



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
May 16, 2012**

TO: Mayor and City Council
FROM: Philip Vince, City Manager
SUBJECT: Public Hearing on the Final Disposition of 630 and 610 Court Street
DATE: May 10, 2012

RECOMMENDATION:

Hold public hearing on the final disposition of 630 and 610 Court Street and adopt resolution approving: 1) A Purchase and Sale Agreement between the City of Martinez and Southport Land and Commercial Company; 2) Declaration of Airspace Plan and Covenants, Conditions and Restrictions for 630 Court Street; 3) Declaration of Use Restrictions; 4) Declaration of Architectural Covenants and Restrictions for 630 Court Street, and authorizing the City Manager to execute all of the above and to also sign, on behalf of Owner a Parcel Map for 630 Court Street.

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 purpose of revitalizing this important building and placing it back into active use to 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 has issued Requests for Proposals (RFPs) on several occasions soliciting proposals to return this property to active use. None of the previous efforts have been successfully completed for various reasons, including financing and the general economy, the costs of rehabilitation and the limited configuration of 630 Court Street.

More recently, the City has entered into a purchase agreement with the County for 610 Court Street, the property immediately next door to 630 Court Street. Combining these two properties into one sale provides the opportunity to develop the entire block on Court Street. The corner of Main Street and Court is a prime location for a mixed use project consisting of office space on the top floor of each building and retail/commercial on the first floor.

By purchasing 610 Court Street the buyer will have the added ability to incorporate design and function on the first floor, which will increase the chances of finding a tenant to open a restaurant or attract other retail activity which will add to the overall ambience and aesthetics of the downtown.

1) PURCHASE AND SALE AGREEMENT:

- A) **Goals/Intent of the Agreement:** The overall objective in developing both of these properties included balancing the historical preservation aspects of 630 Court Street, which is on the state register, with the non-historical building located at 610 Court Street that has fewer constraints and more latitude to renovate.

To maintain structural integrity and uniformity for the entire block the City expressed interest in purchasing the building located at 610 Court Street. The building sat vacant for a number of years, but it had great potential for an interested investor because it was centrally located and seismically sound. With the City owning both buildings it has more control over the type of use, which further insured the optimum utilization of both buildings.

The City entered into an exclusive negotiating agreement with Southport Land Company in June 2011, after numerous meetings and discussion with the Council economic development subcommittee. Southport Land Company has an excellent track record for renovating historical buildings, such as 630 Court Street, and indicated interest in purchasing 610 Court Street and developing both buildings.

- B) **Major Provisions of the Agreement.** The building department and Assistant City Attorney have worked with Southport to craft a purchase and sale agreement acceptable to those parties who developed the corpus of the purchase and sale agreement. The buyer has completed due diligence on both properties.

The basement in 630 Court Street is approximately 900 square feet and not suitable for an operation such as a restaurant or retail activity. The purchaser is requesting that the City retain air rights of the basement.

To mitigate these findings the City provided for division of 630 Court Street into two airspace lots with the City retaining ownership of the basement level of the property. Both parties have agreed to Covenants, Conditions and Restrictions for 630 Court Street, including the Declaration of Use Restrictions and Declaration of Architectural Covenants and Restrictions for 630 Court Street. The agreement also includes a provision for relocation of the Arts Association activity to 610 Court Street for a period of time until Southport leases the space.

2) DECLARATION OF AIRSPACE PLAN AND COVENANTS CONDITIONS AND RESTRICTIONS

The Airspace Plan corresponds to the parcel map (discussed further below), and sets the provisions for creating two airspace units within the building, one consisting of the basement and the other the floors above.

The basement will be retained by City, but the Plan provides for easement for the buyer of the above floors to access to the basement and for utilities. The buyer shall incur all maintenance costs and rehab costs, and the owner of the basement shares in maintenance costs only if City transfers ownership of the basement. The use of the basement is

restricted so that it does not damage or interfere with use of the upper floors.
The City may be able to generate future revenue from renting out the basement for certain allowable uses.

The Plan also requires that both Owners maintain insurance, and provides for mutual indemnification relating to each parties activities and outlines procedures to be followed in the event of destruction of the building.

The Declaration of Airspace Plan is provided as Attachment 3.

3) DECLARATION OF USE RESTRICTIONS AND COVENANTS CONDITIONS AND RESTRICTIONS:

The Declaration restricts the use of the sidewalk level of both buildings, generally prohibiting the following uses, which otherwise could be permitted (or conditionally permitted with use permit approval) within the subject CC Central Commercial zoning district:

- BAIL BONDS AGENCY;
- DRY CLEANER;
- LAUNDRY;
- LAUNDROMAT;
- PAWNSHOP;
- SECONDHAND STORE;
- TATTOO PARLOR;
- MASSAGE PARLOR;
- CHECK CASHING STORE;
- BAR / COCKTAIL LOUNGE;
- LIQUOR STORE;
- MEDICAL MARIJUANA DISPENSARY;
- PRIVATE CLUB OR LODGE;
- PUBLIC BILLIARD ROOM;
- FIREARMS SALES;
- GUNSMITH;
- LICE REMOVAL SALON;
- A COLON CLEANSING SALON; and;
- Generally, all “ADMINISTRATIVE” (i.e. non-retail services) OFFICE uses.

The Declarations allow for the City to grant a written waiver to the above restrictions.
Section 3.03 States:

The application for the waiver shall set forth, in detail, the particular business establishment for which the waiver is sought, including any restrictions proposed to be placed upon the operation of the business establishment. The CITY shall be under no obligation to grant any such waiver, and may deny any such application for any reason whatsoever, or no reason at all.

The above provision provides the City the flexibility to revisit the above restrictions in the future, without any obligation to remove them.

The Declaration of Use Restrictions is provided as Attachment 4.

4) DECLARATION OF ARCHITECTURAL COVENANTS CONDITIONS AND RESTRICTIONS

In 2007, the State Historical Resources Commission listed the SHARKEY BUILDING on the California Register of Historic Places. In recognitions of the building status, the exterior fronting on Main Street (the south facing facade) and fronting on Court Street (the east facing facade) are declared to be "PROTECTED FACADES." As such, the declarations require:

- a) any and all modifications to the PROTECTED FACADES of the SHARKEY BUILDING shall comply with the Secretary of the Interior's "Standards for Rehabilitation," which generally preclude the removal/alteration of historically significant features; and
- b) to the extent reasonably possible, any and all seismic retrofitting and strengthening work shall be performed on the interior of the SHARKEY BUILDING and shall not be visible on the PROTECTED FACADES of the SHARKEY BUILDING (for example, epoxied bolts are to be used when reasonably possible instead of "through the wall" type bolts and washers)

As with the "use restrictions" above, the City may consider – but is not obligated to approve – a waiver to this restriction. The declarations further outline how the City' Design Review process could be used for the evaluation of a request for such a waiver.

The Declaration of Architectural Restrictions is provided as Attachment 4.

5) PARCEL MAP:

A 2-Lot (airspace) Tentative Parcel Map for 630 Court Street was approved by the Zoning Administrator February 1, 2012. This "three dimensional" minor subdivision creates two parcels; one at and above the sidewalk level (to be sold to Southport), and one below, to be retained by the City. The final Parcel map has been prepared, and the City Engineer has approved the documents for signature. The attached resolution authorizes the City Manager to sign the parcel map as the owner, thus completing the subdivision process.

FISCAL IMPACT:

As stated above the purchase price of 610 Court Street from the County is \$378,000, whereas the City purchased 630 Court Street for \$175,000 in 2005. The Southport Land Company intends to purchase both properties at the same time and reimburse the City in the amount of \$533,000.

ACTION:

Adopt resolution on the final disposition of 630 and 610 Court Street approving: 1) A Purchase and Sale Agreement between the City of Martinez and Southport Land and Commercial Company; 2) Declaration of Airspace Plan and Covenants, Conditions and Restrictions for 630 Court Street; 3) Declaration of Use Restrictions; 4) Declaration of Architectural Covenants and Restrictions for 630 Court Street, and authorizing the City Manager to execute all of the above and to also sign, on behalf of Owner a Parcel Map for 630 Court Street.

ATTACHMENTS:

1. Proposed Resolution
2. Purchase and Sale Agreement between the City of Martinez and Southport Land and Commercial Company
3. Declaration of Airspace Plan and Covenants, Conditions and Restrictions for 630 Court Street
4. Declaration of Use Restrictions
5. Declaration of Architectural Covenants, Conditions and Restrictions for 630 Court Street

APPROVED BY:



City Manager

RESOLUTION NO. -12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ APPROVING : (1) A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF MARTINEZ AND SOUTHPORT LAND AND COMMERCIAL COMPANY; (2) DECLARATION OF AIRSPACE PLAN AND COVENANTS, CONDITIONS AND RESTRICTIONS FOR 630 COURT STREET; (3) DECLARATION OF USE RESTRICTIONS; (4) DECLARATION OF ARCHITECTURAL COVENANTS CONDITIONS AND RESTRICTIONS FOR 630 COURT STREET; AND (5) AUTHORIZING THE CITY MANAGER TO EXECUTE ALL OF THE ABOVE AND ALSO SIGN, ON BEHALF OF OWNER A PARCEL MAP FOR 630 COURT STREET

WHEREAS, the City Council pursuant to MMC section 12.40.040 authorizes the City Manager to commence the process of disposition of the properties and 610 and 630 Court Street by negotiated sale based on the fact that the City is not in need of additional office or retail space and is acquiring said property in order to facilitate the return to private use; and

WHEREAS, further disposition of said properties will further economic development in the downtown area consistent with the City's General Plan, Downtown Specific Plan and Zoning for the property as set forth herein; and

WHEREAS, the City has held a public hearing authorizing the addition of the property located at 610 Court Street to the City's Inventory of Real Property as set forth in Martinez Municipal Code Section 12.40.060; and

WHEREAS, the disposition of said properties is for the common benefit of the residents of Martinez, required by public interest and convenience and in compliance with applicable law; and

WHEREAS, on March 25, 2008, the Planning Commission of the City of Martinez, did, by the adoption of Resolution PC08-02 determine that the disposition of 630 Court Street was consistent with the Martinez General Plan; and

WHEREAS, on December 13, 2011, the Planning Commission of the City of Martinez, did, by the adoption of Resolution PC11-12 determine that the disposition of 610 Court Street was consistent with the Martinez General Plan; and

WHEREAS, it has been determined that appropriate limitations on use have been imposed pursuant to the declaration of use restrictions; and

WHEREAS, all documents set forth in Section 12.040.070 and 12.40.080 were available at City Hall at least 10 days prior to the public hearing date; and

NOW, THEREFORE, BE IT RESOLVED that the City Council, based on its independent judgment, does hereby find and resolve as follows:

Section 1. Project exempt from CEQA

- A. The City Council has reviewed and considered the information contained in the record, including but not limited to, all staff reports, all oral and written testimony presented at, or prior to, the hearing on the Project and all other matters deemed relevant prior to adopting this resolution.
- B. The City Council does, based thereon hereby find that the Project is exempt from the requirements of CEQA, including but not limited to Categorical Exceptions: Class 1 - Existing Facilities; Class 12 - Surplus Government Property Sales; Class 15 - Minor and Divisions; Class 32 - In-Fill Development Projects; and Section 15061(b)(3) of the CEQA Guidelines pertaining to the general rule exemption.

