<u>15,401.10</u>
Balance Outstanding :	\$	<u>5,771.73</u>	Remaining Balance :	\$	<u>(2,251.10)</u>

PAYMENT REMIT ADDRESS: Brown and Caldwell, P.O. Box 45208, San Francisco, CA 94145-0208

Payment is due within 30 days of receipt of invoice, interest on the unpaid balance will accrue beginning with the 31st day at the rate of 1.5 percent per month or the maximum interest permitted by law, whichever is lesser.





Brown and Caldwell
 10540 White Rock Road, Suite 180
 Rancho Cordova, CA 95670
 Tel: (916) 444-0123, Fax: (916) 635-8805

INVOICE

To : Goldenberg & Associates, Inc.
 101 Hillside Avenue
 Piedmont, CA 94611

Project No : 133769

Invoice No : 1775612

Date : March 28, 2008

Attention: J. Allen Sayles

Subject : Martinez Court Street

Contact : Megan L Cambridge, PM

Billing Period : January 25, 2008 through February 21, 2008

Invoiced By : Wendy A Power

Progress Billing No : 5

Reference : Authorization Dated : 8/24/2007

LABOR

Class/ Employee Name	Hours	Rate	Cost Amount	Multiplier	Billing Amount
Senior Engineer					
Jason Grant	12.00	\$ 45.78	\$ 549.36	3.2000	1,757.95
Project Coordinator II					
Jacqueline R Bates	0.75	\$ 25.96	\$ 19.47	3.2000	62.30
Supv Geol/Hydrogeologist					
Wendy J Linck	1.00	\$ 52.80	\$ 52.80	3.2000	168.96
Supervising Illustrator					
Susan M Sicora	2.00	\$ 35.13	\$ 70.26	3.2000	224.83
Executive Support Services I					
Deanna L Tanner	8.00	\$ 24.53	\$ 196.24	3.2000	627.97
Accountant I					
Wendy A Power	0.50	\$ 18.57	\$ 9.29	3.2000	29.73
Sub-Total Labor	24.25		\$ 897.42		\$ 2,871.74
APC at \$8.00 per Hour	24.25				\$ 194.00
Total Labor					\$ 3,065.74
Amount Due this Invoice					\$ 3,065.74

PAYMENT REMIT ADDRESS: Brown and Caldwell, P.O. Box 45208, San Francisco, CA 94145-0208

Payment is due within 30 days of receipt of invoice, interest on the unpaid balance will accrue beginning with the 31st day at the rate of 15 percent per month or the maximum interest permitted by law, whichever is lesser



Brown and Caldwell
 10540 White Rock Road, Suite 180
 Rancho Cordova, CA 95670
 Tel: (916) 444-0123, Fax: (916) 635-8805

INVOICE

To : Goldenberg & Associates, Inc.
 101 Hillside Avenue
 Piedmont, CA 94611

Project No : 133769

Invoice No : 1775612

Date : March 28, 2008

Attention: J. Allen Sayles

Summary of Account

Invoiced To Date :	\$ 18,466.84	Contract Ceiling :	\$ 13,150.00
Total Paid To Date :	<u>\$(15,401.10)</u>	Invoiced To Date :	<u>\$ 18,466.84</u>
Balance Outstanding :	<u><u>\$ 3,065.74</u></u>	Remaining Balance :	<u><u>\$(5,316.84)</u></u>

PAYMENT REMIT ADDRESS: Brown and Caldwell, P.O. Box 45208, San Francisco, CA 94145-0208

Payment is due within 30 days of receipt of invoice, interest on the unpaid balance will accrue beginning with the 31st day at the rate of 1.5 percent per month or the maximum interest permitted by law, whichever is lesser.



SITE ACCESS AGREEMENT

THIS SITE ACCESS AGREEMENT ("Agreement") is entered into and effective this 17th day of August 2007 ("Effective Date"), by and between the City of Martinez, incorporated as a California City ("Licensor" or the "City") and Goldenberg and Associates, Inc., a California Corporation ("Contractor" or "Licensee").