Section 2. Consistency with General Plan

- A. The City Council has reviewed and considered the information contained in the Record, including but not limited to, all staff reports, all oral and written testimony presented at, or prior to, the hearing on the Project and all other matters deemed relevant prior to adopting this resolution.
- B. The City Council, based thereon hereby finds that the Project is consistent with the General Plan, in that the project is within the General Plan's Commercial Retail and Services Land Use Designation, were the proposed non-residential uses are appropriate.

Section 3. Consistency with Downtown Specific Plan

- A. The City Council has reviewed and considered the information contained in the Record, including but not limited to, all staff reports, all oral and written testimony presented at, or prior to, the hearing on the Project and all other matters deemed relevant prior to adopting this resolution.
- B. The City Council does, based thereon hereby find that the Project is consistent with the Downtown Specific Plan, in that the project is located within the Downtown Core district of

the Martinez Downtown Specific Plan, where restaurants and office uses are permitted, and that a key policy of the Downtown Core District is to emphasize pedestrian scale specialty commercial and restaurant uses through the rehabilitation and adoptive reuse of older buildings as is being proposed.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council, hereby approves (1) a Purchase and Sale Agreement between the City of Martinez and Southport Land and Commercial Company; (2) Declaration of Airspace Plan and Covenants, Conditions and Restrictions for 630 Court Street; (3) Declaration of Use Restrictions for 630 Court Street (4) Declaration of Architectural Covenants Conditions and Restrictions for 630 Court Street; and (5) authorizing the City Manager to execute all of the above and also sign, on behalf of owner a parcel map for 630 Court Street

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I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at an Regular Meeting of said Council held on the 16th day of May, 2012:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of May 16, 2012 by and between the **City of Martinez**, a general law city, ("Seller") and **Southport Land and Commercial Company**, a California corporation, ("Purchaser").

Recitals

A. Seller owns, or will acquire, the improved real properties commonly known as 610 Court Street and 630 Court Street, Martinez, California, and more particularly described as follows:

610 COURT STREET (APN 373-265-001)

Real property in the City of Martinez, County of Contra Costa, State of California, described as follows:

PARCEL ONE:

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

BEGINNING AT THE MOST NORTHERLY CORNER OF BLOCK 329, SAID POINT BEING THE INTERSECTION OF THE SOUTH LINE OF ESCOBAR STREET WITH THE WEST LINE OF COURT STREET; THENCE FROM SAID POINT OF BEGINNING SOUTHERLY ALONG THE WEST LINE OF COURT STREET, 90 FEET; THENCE WESTERLY AND PARALLEL WITH THE SOUTH LINE OF ESCOBAR STREET, 41 FEET; THENCE NORTHERLY AND PARALLEL WITH THE WEST LINE OF SAID COURT STREET, 90 FEET, MORE OR LESS, TO THE SOUTH LINE OF ESCOBAR STREET; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID ESCOBAR STREET; 41 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

RIGHT OF WAY EMBODIED IN THE DEED TO ANGIE C. BASSI, RECORDED SEPTEMBER 02, 1926, BOOK 48, OFFICIAL RECORDS, PAGE 393, OVER THAT PARCEL OF LAND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF COURT STREET, DISTANT THEREON, 90 FEET SOUTHERLY FROM THE SOUTH LINE OF ESCOBAR STREET; THENCE FROM SAID POINT OF BEGINNING SOUTHERLY ALONG SAID WEST LINE OF COURT STREET, 8 FEET, THENCE WESTERLY AND PARALLEL WITH THE SOUTH LINE OF ESCOBAR STREET, 41 FEET; THENCE NORTHERLY AND PARALLEL WITH SAID WEST LINE OF COURT STREET, 8 FEET; THENCE EASTERLY AND PARALLEL WITH THE SAID SOUTH LINE OF ESCOBAR STREET, 41 FEET TO THE POINT OF BEGINNING.

630 COURT STREET (APN: 373-265-002)

Real property in the City of Martinez, County of Contra Costa, State of California, 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.

B. The Seller is in the process of subdividing 630 Court Street into two (2) airspace lots, with the dividing line between the two lots being a horizontal plane as set by the Declaration of Airspace Plan and Covenants, Conditions and Restrictions attached hereto as Exhibit A; the lot above such plane will be known as Lot 630-A and the lot below said plane will be known as Lot 630-B.

C. The Seller is retaining Lot 630-B at 630 Court Street, described above, and such unit is not included in the sale to Purchaser.

D. The property at 610 Court Street is presently owned by the County of Contra Costa, but will be acquired by Purchaser in an escrow concurrent with, or before, the close of escrow between Seller and Purchaser.

E. The parties wish to provide terms and conditions for Purchaser's purchase of the Property from Seller.

NOW THEREFORE, the parties agree as follows:

Section 1. Property

The property which is the subject of this Agreement (herein collectively the "Property") shall consist of:

- (A) The real property known as 610 Court Street, as described above;
- (B) Lot 630-A within the real property known as 630 Court Street, as described above, but reserving therefrom the easements appurtenant to Lot 630-B as described in the Declaration of Airspace Plan and Covenants, Conditions and Restrictions, attached hereto as Exhibit A; and
- (C) Easements appurtenant to Lot 630-A as described in the Declaration of Airspace Plan and Covenants, Conditions and Restrictions, attached hereto as Exhibit A.

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Section 2. Purchase and Sale

Seller shall sell the Property to Purchaser and Purchaser shall purchase the Property from Seller on the terms and conditions stated in this Agreement.

Section 3. Purchase Prices

(A) The purchase price for the property known as 610 Court Street, as described above, shall be THREE HUNDRED SEVENTY EIGHT THOUSAND DOLLARS (\$378,000).

(B) The purchase price for the property known as Lot 630-A at 630 Court Street, described above, shall be ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000).

(C) The sum of the two purchase prices in subparagraphs (A) and (B), above, may be hereinafter collectively referred to as the ("Purchase Prices").

(D) The Purchase Prices shall be paid by Purchaser all cash to Seller at Close of Escrow (as defined below). The Purchase Prices are subject to decrease as provided in Section 7.B.(b)(iii) of this Agreement, below.

Section 4. Escrow and Closing

A. This transaction shall be completed through an escrow or escrows established with:

First American Title Insurance Company
National Commercial Services
Escrow Officer: Dian Blair
1737 North First Street, Suite 500
San Jose, CA 95112

Phone: (925)372-7798
Phone: (408)451-7828
Email: dblair@firstam.com

B. Prior to the Close of Escrow (as defined below) Seller shall:

(a) file a Minor Subdivision Map subdividing the property at 630 Court Street into the above described Lot 630-A and Lot 630-B.

(b) record a Declaration of Airspace Plan and Covenants, Conditions and Restrictions in the form attached hereto as Exhibit A.

C. Concurrent with the Close of Escrow the following documents, fully executed by both Seller and Purchaser, shall be recorded:

(a) A "Declaration of Use Restrictions" for 610 Court Street and 630 Court Street, in the form attached hereto as Exhibit B, however if 610 Court Street cannot be acquired by Seller prior to or concurrent with the Close of Escrow (as defined below), then the "Declaration of Use Restrictions" shall be substantially in the form attached hereto as Exhibit B with all references to 610 Court Street (also known as the "OLD PUBLIC DEFENDER BUILDING") deleted;

(b) A "Declaration of Architectural Covenants, Conditions & Restrictions" for 630 Court Street, in the form attached hereto as Exhibit C; and

(c) A "Grant Deed" for the property known as 610 Court Street in a form acceptable to the company issuing title insurance;

(d) A "Grant Deed" for the property known as Lot 630-A, that describes and reserves the easements referred to in the Declaration of Airspace Plan and Covenants, Conditions and Restrictions, in a form acceptable to the company issuing title insurance.

E. Each party shall promptly deposit all funds and documents, including but not limited to escrow instructions, as required by the escrow holder to complete this transaction.

F. The transaction by which Lot 630-A is to be transferred to Purchaser shall close before, or concurrent with, the transaction by which 610 Court Street is transferred to Purchaser.

Section 5. Close of Escrow

The escrow shall close ("Close of Escrow") as soon as possible, but no later than August 10, 2012.

Section 6. Costs and Prorations

Costs to be Paid in Escrow

A. The Purchase Prices for the Property are net to Seller. Therefore, Purchaser shall pay all fees, charges and costs charged by, or collected by, the escrow, including but not limited to escrow fees, documentary transfer taxes, recording fees, title fees and the premium for the title insurance policy referred to in Section 8 hereof.

B. Furthermore, regarding the escrow by which 610 Court Street is acquired from the County, Purchaser shall pay all fees, charges and costs charged by, or collected by, the escrow, including but not limited to escrow fees, documentary transfer taxes, recording fees and title fees. (There shall be no title insurance purchased when the Seller acquires 610 Court Street from the County.) In the sole discretion of Purchaser, such fees, charges and costs may be added to the Purchase Prices.

C. Prorations of real property taxes and assessments, rents, interest, and other expenses of the Property shall be prorated as of the date of recordation of the deed, except the rents on Lot 630-A shall not be prorated by the escrow. The parties acknowledge that the tenant in possession of Lot 630-A has not deposited any security deposit with Seller.

D. In addition to the costs described above in subsections "A" through "C," inclusive, Purchaser shall pay to Seller, at close of escrow, the sum of Two Thousand Dollars (\$2,000) towards all fees and costs incurred by the City in disposing of the Property, as provided in Chapter 12.40 of the Martinez Municipal Code. Pursuant to Martinez Municipal Code section 12.40.070, all such costs in excess of \$2,000.00 shall be deemed waived by the City Council's approval of this Agreement.

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Costs Which May Be Due After Close of Escrow

E. Purchaser hereby indemnifies and holds Seller harmless for all costs and expenses, including reasonable attorney fees, that Seller may be obligated to pay arising from any claim under Government Code section 7260, et seq., with respect to the Property. With respect to any such claim, Purchaser may defend Seller through an attorney of Purchaser's choice, but subject to the approval of Seller, which approval shall not be unreasonably withheld. This subsection "E" shall survive the Close of Escrow, delivery of the deeds and the transfer of the Property.

Section 7. Contingencies & Lack of Contingencies

A. Except as noted in Section 7.B., below, Seller's obligations under this Agreement to sell 610 Court Street to Purchaser are conditioned upon Seller acquiring marketable title to the property at 610 Court Street, which is presently owned by the County of Contra Costa.

B. If Seller is unable, prior to the Close of Escrow, to acquire marketable title to 610 Court Street, then Purchaser shall have the option to either:

(a) cancel this Agreement in whole; or

(b) elect to proceed with this Agreement, in which event: (i) Purchaser shall accept a conveyance of Lot 630-A only; (ii) all references to 610 Court Street shall be deleted from the Declaration of Use Restrictions; and (iii) the Purchase Prices shall be reduced to a total of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000.00).

C. Seller's obligations under this Agreement to sell 610 Court Street to Purchaser are expressly conditioned upon the transaction for Lot 630-A closing before, or concurrent with, the sale of 610 Court Street to Purchaser.

D. In accordance with the authority granted by Government Code section 66499.30(e), Seller's obligations under this Agreement are expressly conditioned upon the filing of a Parcel Map subdividing 630 Court Street into Lot 630-A and Lot 630-B.

E. Purchaser's obligations under this Agreement are not conditioned on Purchaser obtaining any financing. This is an all cash transaction.

Section 8. Title

Seller shall convey title to the Property subject only to:

(a) real estate taxes (including supplemental taxes, if any);

(b) the documents referred to in Section 4.B. and 4.C. of this Agreement, above;

(c) all matters disclosed by the Preliminary Report for 610 Court Street dated as of December 01, 2011 at 7:30 A.M. issued by First American Title Insurance Company under Order Number NCS-516944-SC; and

(d) all matters disclosed by the Preliminary Report for 630 Court Street dated as of December 19, 2011 at 7:30 A.M., Amended January 9, 2012, issued by First American Title Insurance Company under Order Number NCS-519988-SC.

Title in the form of a California Land Title Association or American Land Title Association policy of title insurance shall be issued by the title company and paid by Purchaser.

Purchaser shall take title in the following form:

“Southport Land and Commercial Company, a California corporation.”

Section 9. Review of Property, Test, and Surveys

Purchaser, having retained numerous experts to review the Property since becoming a party to that certain “Exclusive Right to Negotiate Agreement” on June 17, 2011, is fully aware of the condition of the Property and the improvements situated thereon. Accordingly, Purchaser waives any further right to inspect the Property and conduct further tests thereon.

Purchaser is aware that the building at 630 Court Street is an unreinforced masonry structure in need of retrofitting work.

Section 10. Disclaimers

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, the property lines related thereto, or any other past, present or future matter whatsoever relating to the Property, 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 "Seller's knowledge" or "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 Phillip Vince, City Manager of the City of Martinez that would give him actual knowledge of the existence of a state of facts contrary to that indicted 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. 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 except as to warranties and representations made and given by Seller as set forth herein. 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, (2) shall have investigated, to Buyer's complete satisfaction, all items, matters and circumstances which Buyer wishes to investigate. 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 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 or proposed governmental laws, regulations and requirements (including but not limited to those pertinent to the any required 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. Notwithstanding anything to the contrary stated herein, 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. Buyer hereby waives, releases and forever discharges Seller, Seller's agents, employees, and any other person acting on behalf of Seller, of and from any claims, actions, causes of action, demands, rights, damages, costs, and liabilities of any sort, known or unknown, foreseen or unforeseen, which Buyer now has or which may arise in the future on the account of or in any way growing out of or connected with the physical or environmental condition of the Property or any Applicable Laws. This section shall survive the Close of Escrow, delivery of the deeds and the transfer of the Property.

Section 11. Changes During Transaction

During the pendency of this transaction, Seller agrees that no changes in the existing leases or rental agreements shall be made, nor new leases or rental agreements entered into, nor shall any substantial alterations or repairs be made or undertaken to the Property without the written consent of the Purchaser.

Section 12. Destruction of Improvements

If the improvements of the Property are destroyed, materially damaged, or found to be materially defective as a result of such damage prior to Close of Escrow, Purchaser may terminate the transaction by written notice delivered to Seller, and all unused Deposits shall be returned to Purchaser.

Section 13. Withholding

Seller is neither a "foreign person" under FIRPTA nor a non-resident under California Revenue and Taxation Code, section 18662.

Section 14. Commissions

A. Except as noted in Section 14.B. of this Agreement, below, each party represents and warrants to the other party that no broker or finder or other real estate agent is entitled to any commission, finder's fee or other compensation resulting from any action on its part. Purchaser and Seller each agree to indemnify the other and defend and hold harmless the other party from and against any loss, cost, or expense, including attorney's fees, incurred by such party, and against any claims, causes of action or the like brought by any broker, finder or similar agent for a commission or fee on account of this Agreement.

B. Purchaser is represented in this transaction by David R. Fischer, broker, and any commission or fee paid to Mr. Fischer at the Close of Escrow shall be paid solely by Purchaser and be at no cost to the Seller.

Section 15. [Reserved.]

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Section 16. Purchaser's Obligation to Perform Earthquake Retrofit Work

Purchaser covenants, in a timely manner, to perform all earthquake retrofitting work necessary to bring the structure at 630 Court Street up to the minimum standard required by the City of Martinez Municipal Code as such standard exists on the date of acquisition by Purchaser. The structure at 630 Court Street shall not be occupied until such earthquake retrofitting work has been completed. This covenant shall survive the Close of Escrow, delivery of the deeds and the transfer of the Property. All such work shall be performed at no cost to Seller and/or the owner of Lot 630-B.

Section 17. Art Gallery

(A) Purchaser shall accept title to Lot 630-A subject to the rights of the tenant under that certain document titled "MONTH TO MONTH LEASE FOR 630 COURT STREET" dated May 20, 2007, entered into between the Seller and the Martinez Art Association, a copy of which is attached hereto as EXHIBIT D.

(B) Purchaser shall allow the Art Gallery which currently occupies part of 630 Court Street (the "Gallery"), to occupy space in 610 Court Street at \$1 per month rent, terminable upon 30 days notice by either the Gallery or Purchaser, with the non-binding intent on the part of Purchaser that the Gallery can stay until the space is rented to a commercial tenant or occupancy of the space is needed for renovations to the building. Purchaser may require the Gallery to sign a formal lease, to pay for its utility usage, and to provide adequate liability insurance. The exact location and size of the unit or units to be made available to the Gallery shall be at the Purchaser's discretion.

Section 18. Effect of Headings

The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

Section 19. Entire Agreement

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties.

Section 20. Counterparts

This Agreement may be executed simultaneously in one (1) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one (1) and the same instrument.

Section 21. Binding on Successors and Assigns

This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective legal representatives, successors, and assigns.

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Section 22. Attorney's Fees

If any legal action, arbitration or other proceeding is brought involving a dispute between the parties or arising out of the execution of this Agreement or sale of the Property, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees incurred in such action or proceeding, in addition to any other relief to which such party may be entitled.

Section 23. 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 in this Agreement.

Section 24. Notices

All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the person to whom notice is to be given or, on the second (2nd) day after mailing if mailed to the party to whom notice is to be given, by First Class Mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To Seller at: CITY OF MARTINEZ
Attn: PUBLIC WORKS DIRECTOR
525 HENRIETTA STREET
MARTINEZ, CA 94553

To Purchaser at: SOUTHPORT LAND AND COMMERCIAL COMPANY
Attn: DAVID R. FISCHER
1017 GREEN LANE
MARTINEZ, CA 94553

Any party may change its address for purposes of this paragraph by giving the other party written notice of the new address to the other party at the address contained herein.

Section 25. Governing Law / Venue

(A) This Agreement has been negotiated and entered into in the State of California and shall be governed by, construed and enforced in accordance with the laws of the State of California and according to its fair meaning, and not in favor of or against any party.

(B) The venue for any action or proceeding based upon this Agreement shall be Contra Costa County, California.

Section 26. Severability

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all the other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.

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Section 27. Survival of Representations and Warranties

All covenants, representations, warranties, and other agreements under this Agreement shall survive the Close of Escrow, delivery of the deeds and the transfer of the Property.

Section 28. Time is of the Essence

Time is of the essence and performance of this Agreement in respect to all provisions of this Agreement that specify a time for performance, and failure to comply with this provision shall be a material breach of this Agreement.

Section 29. Saturdays, Sundays, and Holidays

If any date by which an election or a notice must be given falls on a Saturday, Sunday or holiday, then the date by which an election or notice must be given is extended to 5:00 p.m. on the next business day following such Saturday, Sunday or holiday.

Section 30. Waiver

No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of a provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law.

Section 31. Attached Exhibits

The following exhibits are attached hereto and incorporated herein by reference:

- EXHIBIT A ... form of Declaration of Airspace Plan and Covenants, Conditions and Restrictions;
- EXHIBIT B ... form of "Declaration of Use Restrictions" for 610 Court Street and 630 Court Street.
- EXHIBIT C ... form of "Declaration of Architectural Covenants, Conditions & Restrictions" for 630 Court Street;
- EXHIBIT D ... document titled "MONTH TO MONTH LEASE FOR 630 COURT STREET" dated May 20, 2007, entered into between the Seller and the Martinez Art Association.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SELLER:

CITY OF MARTINEZ, a general law city

By: _____
Name: Philip Vince, City Manager

PURCHASER:

Southport Land and Commercial Company

By: _____
Name: David R. Fischer, President

[Attach exhibits]

Karen

**MONTH TO MONTH LEASE
FOR 630 COURT STREET**

This Lease (Lease) dated as of the 20th day of May, 2007 is entered into by and between the City of Martinez, a Municipal Corporation (Lessor) and The Martinez Art Association, a 501(c)(3) non-profit corporation (Lessee).

Section 1. Premises.

Lessor leases to Lessee and Lessee leases from Lessor that certain real property located at 630 Court street, Martinez California, as more particularly described in Exhibit A, attached hereto and incorporated by reference (the "Premises").

Section 2. Term and Termination.

(a) The term of this Lease is month to month (Term), commencing on the 3rd day of May 2007 (Commencement Date).

(b) This Lease shall be terminable by Lessor (i) immediately upon the occurrence of an Event of Default as provided in Section 8 hereof, (ii) upon thirty (30) days written notice at any time in the exercise of the sole and absolute discretion of Lessor or (iii) as otherwise expressly provided in this Lease.

Section 3. Rental Terms and Security Deposit.

(a) Lessee shall pay to Lessor, as Rent for the Premises the sum of One Dollar (\$1.00) per month, payable in advance to Lessor on or before the first day of each and every month.

Section 4. Use.

The Premises are to be used for the temporary display and sale of art of members of Lessee's organization and no part of the Premises shall be used for any different purpose. Lessee shall not do or permit any act to be done that will increase the existing rate or cause cancellation of insurance on the Premises. Lessee shall comply with all statutes, ordinances, regulations, and other requirements of all governmental entities that pertain to the occupancy or use of the Premises, and shall at all time maintain the Premises in a good order with all due care for the safety and cleanliness of the Premises.