RECITALS

A. Whereas, the City is the owner of the property located at 630 Court Street, Martinez California (the "Property");

B. Whereas, Contractor has responded to City's Request for Proposal for the development of the Property;

C. Whereas, the City wishes to negotiate with the Contractor for the purchase and redevelopment of the Property and the Contractor and City have entered an Exclusive Right to Negotiate Agreement effective July 18, 2007 ("ERNA") for that purpose;

D. Whereas, Contractor as part its due diligence related to the potential development of the Property requires access to the Property to conduct various property inspections, specifically including but not limited to investigations which among other things requires that the Contractor obtain environmental and soil compaction samples from under the basement floor slab and through the first floor;

E. Whereas, the City and the Contractor acknowledge that Contractor has no current ownership interest in the Property; and

F. Whereas, the City is willing to grant Contractor access to the Property for the above-described purposes subject to the terms and conditions contained herein.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, the parties hereby agree as follows:

1. Rights Granted

The City hereby grants to Contractor a limited, non-transferable, and non-exclusive license over, under, and across the Property for the sole purpose of performing any necessary property inspections, including environmental assessment, investigation, and soil investigation activities relating to the Property (the "Work") as further set forth herein (the "License").

2. Performance of the Work

Contractor agrees, at its sole cost and expense, to conduct and perform all Work at, under, and around the Property in a prompt, safe, efficient, and workmanlike manner and in full and complete compliance with all applicable federal, state or local laws, regulations or ordinances. The Work shall be undertaken and diligently pursued and completed by Contractor. Contractor acknowledges and agrees that it is solely responsible for the Work. Contractor shall be responsible for coordinating and performing the Work, including providing all materials and labor necessary to complete the Work. Contractor, at its sole cost and expense, shall prepare all plans, specifications and contract documents, and provide all material, labor and documentation necessary to complete the Work. Further, Contractor agrees to obtain all necessary approvals and permits required for the

SITE ACCESS AGREEMENT

Work.

3. Term and Termination

The License granted herein and the rights it grants to Contractor shall terminate upon completion of the Work or upon termination of the ERNA, whichever comes first, provided however that the provisions related to indemnity as contained in Paragraph 7 shall survive the termination of this Agreement as provided therein. Notwithstanding the foregoing, the City may immediately terminate this Agreement by giving written notice of termination to Contractor if Contractor breaches any of Contractor's obligations hereunder and Contractor does not cure the breach within fifteen (15) days' from the date written notice of any alleged breach is received by the Contractor from the City.

4. Restoration

If entry onto the Property by Contractor, or exercise by Contractor of any of its rights or Contractor's discharge of any obligations under this Agreement, results in any physical damage to the building or other improvements at the Property, Contractor shall promptly repair and restore the portions of the building and/or improvements at the Property damaged to substantially the same condition as existed prior to the damage or exercise of such right or discharge of such obligation.

5. Ownership of Property

Contractor and the City agree and acknowledge that the Contractor does not and has never owned any portion of the Property or building at the Property. At no time shall Contractor own or possess said Property or building at the Property as the result of this agreement.

6. The City's Obligations

The City will provide entry and access to the Property. The City will meet with Contractor as reasonably necessary during the City's normal business hours to permit Contractor to determine the location of any underground utility lines, pipelines, or other subsurface structures and existing equipment and facilities above ground. The City shall sign in a prompt and timely fashion any and all documents as reasonably requested or as necessary for the investigation, cleanup or remediation of hazardous waste that may exist at, on or emanating from the Property, including signing waste manifests as the generator for purposes of disposal of waste resulting from Property investigation and cleanup activities. The City authorizes Contractor to hire necessary contractors to transport and dispose of any contaminated or other waste material generated from the Property during the Work.