Section 5. Alterations.

**EXHIBIT D
TO PURCHASE & SALE AGREEMENT**

(a) Lessor and Lessee agree that Lessee shall not make or suffer to be made any alterations, additions or improvements with respect to the Premises, without the prior written consent of Lessor and if requested by Lessor, without first submitting a program of construction or alteration and plans and specifications therefore. Any alteration to the Premises without the prior written consent of Lessor shall be a breach of this Lease and, at the option of Lessor, shall cause a termination of this Lease. Lessee shall keep the Premises and any improvements located thereon free and clear from any and all liens and claims arising out of any work performed, materials furnished or obligations incurred by or for the account of Lessee.

(b) Unless Lessor shall indicate in writing at any time during the term of this Lease, any alterations, additions or improvement made or suffered to be made by Lessee with respect to the Premises shall on the termination of the Lease become a part of the Premises and the property of Lessor. Upon notice to Lessee, Lessee shall at its sole cost and expense forthwith and with all due diligence remove any alterations, additions or improvements designated by Lessor and Lessee shall forthwith and with all due diligence at its sole cost and expense repair any damage to the Premises caused by such removal.

Section 6. Possession.

Lessee acknowledges that the Premises are currently being actively marketed by Lessor for development. Lessee agrees that it shall not have exclusive possession of the Premises and that Lessor shall have the right at any time, with or without notice, to enter the Premises for any reason whatsoever, in the sole and absolute discretion of the Lessor. In this regard Lessee acknowledges that Lessee's possession of all or a part of the Premises may be interrupted and disrupted by Lessor and that Lessee shall have no claim whatsoever against Lessor as a result of said interruption and disruption.

Section 7. Insurance.

Lessee agrees to and shall at its own cost and expense procure and maintain during the entire Lease Term and any extension thereof (1) commercial general liability insurance covering the Premises and their surrounding areas in an amount of \$2 million combined single limit and with a Best's rating of A-:VII or better. Such commercial general liability insurance shall (a) be procured from an insurer authorized to do business in California and approved by Lessor; (b) provide primary and not excess coverage; (c) name Lessor as an additional insured; (d) waive subrogation rights, if any, which the insurer may have against Lessor by reason of any claim, liability, loss, or expense as described herein; (e) require that Lessor be given at least thirty (30) days' written notice before any such insurance can be canceled or changed with respect to parties, coverage, or limits of liability; and (f) include cross-liability provisions; and (2) Workers' Compensation coverage covering all employees, volunteers and other persons working within the Premises with limits of \$1,000,00.00 per occurrence. Lessee shall, prior to the Commencement Date, deliver to Lessor a certificate of insurance in the form attached as Exhibit B together with satisfactory evidence that the premiums have been paid, and before each expiration of any such insurance coverage during the Lease Term and any extension thereof shall deliver to Lessor

EXHIBIT D TO PURCHASE & SALE AGREEMENT

satisfactory evidence that such insurance has been renewed and that the required premium or premiums therefor have been paid.

Lessee shall release Lessor its officials, employees, representatives and agents, from any claims for damage to any person or to the Premises or to the Lessee's personal property contained therein caused by, or that result from, risks insured against under any insurance policies carried by Lessor and in force at the time of any such damage. Lessee shall cause each insurance policy obtained by Lessee to provide that the insurance company waives all right of recovery by way of subrogation against Lessor in connection with any damage covered by any Lessor policy. Lessor shall not be liable to Lessee for any damage caused or any of the risks insured against under any insurance policy required by Section 7.

Section 8. Default.

Each of the following shall be an Event of Default under this Lease:

- (a) If Lessee fails within ten (10) days after written notice to correct any breach or default of the other covenants, terms, or conditions of this Lease;
- (b) If Lessee vacates, abandons, or surrenders the Premises prior to the end of any Term.

Section 9. Remedies.

Upon the occurrence of an Event of Default under this Lease by Lessee, Lessor is entitled at Lessor's option to the following:

- (a) to reenter immediately, and retake exclusive possession of the Premises;
- (b) to continue this Lease in force or to terminate it at any time;
- (c) to recover from Lessee the damages described in Civil Code § 1951.2(a)(1), 1951.2(a)(2), 1951.2(a)(3), and 1951.2(a)(4), the provisions of which are expressly made a part of this Lease;
- (d) to restore the Premises to the same condition as received by Lessee, or to alter the Premises to make them suitable for reletting, all at Lessee's expense; and
- (e) to enforce by suit or otherwise all obligations of Lessee under this Lease and to recover from Lessee all remedies now or later allowed by law.

Any act that Lessor is entitled to do in exercise of Lessor's rights upon an Event of Default may be done at a time and in a manner deemed reasonable by Lessor in Lessor's sole and absolute discretion, and Lessee irrevocably authorizes Lessor to act in all things done on Lessee's account.

EXHIBIT D TO PURCHASE & SALE AGREEMENT

Section 10. Maintenance and Repairs.

Lessee acknowledges that the Premises are in an "as is" condition as of the Commencement Date and that the Premises consist of an unreinforced masonry building subject to severe damage and or collapse in a seismic event. Lessee further acknowledges that the Premises are not compliant with current building code standards, including, but not limited to building and fire codes and state and federal access codes, including, but not limited to, the Americans with Disabilities Act. Lessee shall have no claim whatsoever against Lessor as a result of said condition of the Premises and Lessee shall indemnify Lessor against all claims relating to the condition of the Premises in accordance with Section 17 hereof. Lessee agrees to maintain the Premises, and all portions thereof, in as good and safe a condition as that existing on the Commencement Date, including, but not limited to, all interior surfaces of walls, windows, plate glass, doors, and ceilings, and all fixtures or equipment installed by Lessee. Lessee promises to surrender the Premises at termination of this Lease in at least the same condition as that existing on the Commencement Date, except for normal wear and tear and except for changes authorized by Lessor and not required to be removed pursuant to the terms of this Lease. Lessee agrees to make no repairs at the expense of Lessor. Lessor shall charge and Lessee shall pay all of the City of Martinez's usual and customary fees for any licenses or permits required in connection with such maintenance and repair work.

Lessor and Lessee agree that Lessor shall have no responsibility whatsoever for the maintenance and repair of the Premises. All responsibility for maintenance and repair of the Premises during the Term of this Lease shall be the responsibility of Lessee. Lessee specifically waives the right to make any repairs or cause to be made any repairs or maintenance at Lessor's expense under any law, statute or ordinance now or hereafter in effect. Lessee hereby accepts the Premises on an "as is" basis without the benefit of any express or implied warranty or representation from Lessor.

Lessee shall not cause, maintain or permit any nuisance in, on or about the Premises or commit or suffer to be committed any waste in or upon the Premises. Lessee shall not permit garbage or other refuse to accumulate or to gather in or about the Premises except in suitable covered garbage receptacles. All parts, equipment, garbage, refuse and other debris shall be stored or discarded in such a manner so as not to be visible by persons located off the Premises.

Section 11. Estoppel Certificate.

At any time within ten (10) days after request by Lessor, Lessee shall execute, acknowledge, and deliver to Lessor, without charge, a written statement certifying that this Lease is unmodified and in full force, or if there have been modifications, that it is in full force as modified. The statement shall also contain the date of commencement of this Lease, the dates to which the rent and any other charges have been paid in advance, and any other information Lessor reasonably requests. It is acknowledged by Lessee that any statement is intended to be delivered by Lessor to and relied upon by prospective purchasers, mortgagees, deed of trust beneficiaries, and assignees.

EXHIBIT D TO PURCHASE & SALE AGREEMENT

Section 12. Severability.

The invalidity of any portion of this Lease shall not affect the remainder, and any invalid portion shall be deemed rewritten to make it valid so as to carry out as near as possible the expressed intention of the parties.

Section 13. Assignment or Subletting.

(a) Lessee shall not assign the Lease or any interest hereunder, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any person other than the agents and employees of Lessee to occupy the Premises or any portion thereof without the prior written consent of the Lessor, which consent may be withheld for any reason or no reason whatsoever in the sole and absolute discretion of Lessor. Lessee shall notify Lessor, in writing, of its intent to sublease any portion of the Premises thirty (30) days prior to any such sublease. In the event that Lessor does not approve said sublease, in writing, within said thirty (30) day period, Lessor's consent shall be deemed to be denied. Lessor shall have the right to review and approve any sublease or assignment document relating to the Premises or any portion thereof and not notice of intent to sublease shall be considered delivered to Lessor in accordance with this paragraph unless said notice contains a full and complete copy of any proposed sublease document. Lessee will reimburse Lessor for any legal fees or for any other expense incurred as a consequence of such assignment or subletting. The consent of Lessor to one assignment, subletting or occupation by another person or entity shall not be deemed to be a consent by Lessor to any subsequent assignment, subletting or occupation by another person or entity. Any such assignment or subletting without such consent shall be void and shall, at the option of Lessor, be deemed to be an Event of Default under the provisions of this Lease. Neither this Lease nor any interest herein shall be assignable, as to the interest of Lessee, by operation of law, without the prior written consent of Lessor.

(d) Irrespective of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting. In the event of default by an assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of exhausting remedies against such assignee or successor.

Section 14. Entry.

Lessor reserves the right, at any time, to enter the Premises at reasonable times to carry out any building management or business purpose in or about the building, without any abatement of rent or liability to Lessee. This right shall be in addition to and not exclusive of any right of entry or inspection that Lessor may have in its capacity as a local governmental entity.

EXHIBIT D TO PURCHASE & SALE AGREEMENT

Section 15. Signs.

Lessee shall not place or permit to be placed in, upon, about, or outside the Premises any sign, notice, drapes, shutters, blinds, or display of any kind, without the prior written consent of Lessor. Lessee shall erect and maintain any and all signs required by Lessor to be erected relating to the condition of the building and its status as an unreinforced masonry building.

Section 16.

Intentionally Omitted

Section 17. Indemnity.

(a) Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Premises or from any activity, work, or other thing done, permitted or suffered by the Lessee in or about the Premises, and the condition of the Premises, including but not limited, claims resulting from the unreinforced masonry condition and lack of compliance with federal, state and local codes, rules and regulations, including but not limited to building and fire codes and accessibility laws and regulations and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any act or omission of Lessee, or any officer, agent, employee, contractor guest, or invitee of Lessee, and from and against all costs, attorney's fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon, and, in any case, any action or proceeding brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor. Lessor or its agents shall not be liable for any damage to property entrusted to Lessee's employees, nor for loss or damage to any property by theft or otherwise, nor for any injury to or damage to persons or property resulting from Lessee's use of the Premises.

(b) Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation and Lessee shall indemnify and hold harmless Lessor, its officers, agents and employees from and against any and all losses, liabilities, claims and/or costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs and expenses, attorney's fees and consulting and engineering and construction costs) arising from or in any way related to a breach of this warranty and representation or as a result of the disposal, storage, generation or release on the Premises at any time during the term of this Lease of any "Hazardous Materials", except to the extent caused by the gross negligence or wilful misconduct of Lessor or any Lessor indemnitee regardless of whether such liability, cost or expense arises during or after the Lease Term. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Premises due to Lessee's use and occupancy thereof, Lessee, at Lessee's expense, shall clean

EXHIBIT D TO PURCHASE & SALE AGREEMENT

all property affected thereby to the satisfaction of Lessor and any governmental body having jurisdiction thereover.

(c) Lessor shall indemnify, hold harmless, and defend Lessee from and against all losses, liabilities, claims, claims and/or costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) incurred by Lessee as a result of the presence, disposal, storage, generation or release on the Premises at any time prior to Lessee's possession of the Premises of any Hazardous Materials, except to the extent caused by the gross negligence or wilful misconduct of Lessee or any officer, agent, employee, contractor, guest, or invitee of Lessee regardless of whether such liability, cost or expense arises during or after the Lease Term.

As used in this paragraph, "Hazardous Material" shall mean any substance, chemical or waste that is identified as hazardous material hazardous substance hazardous waste or toxic substance in any federal, state or local law or regulation. Lessee acknowledges that Lessee is not looking to or relying upon Lessor to disclose any matters which Lessor might be required to disclose under California Health and Safety Code Section 25359.7 and that all such matters have been investigated by Lessee to Lessee's satisfaction. In this regard, Lessee specifically waives any and all rights it may have pursuant to the provisions of California Health and Safety Code Section 25359.7.

(d) The indemnifications provided pursuant to this Section 17 shall survive the termination of this Lease.

Section 18.

Intentionally Omitted

Section 19. Notices.

All notices, payments, or other communications by either party to the other under this Lease shall be deemed to have been given on the date of service if served personally or on the second business day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To Lessor: City of Martinez
525 Henrietta Street
Martinez, CA
ATTN: City Manager

To Lessee: Martinez Art Association
P.O. Box L304
MARTINEZ, CA. 94553

EXHIBIT D TO PURCHASE & SALE AGREEMENT

Either party may change its address by providing written notice to the other as provided herein.

Section 20. Attorney Fees.

In any action or proceeding by either party to enforce this Lease or any provision of this Lease, the prevailing party shall be entitled to recover reasonable attorney fees and all other costs incurred.

Section 21. Legal Effect.

All obligations of Lessee are expressly made conditions of this Lease, any breach of which shall, at the option of Lessor, terminate this Lease.

Section 22. Titles.

The titles or headings to paragraphs shall have no effect on interpretation of provisions.

Section 23. Successors.

The provisions of this Lease shall apply to and ~~bind the heirs,~~^{CR} successors, and assigns of the parties. _{KMT}

Section 24. Waiver.

Any waiver given hereunder by Lessor must be in writing and shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition herein waived. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted, irrespective of Lessor's knowledge of such preceding breach at the time of the acceptance of such rent. The failure of Lessor to enforce a provision of this Lease shall not be deemed a waiver for any purpose.

Section 25. Services and Utilities.

Lessee shall reimburse Lessor for the full cost of providing gas, electricity, heating, water, sewer, any other utilities to the Premises within ten (10) days of demand therefor. Lessee shall be responsible for providing telephone, cable and janitorial services at Lessee's sole cost and expense. Lessor shall not be liable for, and Lessee not be entitled to any reduction of rent by reason of the unavailability of any utility service to the Premises.

Section 26. Entire Agreement.

This Lease, together with each attached exhibits, shall constitute the entire agreement of the parties, and may be modified only by a writing signed by the parties.

**EXHIBIT D
TO PURCHASE & SALE AGREEMENT**

Section 27. Taxes.

Lessee shall pay all personal property taxes assessed against the Lessee's property located on the Premises. Notice is hereby given pursuant to California Revenue and Taxation Code Section 107.6, that the interest granted to Lessee pursuant to this Lease to occupy the Premises may create a possessory interest in Lessee subject to property taxation and Lessee may be subject to the payment of property taxes levied on such interest.

Section 28. Time of the Essence.

Time is of the essence in the performance of Lessee's obligations under this Lease.

Section 29. Governing Law.

This Lease shall be governed by and construed in accordance with California law. Venue shall be in the County of Contra Costa.

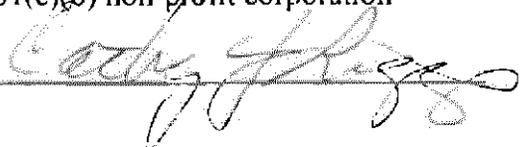
Section 30. Sale or Lease of Premises By Lessor.

In the event of any sale or Lease of the Premises, Lessor shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale and this Lease shall immediately terminate. Lessee shall thereupon deliver immediate possession of the entirety of the Premises to Lessor.

The parties have executed this Lease on the date first written above.

Lessee:

The Martinez Art Association,
a 501(c)(6) non-profit corporation

By: 

Attest:



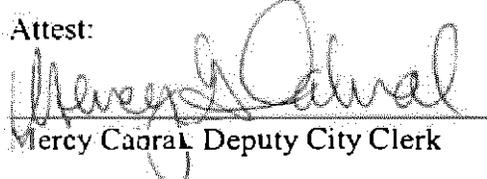
Lessor:

City of Martinez, A Municipal Corporation

By: 

Donald Blubaugh, City Manager

Attest:


Mercy Cabral, Deputy City Clerk

**EXHIBIT D
TO PURCHASE & SALE AGREEMENT**

CITY OF MARTINEZ
ATTN: PUBLIC WORKS DIRECTOR
525 HENRIETTA ST.
MARTINEZ, CA 94553

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 373-265-002

DECLARATION OF AIRSPACE PLAN
AND
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
630 COURT STREET, MARTINEZ, CALIFORNIA

This Declaration (hereinafter referred to as the "DECLARATION"), made on May 16, 2012, by the **CITY OF MARTINEZ**, a general law city, (hereinafter referred to as "DECLARANT"), is made with reference to the following recited facts:

A. Location of Property. DECLARANT is the owner of that certain real property (the "PROPERTY") located in the City of Martinez, County of Contra Costa, State of California, commonly known as 630 Court Street, and more particularly 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.

B. Intention. DECLARANT intends to convert the PROPERTY into two (2) airspace lots consisting of separate interests in the PROPERTY.

C. Mutually Beneficial Restrictions. DECLARANT intends by this document to impose upon the PROPERTY mutually beneficial restrictions under a general plan of improvement for the benefit of all of the owners of airspace lots, and their successors and assigns.

NOW, THEREFORE, DECLARANT hereby declares that the PROPERTY shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the PROPERTY for the purposes of: (a) enhancing and protecting the value and attractiveness of the PROPERTY, and every part of it; and (b) dividing the PROPERTY into airspace lots. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants that run with the land and are binding upon DECLARANT and its successors and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the PROPERTY.

ARTICLE 1: DEFINITIONS AND RULES OF INTERPRETATION

SECTION 1.01. PREVIOUSLY DEFINED TERMS.

As used in this DECLARATION the terms "DECLARATION," "DECLARANT" and "PROPERTY" shall have the definitions given to those terms in the recitals, above.

SECTION 1.02. DEFINITION OF "SHARKEY BUILDING."

As used in this DECLARATION the term "SHARKEY BUILDING" shall mean that certain mostly brick building, commonly known as the "Sharkey Building," containing two (2) stories above the level of the adjacent sidewalk and a basement/crawlspace below the level of the adjacent sidewalk, and situated upon the PROPERTY.

SECTION 1.03. DEFINITION OF "STORY OF A BUILDING."

As used in this DECLARATION the term "STORY OF A BUILDING" shall mean a set of rooms on the same level of a building.

SECTION 1.04. DEFINITION OF "SIDEWALK LEVEL STORY."

As used in this DECLARATION the term "SIDEWALK LEVEL STORY" shall mean a STORY OF A BUILDING with an entrance or exit onto a street level sidewalk.

SECTION 1.05. DEFINITION OF "LOT 630-A."

As used in this DECLARATION the term "LOT 630-A" shall mean all that portion of the PROPERTY lying above a horizontal plane of Elevation 18.75 above sea level, North American Vertical Datum of 1988 (NAVD 88).

SECTION 1.06. DEFINITION OF "LOT 630-B."

As used in this DECLARATION the term "LOT 630-B" shall mean all that portion of the PROPERTY lying below a horizontal plane of Elevation 18.75 above sea level, North American Vertical Datum of 1988 (NAVD 88).

SECTION 1.07. DEFINITION OF "AIRSPACE LOT" AND "AIRSPACE LOTS."

(A) As used in this DECLARATION the term "AIRSPACE LOT" shall mean "LOT 630-A" or "LOT 630-B."

(B) As used in this DECLARATION the term "AIRSPACE LOTS" shall mean "LOT 630-A" and "LOT 630-B."

SECTION 1.08. DEFINITION OF "PERSON."

As used in this DECLARATION the term "PERSON" shall mean a natural person, corporation, partnership, limited partnership, limited liability company, joint venture, public entity, trust, association or other entity.

SECTION 1.09. DEFINITION OF "CONTRACT OF SALE."

As used in this DECLARATION the term "CONTRACT OF SALE" shall mean an "installment land contract" as that term is used in the opinion issued in the case of Tucker v. Lassen Sav. & Loan Assn. (1974) 12 Cal.3d 629.

SECTION 1.10. DEFINITION OF "OWNER."

As used in this DECLARATION the term "OWNER" shall mean the record holder of fee simple title to an AIRSPACE LOT, expressly excluding: (a) PERSONS having any interest merely as security for the performance of an obligation until such person obtains fee title thereto; and (b) PERSONS who have a leasehold interest in an AIRSPACE LOT. If an AIRSPACE LOT is sold under a recorded CONTRACT OF SALE, the purchaser under the contract of sale, rather than the holder of the fee interest, shall be considered the "OWNER" from and after the date of recording of the contract in the Office of the County Recorder of Contra Costa County, California.

SECTION 1.11. DEFINITION OF "CPI."

As used in this DECLARATION the term "CPI" shall mean and refer to the Consumer Price Index (1982/84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco/Oakland area. In the event the computation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used.

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SECTION 1.12. DEFINITION OF "SEWER."

As used in this DECLARATION the term "SEWER" shall mean all pipes, clean-outs, P-traps, grease traps, grease interceptors, floor drains, pumps, floor sinks, and similar devices for, or incidental to, the conveyance of human waste and/or food waste to the public sanitary system.

SECTION 1.13. DEFINITION OF "UTILITIES."