7. Indemnity

The City shall indemnify, defend, and hold harmless the Contractor, its agents, representatives, trustees, beneficiaries, successors, and assigns (collectively, the "Contractor's Related Parties") from and against any and all claims, causes of action, or suits resulting from or arising out of the contamination and any other hazardous materials or substances at, under, and around the Property related to operations at, under or around the Property occurring prior to the Contractor's purchase and development of the Property. Notwithstanding the foregoing, however, (a) Contractor's Related Parties shall comply with all federal, state and local laws and regulations pertaining to hazardous materials or hazardous substances as those terms are defined by any such law or regulation, and (b) Contractor shall indemnify, hold harmless and defend the City's Related Parties (defined below) from and against any and all claims, causes of action, or suits resulting from

SITE ACCESS AGREEMENT

Contractor's failure to comply with said laws and regulations.

The Contractor shall indemnify, defend, and hold harmless the City its agents, representatives, trustees, beneficiaries, successors, and assigns (collectively, the "the City's Related Parties") harmless from and against any and all claims, causes of action, or suits resulting from or arising out any damage to the building and improvements on the Property or personal injuries arising from the Work being conducted at the Property by the Contractor or the Contractor's Related Parties. Contractor's defense, hold harmless, and indemnification obligations shall not apply to the City's concurrent or wilful negligence.

The City's and Contractor's obligations under Sections 6 and 7, respectively, of this Agreement shall continue after the termination of this Agreement.

8. Insurance

Prior to conducting any activities upon the Property, Contractor shall ensure that each of its contractors and subcontractors which will enter upon the Property and conduct work at the Property will maintain throughout the term of the entry onto the Property, a commercial general liability insurance policy with a limit of at least Two Million Dollars (\$2,000,000.00) per policy period in the aggregate, insuring against liability arising out of or in connection with their activities at, under, and around the Property. Each of said insurance policies shall list the City and the Contractor as additional named insured. In addition, Contractor shall ensure that each of its contractors and subcontractors have worker compensation insurance. Prior to entry in or onto the Property under this Agreement, Contractor shall deliver to the City written evidence of said insurance, which said evidence and the nature, deductibles, the insurer's Best Rating, coverage and terms and conditions of said insurance shall be subject to the reasonable approval of the City. In addition, Contractor shall ensure that each of its contractors and subcontractors which will enter upon the Property and conduct work at the Property will maintain Professional liability coverage in the amount of at least One Million Dollars (\$1,000,000.00).

9. Liens

Contractor shall discharge at once or bond or otherwise secure against all liens and attachments that are filed in connection with the Work, and shall indemnify and save the City, the City Related Parties, and the Property harmless from and against any and all loss, damage, injury, liability and claims thereof resulting directly from any such liens and attachments arising solely from the Work.

10. Nature of the License

This License does not convey any estate or interest in the Property to Contractor. Contractor agrees, upon request of the City, to execute such other and further documents as may be necessary to evidence that except for the License, Contractor has no interest or estate in the Property whatsoever.

11. Notices

Any notices required to be made under this Agreement shall be made in writing to the address of the appropriate party as set forth below. All such notices shall be deemed to have been duly given

SITE ACCESS AGREEMENT

and received upon mailing, facsimile, or delivery by courier or personal delivery service. If a party delivers a notice by means of facsimile transmission, it must also send a copy of that notice by one of the other means specified above. Parties may alter or modify their notice address by delivery of written notice pursuant to the terms of this Agreement.

To the City: Karen Majors
City of Martinez
525 Henrietta Street
Martinez, CA 94553

With a Copy To: Jeffrey A. Walter
City Attorney for the City of Martinez
670 W. Napa St., Suite F
Sonoma, CA 95476
Fax 707 996 9603

To Contractor: Goldenberg & Associates, Inc.
101 Hillside Ave.
Piedmont, CA 94611

With a Copy To: John R. Till
Paladin Law Group® LLP
1196 Boulevard Way, Suite 10
Walnut Creek, CA 94595
Telephone: (925) 947-5700
Facsimile: (925) 935-8488

12. Reports

Contractor shall send to the City all non-privileged documentation relating to the Work at, under, and around the Property, including but not limited to, reports, correspondence, work plans, sampling results and data.