As used in this DECLARATION the term "UTILITIES" shall mean utilities of all types, whether public, quasi-public or private, including but not limited to: (a) electricity; (b) natural gas; (c) communications (such as telephone, television and internet); (d) SEWER; (e) domestic water; (f) recycled non-potable irrigation water; and (g) fire suppression water. Said term shall also include all necessary or convenient pipes, valves, risers, conduits, wires, boxes, vaults, meters, cables, hangers, fasteners and similar devices therefor.

SECTION 1.14. DEFINITION OF "FOUNDATION."

As used in this DECLARATION the term "FOUNDATION" shall mean all footings, stem walls, basement walls, posts, pillars, pilasters, columns, piers, grade beams and similar construction features of the SHARKEY BUILDING which, from time to time, are necessary or convenient to support the SHARKEY BUILDING upon the soil of the PROPERTY.

SECTION 1.15. DEFINITION OF "EARTHQUAKE REINFORCEMENT."

As used in this DECLARATION the term "EARTHQUAKE REINFORCEMENT" shall mean all moment frames, strong-backs, beams, shear walls, sheathing, diaphragms, cross-braces, blocking, bolts, washers, rods, ties, connectors, anchors, hold-downs, angle clips, and similar construction features installed, from time to time, to comply with any recognized standard for the earthquake reinforcement of structures, including but not limited to: (a) minimum standards adopted by statutes; (b) minimum standards adopted by local ordinances; and (c) recognized standards that exceed such minimum standards.

SECTION 1.16. DEFINITION OF "MATERIALLY DAMAGED."

As used in this DECLARATION the term "MATERIALLY DAMAGED" shall mean and refer to any damage for which the cost of repair or reconstruction, as determined by bids solicited and obtained from at least two (2) licensed contractors selected by the OWNER of LOT 630-A (with the consent of the OWNER of LOT 630-B, which shall not be unreasonably withheld), is equal to or greater than Two Hundred Fifty Thousand Dollars (\$250,000.00) as adjusted by multiplying such amount by a fraction whose numerator is the amount of the CPI last published as of the date of such damage or destruction and whose denominator is the amount of the CPI last published as of the date of recordation of this DECLARATION.

SECTION 1.17. DEFINITION OF "MOISTURE CONTROL DEVICES."

As used in this DECLARATION the term "MOISTURE CONTROL DEVICES" shall mean all necessary or convenient pumps, sumps, pipes, valves, risers, fans, blowers, vents, ducts, conduits, controls, wires, boxes, vaults, cables, hangers, fasteners and similar devices used in connection with the removal of surface waters, moisture and moisture containing vapors from LOT 630-B and that portion of LOT 630-A lying below the bottom of the floor joists of the SIDEWALK LEVEL STORY of the SHARKEY BUILDING.

SECTION 1.18. DEFINITION OF "MORTGAGE."

As used in this DECLARATION the term "MORTGAGE" shall mean a mortgage or a deed of trust encumbering an AIRSPACE LOT.

SECTION 1.19. DEFINITION OF "MORTGAGEE."

As used in this DECLARATION the term "MORTGAGEE" shall mean a beneficiary of, or the holder of, a beneficial interest in a MORTGAGE encumbering an AIRSPACE LOT.

SECTION 1.20. DEFINITION OF "FIRST MORTGAGE."

As used in this DECLARATION the term "FIRST MORTGAGE" shall mean any recorded MORTGAGE (made in good faith and for value) encumbering an AIRSPACE LOT with first priority over other MORTGAGES encumbering that AIRSPACE LOT.

SECTION 1.21. DEFINITION OF "CASUALTY INSURANCE."

As used in this DECLARATION the term "CASUALTY INSURANCE" shall mean a policy or policies of insurance with the following characteristics:

- (a) the policy or policies shall insure against all risks of direct physical loss or damage to the SHARKEY BUILDING and any and all improvements relating thereto, (to the extent that such coverages are available and commercially appropriate), including coverage for debris removal as the result of a covered loss, however there is no requirement that the perils of flood and/or earthquake be insured against;
- (b) the amount of such insurance shall be equal to the full insurable replacement cost of the SHARKEY BUILDING, as the same shall exist from time to time, or the amount required by any MORTGAGEE, but in no event more than the commercially reasonable and available insurable value of the SHARKEY BUILDING;
- (c) the deductible amount shall not exceed Five Thousand Dollars (\$5,000) per occurrence, however such maximum deductible amount shall be subject to increase beginning on January 1, 2013, and every January 1st thereafter, to

reflect any increase in the CPI, during the previous one (1) year period.

SECTION 1.22. DEFINITION OF "EXISTING SIDEWALK VAULT."

As used in this DECLARATION the term "EXISTING SIDEWALK VAULT" shall mean that certain covered vault in the Court Street sidewalk adjacent to the SHARKEY BUILDING. Said vault, when opened, provides some access to LOT 630-B.

SECTION 1.23. DEFINITION OF "THIRD PARTY TENANT."

As used in this DECLARATION the term "THIRD PARTY TENANT" shall mean a tenant who rents or leases all or a portion of LOT 630-B from the City of Martinez and who does not also rent or lease all or a part of the SIDEWALK LEVEL STORY of LOT 630-A.

SECTION 1.24. DEFINITION OF "PROPORTIONAL SHARE."

As used in this DECLARATION the term "PROPORTIONAL SHARE" shall mean a percentage determined by taking the total usable interior square footage of an AIRSPACE LOT, and dividing it by the sum of the usable interior square footage in both LOT 630-A and LOT 630-B. Utility raceways, utility shafts, flue shafts, support columns and stairways shall not be considered to be "usable square footage." The PROPORTIONAL SHARE may change over time, however at the time of this DECLARATION, the PROPORTIONAL SHARE of LOT 630-A is approximately Eighty Percent (80%), and the PROPORTIONAL SHARE of LOT 630-B is approximately Twenty Percent (20%).

SECTION 1.25. MAJORITY OF OWNERS OF AN AIRSPACE LOT.

When this DECLARATION refers to a "majority of the OWNERS" of an AIRSPACE LOT, it shall mean the OWNERS of a majority of the title as represented on the deed or deeds to the AIRSPACE LOT. By way of example, if several PERSONS own, according to the deed or deeds, different undivided percentages in an AIRSPACE LOT, a "majority of the OWNERS" shall mean the PERSONS owning more than an undivided 50% of the AIRSPACE LOT. If a deed does not specify percentages among multiple OWNERS of an AIRSPACE LOT, each owner will be deemed to own an equal percentage.

SECTION 1.26. PLURAL DEFINITIONS.

Except as expressly stated above in this Article, as used in this DECLARATION a defined term that appears in the singular shall also apply to the plural of that term.

SECTION 1.27. HEADINGS.

The titles of the articles and sections (i.e. headings) within this DECLARATION are merely for convenience, do not form a part of this DECLARATION, and shall not be used to interpret any particular article,

section or other portion of this DECLARATION.

SECTION 1.28. AMBIGUITIES.

Any rule of construction to the affect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this DECLARATION.

ARTICLE 2: CREATION OF PROPERTY RIGHTS

SECTION 2.01. OWNERSHIP OF AIRSPACE LOTS.

Title to each AIRSPACE LOT shall be conveyed in fee to an OWNER. If more than one (1) PERSON owns an undivided interest in the same AIRSPACE LOT, such PERSONS shall collectively constitute one (1) OWNER.

SECTION 2.02. LIMITED ACCESS AND INSPECTION EASEMENT WITHIN LOT 630-A.

(A) There shall exist within LOT 630-A a non-exclusive easement appurtenant to LOT 630-B for: (a) ingress to, and egress from, LOT 630-B, for reasonable periodic inspection of LOT 630-B and for the purpose of gaining access to LOT 630-B; and (b) access to open and close the EXISTING SIDEWALK VAULT leading to LOT 630-B. The easement created in this section shall be along a reasonable route, not less than thirty-six inches (36") wide, through LOT 630-A, as designated from time to time by the OWNER of LOT 630-A. Further, said route shall include at least one (1) stairway leading to LOT 630-B. The OWNER of LOT 630-A shall have the right to move, from time to time, any stairway leading to LOT 630-B and located along the route described above. The OWNER of LOT 630-A shall have the right to place a locked door at the top of any such stairway, however if such right is not exercised, the OWNER of LOT 630-B may install such door, provided it is of a type and design that is compatible with the type and design of doors within LOT 630-A. If such door is installed by the OWNER on LOT 630-A, the OWNER of LOT 630-B shall be provided with a key. If such door is installed by the OWNER on LOT 630-B, the OWNER of LOT 630-A need not be given a key, however the OWNER of LOT 630-A shall be provided reasonable access through such door for the purpose of ingress to, and egress from, any easements encumbering LOT 630-B which are appurtenant to LOT 630-A.

(B) Inspections and entries along the route described in subsection (A) of this Section shall only occur upon a reasonable amount of notice based upon the reason for the inspection or entry, and in no event shall the shortness of the notice, nor the inspection or entry itself, cause an unreasonable disruption or an unreasonable extra cost to any business conducted within LOT 630-A. Such notice shall be given to the OWNER of LOT 630-A if the route is not occupied by a tenant, and to the tenant(s) if the route is occupied by a tenant(s). To the extent reasonably possible under the circumstances, the preferred access to LOT 630-B, for the purposes of moving personal property in and out of LOT 630-B, shall be through the EXISTING SIDEWALK VAULT, with entry

through LOT 630-A for the purposes of opening and closing said vault.

(C) The easement created by this Section shall terminate if the EXISTING SIDEWALK VAULT is replaced or rebuilt such that a code compliant human access to LOT 630-B is provided in that location or an alternate external location.

SECTION 2.03. UTILITY EASEMENT WITHIN LOT 630-B.

There shall exist within LOT 630-B a non-exclusive easement appurtenant to LOT 630-A for the installation, maintenance, repair and replacement of UTILITIES, and incidental uses such as: (a) ingress and egress to said UTILITIES; and (b) reasonable support for such UTILITIES by means of hangers, fasteners, support posts, and similar devices. All such UTILITIES shall be placed within LOT 630-B in a manner that causes the least impact to the usefulness of LOT 630-B. Any UTILITIES placed within the following areas of LOT 630-B shall conclusively be deemed to have been placed in a manner that causes the least impact to the usefulness of LOT 630-B, provided no such UTILITIES block the stairway leading from LOT 630-A to LOT 630-B, or the EXISTING SIDEWALK VAULT leading to LOT 630-B: (a) within twelve inches (12") below the top limits of LOT 630-B; and/or (b) within thirty-six inches (36"), measured easterly from the interior face of the west concrete basement/foundation wall of LOT 630-B.

SECTION 2.04. JOINT USE OF SEWER.

The OWNER of LOT 630-B shall have the right to reasonably use, jointly with the OWNER of LOT 630-A, any SEWER pipe installed by, or maintained by, LOT 630-A within LOT 630-B. However, any connection or connections into any said SEWER pipe or pipes: (a) shall occur only below the bottom of the floor joists of the SIDEWALK LEVEL STORY of the SHARKEY BUILDING; and (b) shall be subject to any applicable rules and regulations of the public entity providing public sewer service to the SHARKEY BUILDING. The OWNER of LOT 630-B shall not be responsible for any sewer charges or fees unless and until a connection is made into said SEWER which provides service to LOT 630-B.

SECTION 2.05. EASEMENT BELOW SIDEWALK LEVEL FLOOR JOISTS OF LOT 630-A.

There shall exist within that portion of LOT 630-A lying below the bottom of the floor joists of the SIDEWALK LEVEL STORY of the SHARKEY BUILDING, a non-exclusive easement appurtenant to LOT 630-B for ingress, egress, and commercial purposes in general. However, the easement created in this section shall be subordinate to the right of the OWNER of LOT 630-A to use said easement area for UTILITIES. It is the intent of this section to allow the OWNER of LOT 630-B to use the SHARKEY BUILDING up to the bottom of the floor joists of the SIDEWALK LEVEL STORY, to the extent that easement area is not being used by the OWNER of LOT 630-A for UTILITIES.

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SECTION 2.06. EASEMENT OF SUPPORT WITHIN LOT 630-B.

(A) There shall exist within LOT 630-B a non-exclusive easement appurtenant to LOT 630-A for the support of the improvements within LOT 630-A. Such support shall include, but is not limited to: (a) the right to maintain, repair and replace the FOUNDATION; (b) the right to install, maintain, repair and replace supports to hold-up not more than three (3) steps leading from the sidewalk at the intersection of Main Street and Court Street into LOT 630-A; and (c) incidental uses including but not limited to ingress and egress to said FOUNDATION and supports holding-up said steps.

(B) If, in exercising the easement rights created in this section, the OWNER of LOT 630-A should desire to perform any construction or other building activity, the OWNER of LOT 630-A shall first obtain all required governmental permits and plan approvals, including but not limited to a building permit.

SECTION 2.07. EASEMENT FOR EARTHQUAKE REINFORCEMENT WITHIN LOT 630-B.

(A) There shall exist within LOT 630-B a non-exclusive easement appurtenant to LOT 630-A for the installation, maintenance, repair and replacement of EARTHQUAKE REINFORCEMENT, and incidental uses such as ingress and egress to said EARTHQUAKE REINFORCEMENT.

(B) If, in exercising the easement rights created in this section, the OWNER of LOT 630-A should desire to perform any construction or other building activity, the OWNER of LOT 630-A shall first obtain all required governmental permits and plan approvals, including but not limited to a building permit.

SECTION 2.08. EASEMENT FOR MOISTURE CONTROL DEVICES WITHIN LOT 630-B.

(A) There shall exist within LOT 630-B a non-exclusive easement appurtenant to LOT 630-A for the installation, maintenance, repair, replacement and removal of MOISTURE CONTROL DEVICES, and incidental uses such as: (a) ingress and egress to said MOISTURE CONTROL DEVICES; and (b) reasonable support for such MOISTURE CONTROL DEVICES by means of hangers, fasteners, support posts, and similar devices. The OWNER of LOT 630-B shall have the right to approve of the location and scope of any MOISTURE CONTROL DEVICES installed, from time to time, by the OWNER of LOT 630-A, however such consent shall not be unreasonably withheld.

(B) The DECLARANT acknowledges that the scope and extent of MOISTURE CONTROL DEVICES required for the uses in LOT 630-A may be different from those required for the uses in LOT 630-B. By way of example, a use instituted in LOT 630-B may require a larger number of such devices than is required for the uses in LOT 630-A. Therefore:

- (a) exercise of the easement rights created in this section is discretionary, and the OWNER of LOT 630-A shall have no affirmative obligation to install or replace any MOISTURE

CONTROL DEVICES within LOT 630-B, however at all times while there exists such devices installed by the OWNER of LOT 630-A, the OWNER of LOT 630-A shall have the affirmative obligation to maintain and repair all such devices that were installed by the OWNER of LOT 630-A;

- (b) all temporary MOISTURE CONTROL DEVICES installed by the OWNER of LOT 630-A within LOT 630-B shall immediately be removed by, and at the sole expense of, the OWNER of LOT 630-A when such MOISTURE CONTROL DEVICES are no longer used, unless mutually agreed otherwise between the OWNER of LOT 630-A and the OWNER of LOT 630-B;
- (c) nothing herein prevents the OWNER of LOT 630-A from removing any MOISTURE CONTROL DEVICES from LOT 630-B, so long as the removed device was installed by the OWNER of LOT 630-A; and
- (d) nothing herein prevents the OWNER of LOT 630-B from installing, maintaining and operating such OWNER's own MOISTURE CONTROL DEVICES within LOT 630-B.

SECTION 2.09. EASEMENT WITHIN LOT 630-B FOR FUTURE ELEVATOR SERVING LOT 630-A.

Although, as of the date of this DECLARATION, there is no elevator in the SHARKEY BUILDING, the DECLARANT acknowledges that the addition of an elevator would help serve those members of the public with physical disabilities that make the use of a stairway difficult. Therefore, there shall exist within LOT 630-B a non-exclusive easement appurtenant to LOT 630-A for the installation, maintenance, repair and replacement of walls, supports, pads, wires, equipment and other architectural features, and mechanical devices, as necessary to safely operate an elevator to serve the floors within LOT 630-A. The easement created in this section shall not exceed one hundred (100) square feet, the exact location of which shall require the consent of the owner of LOT 630-B, which consent shall not be unreasonably withheld.

SECTION 2.10. ALL EASEMENTS PART OF COMMON PLAN.

Whenever any easements are reserved or created or are to be reserved or created in this DECLARATION, such easements shall constitute equitable servitudes and are intended to promote the common plan.

ARTICLE 3: RESTRICTIONS ON AIRSPACE LOTS

SECTION 3.01. COMPROMISE OF STRUCTURAL INTEGRITY.

Nothing shall be done in or on any AIRSPACE LOT which will impair the structural integrity of the SHARKEY BUILDING.

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SECTION 3.02. STORAGE OF MATERIALS.

The storage of materials within LOT 630-A or LOT 630-B shall be in accordance with all laws and regulations, including but not limited to building, fire, and health and safety laws and regulations. No material shall be stored in LOT 630-A or LOT 630-B if it would cause cancellation of a policy of CASUALTY INSURANCE or result in a premium for a policy of CASUALTY INSURANCE that is unreasonably expensive. A premium shall be deemed to be unreasonably expensive if it is greater than ten percent higher than the premium for a policy without the storage.

SECTION 3.03. RESTRICTIONS ON SIGNAGE FOR LOT 630-B.

If the OWNER of LOT 630-B should desire to place any exterior signage on the SHARKEY BUILDING: (a) the OWNER of LOT 630-A shall have the right to require that such signage be of the same style, colors, shape and size as the signage for the occupant(s) of LOT 630-A; (b) all signage for LOT 630-B, including its location, shall be subject to the approval of the OWNER of LOT 630-A, which approval shall not be unreasonably withheld; and (c) all signage for LOT 630-B shall not violate any architectural covenants recorded against the SHARKEY BUILDING.

SECTION 3.04. RESTRICTIONS ON EXCAVATIONS IN LOT 630-B.

If the OWNER of LOT 630-B should desire to excavate the soil within or under any part of LOT 630-B, the OWNER of LOT 630-B shall, at all times, provide support, including but not limited to lateral support, to all portions of the FOUNDATION of the SHARKEY BUILDING. Prior to performing any such excavations, the OWNER of LOT 630-B shall obtain all required governmental permits and plan approvals, including but not limited to a building permit.

SECTION 3.05. CONSTRUCTION THAT CAUSES UNREASONABLE LOSS OF BUSINESS.

(A) Except as provided in subsections (C) and (D) of this Section, and unless otherwise mutually agreed among the OWNERS of the AIRSPACE LOTS, no construction shall be undertaken in an AIRSPACE LOT which causes an unreasonable loss of business to the OWNER of the other AIRSPACE LOT.

(B) If an AIRSPACE LOT is vacant and unoccupied during any construction, there shall be a rebuttable presumption that there is no unreasonable loss of business to the OWNER of the vacant and unoccupied AIRSPACE LOT.

(C) Subsection (A) of this Section shall not apply to the construction of any EARTHQUAKE REINFORCEMENT installed to comply with any statute, ordinance, law or regulation of a government entity having jurisdiction.

(D) Subsection (A) of this Section shall not apply to any construction reasonably related to the reasonable exercise of an easement right

within an AIRSPACE LOT.

SECTION 3.06. NUISANCES.

No nuisance, use or practice is permitted in any AIRSPACE LOT which is detrimental to the health, safety and welfare of the OWNERS or their tenants, or which interferes with their peaceful possession or proper use of their AIRSPACE LOTS. No use is allowed in any AIRSPACE LOT which creates conditions that are hazardous, noxious or offensive through the emission of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste or excessive noise or which impairs the structural integrity of the SHARKEY BUILDING.

SECTION 3.07. COMPLIANCE WITH LAWS.

No OWNER shall permit anything to be done or kept in that OWNER's AIRSPACE LOT which is in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

SECTION 3.08. GOVERNMENTAL APPROVALS OF CHANGES TO AIRSPACE LOT.

All alterations, modifications, or other improvements on or within an AIRSPACE LOT shall comply with all design requirements, approvals and procedures of the City of Martinez. Before commencement of any alteration or improvements the OWNER shall comply with all appropriate governmental laws and regulations.

ARTICLE 4: INDEMNITIES AND INSURANCE

SECTION 4.01. MUTUAL INDEMNITIES.

(A) To the fullest extent permitted by law, each OWNER of an AIRSPACE LOT (the "INDEMNIFYING OWNER") hereby agrees to, and shall defend, indemnify and hold the OWNER of the other AIRSPACE LOT, (the "INDEMNIFIED OWNER"), its officers, agents, and employees, harmless from and against any and all allegations, claims, damages, disabilities, or expenses, including attorneys' fees, experts' fees, and witness costs that may be asserted or incurred, as the case may be, by any person or entity, including liability for damages or claims for damage for personal injury, or death, as well as from claims for real or personal property damage arising out of or in connection with:

- (a) the activities of the INDEMNIFYING OWNER in performing any maintenance, work or any improvement required to be performed by the INDEMNIFYING OWNER pursuant to the terms of this DECLARATION;
- (b) the performance or non-performance under this DECLARATION by the INDEMNIFYING OWNER;
- (c) breaches of this DECLARATION by the INDEMNIFYING OWNER;

- (d) the INDEMNIFYING OWNER's compliance or non-compliance with the California Environmental Quality Act or any other law applicable to the approval, processing and implementation of any work or improvements to be performed by the INDEMNIFYING OWNER within any AIRSPACE LOT;
- (f) any soils subsidence, land slides or soil movement arising out of the INDEMNIFYING OWNER's activities pursuant to this DECLARATION;
- (g) the INDEMNIFYING OWNER's handling, releasing, disposing, transporting or arranging for the handling, releasing, disposing or transporting of any hazardous wastes, substances or materials as those terms may be defined by any law, ordinance and/or regulation of any regulatory agency with jurisdiction at or in the SHARKEY BUILDING from and after the date of transfer of the INDEMNIFYING OWNER's AIRSPACE LOT to the INDEMNIFYING OWNER; and
- (h) the INDEMNIFYING OWNER's violation of any law, ordinance or regulation, whether or not there is concurrent, passive negligence on the part of the INDEMNIFIED OWNER, its officers, agents, and employees, and regardless of a public entity's approval of any plans or a public entity's inspection, approval or acceptance of any work or improvements and notwithstanding any limitation on the amount or type of damages or compensation payable by or for the INDEMNIFYING OWNER under Workers' Compensation, Disability, or other employee benefit acts, the acceptance of insurance certificates required under this DECLARATION, or the terms, applicability, or limitations of any insurance held by the INDEMNIFYING OWNER.