13. Applicable Law

This Agreement shall be interpreted, and any dispute arising hereunder shall be resolved, in accordance with the substantive laws of the State of California, without reference to choice of law rules.

14. Counterparts

This Agreement may be executed in counterparts, all of which together shall constitute one and the same agreement. The parties agree that this Agreement shall be considered signed when a copy of the last page of this Agreement bearing the signature of a party is delivered to the other parties by facsimile transmission. Such facsimiles shall be treated in all respects as having the same effect as an original signature.

///

SITE ACCESS AGREEMENT**15. Modification**

No modification of the terms herein shall be effective unless in writing and duly executed by the authorized representatives of the respective parties.

16. No Waiver by the City

Nothing contained in this Agreement shall be construed in any manner to be a waiver by the City of any claim it may have against Contractor relating to the conditions at, under, and around the Property, Contractor's operations at the Property, or the Lease.

17. Remedies Cumulative

No reference to or exercise of any specific right or remedy by the parties to this agreement will prejudice or preclude them from any other remedy whether allowed at law or in equity or expressly provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but the parties may from time to time exercise any one or more of such remedies independently or in combination.

18. Attorneys' Fees

In the event of any action, proceeding, controversy, claim, or dispute concerning the interpretation or enforcement of this instrument or the right granted herein or obligations created hereby, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable attorneys' fees, costs, and expenses.

19. Captions

The captions and headings used throughout this Agreement are for convenience or reference only, and the words contained therein shall in no way be held or deemed to define, limit describe, explain, modify, amplify or aid in the interpretation, consideration or meaning of any provisions or the scope or the intent of this Agreement.

20. Compliance With Laws

Throughout the term of this Agreement, Contractor and the City shall at all times comply fully with all applicable laws, ordinances, rules, and regulations of any governmental agency having jurisdiction over the Property.

21. Severability

If any part, clause or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated; provided, however, in no event shall either party be deprived of a material consideration by operation of this provision.

22. Binding Effect

Subject to the limitations set forth herein, this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

///

08/27/2007 18:22 FAX

CITY OF MARTINEZ

007/007

SITE ACCESS AGREEMENT

23. No Third Party Beneficiary

The parties to this agreement agree that they do not intend any person or entity not a party to this agreement to be a third party beneficiary of this agreement.

24. Right of Entry Agreement Dated July 25, 2007

The "Howard Goldenberg and Associates" and the City of Martinez entered into an agreement ("Right of Entry Agreement") dated July 25, 2007 which agreement is null, void, and superceded by this Agreement. No provisions, releases, indemnifications, terms, or conditions of the July 25, 2007 Right of Entry Agreement are enforceable against the parties to this Agreement or against any person or entity party to the July 25, 2007 Right of Entry Agreement.

25. Warranty of Authorized Signatories

The City warrants and represents that the City owns the Property and has authority to enter into this Agreement. The City further warrants and represents that it has obtained any and all permissions necessary for the Contractor to conduct the Work during normal business hours at the Property. Each person signing this Agreement warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

26. Agreement to Perform Necessary Acts

Each party agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement. Without limiting the foregoing, Contractor shall cooperate with the City in preparing and posting a Notice of Non-Responsibility in accordance with California law prior to the commencement of any Work.

27. Recitals

The recitals set forth above are deemed to be an integral part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the Effective Date set forth above.

The City:

City of Martinez

Dated: August 27 2007

By: [Signature]

Name: David A. Birbaugh

Its: City Manager

Contractor:

Goldenberg and Associates, Inc.

Dated: August 27 2007

By: [Signature]

Name: Howard N. Goldsouley

Its: President