(B) The indemnification contained in Subsection (h) of this Section, above, also shall apply to any claim arising out of any federal, state or local law, rule or regulation which may be applicable to any work on the SHARKEY BUILDING including, but not limited to the Building Code, the Martinez Municipal Code, the American's with Disabilities Act, any state disabled access laws, or any other laws, rules or regulations relating to the work to be performed by the INDEMNIFYING OWNER pursuant to this DECLARATION, and to any cause of action against the INDEMNIFIED OWNER arising from the negligent provision of designs for, or the negligent construction, performance, testing, planning, observation or supervision of, any work required to be performed by the INDEMNIFYING OWNER pursuant to the terms of this DECLARATION.

(C) Any defense provided to an INDEMNIFIED OWNER by an INDEMNIFYING OWNER under this Section may be provided by counsel selected by the INDEMNIFYING OWNER, however such counsel shall be subject to the approval of the INDEMNIFIED OWNER, which approval shall not be unreasonably withheld.

(D) If a public entity is an INDEMNIFIED OWNER, the term "INDEMNIFIED OWNER" shall also include that public entity's elective and appointive

officers, officials, boards and commissions, employees, contractors and volunteers.

(E) The terms of this Section shall survive termination of this DECLARATION for any reason.

SECTION 4.02. CASUALTY INSURANCE.

(A) Without limiting the OWNER of LOT 630-A's indemnification provided herein, the OWNER of LOT 630-A shall take out and maintain, at all times during the term of this DECLARATION, CASUALTY INSURANCE.

(B) The policy of insurance required by this Section shall be obtained from an insurer holding a "Financial Strength Rating" of A- or better, and a "Financial Size Category" of VIII or better, as set forth in the most current issue of "Best's Insurance Guide."

SECTION 4.03. WORKERS' COMPENSATION INSURANCE.

(A) At all times when an OWNER of an AIRSPACE LOT is performing work on or in the SHARKEY BUILDING, all employees of such OWNER performing that work shall be covered by a policy of Workers' Compensation Insurance. Additionally, such OWNER shall require all contractors and subcontractors performing work on or in the SHARKEY BUILDING to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of the contractors' or subcontractors' employees. Each Workers' Compensation policy shall be endorsed with the provision that it will not be canceled without first giving ten (10) days prior notice to the OWNER of the other AIRSPACE LOT.

(B) In case any class of employees engaged in hazardous work under this DECLARATION is not protected under Workers' Compensation statutes, an OWNER who is required to provide insurance under subsection (A) of this Section, above, shall provide, and shall cause its contractors and subcontractors to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy shall provide that it will not be canceled without first giving ten (10) days prior notice to the OWNER of the other AIRSPACE LOT.

(C) Said Worker's Compensation policy shall have an endorsement which provides that all rights of subrogation are waived against the OWNER of the other AIRSPACE LOT, its officers and employees when acting within the scope of their appointment or employment.

(D) If the OWNER performing work on or in the SHARKEY BUILDING is a public entity, the type of insurance required by this Section may be provided by an insurance pool or self-insurance fund.

SECTION 4.04. LIABILITY INSURANCE.

(A) Without limiting any OWNER's indemnification provided herein, each OWNER of an AIRSPACE LOT shall maintain Commercial General Liability Insurance including personal injury and property damage insurance for

all activities of the OWNER and its contractors and subcontractors arising out of or in connection with this DECLARATION and any work performed pursuant hereto, written on a commercial general liability form including, but not limited to, Builder's All Risk, Broad Form Property Damage, blanket contractual, products liability and completed operations, X, C, U hazards, vehicle coverage and non-owned auto liability coverage with limits in amount no less than Two Million Dollars (\$2,000,000) combined single limit personal injury and property damage for each occurrence.

(B) Each policy required by this Section shall be endorsed with the following clauses:

- (a) A clause which names the OWNER of the other AIRSPACE LOT as an additional insured for all liability arising out of the work performed by or on behalf of the named insured, and stating that the policy protects the additional insured, its officers, agents, and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly, or indirectly, in the performance of this DECLARATION.
- (b) A clause that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.
- (c) A clause that the insurance provided is primary and no insurance held or owned by the the OWNER of the other AIRSPACE LOT shall be called upon to contribute to a loss.
- (d) A clause that the coverage provided by the policy shall not be canceled without ten (10) days prior written notice given to the OWNER of the other AIRSPACE LOT.

(C) The policy containing the clauses required by Subsections (B) (a) through (B) (d) of this Section may, but is not required to, have a provision limiting such clauses to the SHARKEY BUILDING.

(D) The policy of insurance required by this Section shall be obtained from an insurer holding a "Financial Strength Rating" of A- or better, and a "Financial Size Category" of VIII or better, as set forth in the most current issue of "Best's Insurance Guide."

(E) If an OWNER of an AIRSPACE LOT is a public entity:

- (a) the type of insurance required by this Section may be provided by an insurance pool or delf-insurance fund; and
- (b) Subsections (B) and (D) of this Section shall not apply.

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SECTION 4.05. PROOF OF INSURANCE.

(A) Upon request, an OWNER who is required to maintain an insurance policy or policies pursuant to this Article shall submit documentation evidencing the required insurance, including properly signed Certificates of Insurance and properly executed endorsements in a form reasonably acceptable to the OWNER of the other AIRSPACE LOT.

(B) If the OWNER of an AIRSPACE LOT is a public entity, the documentation required by Subsection (A) of this Section may consist of a statement, signed by an authorized person on behalf of the public entity, that the public entity belongs to an insurance pool or is self insured, provided the statement is true.

SECTION 4.06. DEDUCTIBLES OR SELF-INSURANCE RETENTION.

(A) Subject to Subsection (B) of this Section, below, any policy required to be maintained by an OWNER of an AIRSPACE LOT pursuant to this Article may contain a deductible or self-insured retention of up to Five Thousand Dollars (\$5,000). If it is proposed that any such policy is to contain a deductible or self-insured retention in excess of \$5,000, the consent of the OWNER of the other AIRSPACE LOT, to such larger deductible or self-insured retention, must first be obtained.

(B) If the OWNER of an AIRSPACE LOT is a public entity, the deductible or self-insured retention may be any amount adopted by the governing body of the public entity.

SECTION 4.07. INCREASES IN STATED LIMITS AND DEDUCTIBLES.

(A) The minimum limits, as stated in this Article, for any policy of insurance shall be increased beginning on January 1, 2013, and every January 1st thereafter, to reflect any increase in the CPI, during the previous one (1) year period.

(B) The maximum deductible, as stated in this Article, for any policy of insurance shall be increased beginning on January 1, 2013, and every January 1st thereafter, to reflect any increase in the CPI, during the previous one (1) year period.

(C) Any increase in limits shall be in full increments of Five Hundred Thousand Dollars (\$500,000), and shall only be applicable when the CPI increase calculation produces a number which is equal to, or exceeds, a full increment of Five Hundred Thousand Dollars (\$500,000). Any increase in deductible shall be in full increments of Two-thousand Five Hundred Dollars (\$2,500), and shall only be applicable when the CPI increase calculation produces a number which is equal to, or exceeds, a full increment of Two-thousand Five Hundred Dollars (\$2,500). By way of example, for a limit of Two Million Dollars, if the CPI increase calculation produces a number of Two Million Four Hundred Thousand Dollars, the limit shall remain at Two Million Dollars because the full increment of Five Hundred Thousand Dollars has not been met.

ARTICLE 5: MAINTENANCE, OPERATION & COSTS THEREOF

SECTION 5.01. MAINTENANCE STANDARDS & DUTY TO MAINTAIN.

(A) The SHARKEY BUILDING shall, at all times, be maintained in accordance with the following standards:

- (a) All exterior wood on the SHARKEY BUILDING shall be maintained so that no peeling, chipping or missing paint exists at any time;
- (b) The glass in all windows and doors in the exterior facades of the SHARKEY BUILDING shall be at all times maintained in good repair;
- (c) The bricks and mortar between the bricks in the exterior facades of the SHARKEY BUILDING shall be at all times maintained in good repair;
- (d) The FOUNDATION of the SHARKEY BUILDING shall be at all times maintained so that it is capable of adequately supporting the SHARKEY BUILDING; and
- (e) The roof of the SHARKEY BUILDING shall be at all times maintained so as to be free of leaks.

(B) Except as expressly stated in this Article, the OWNER of LOT 630-A shall have the affirmative duty to maintain and repair the SHARKEY BUILDING, and any and all portions thereof regardless of whether said portion of the SHARKEY BUILDING is located within LOT 630-A or LOT 630-B, in accordance with the standards contained in subsection (A) of this section, above, and the OWNER of LOT 630-B shall not have such a duty.

SECTION 5.02. COSTS OF MAINTENANCE AND OPERATION.

(A) Except as expressly stated in this Article, the OWNER of LOT 630-B shall not be required to contribute to any cost for:

- (a) maintenance or repair of any portion of the SHARKEY BUILDING, including but not limited to its exterior walls, windows, doors, roof, FOUNDATION, structural elements, interior walls, fixtures, flooring, paint, lighting or any other part or portion of the SHARKEY BUILDING (except interior improvements installed by the OWNER of LOT 630-B in LOT 630-B and the EXISTING SIDEWALK VAULT);
- (b) the installation, maintenance and/or repair of any EARTHQUAKE REINFORCEMENT;

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(c) the installation, maintenance, repair and/or operational costs of any MOISTURE CONTROL DEVICES installed pursuant to the easement for such purposes appurtenant to LOT 630-A; and

(d) any premiums for CASUALTY INSURANCE.

(B) Except as expressly stated in this Article, the OWNER of LOT 630-A shall be required to pay all costs associated with the items described above in subsections (A)(a) through (A)(d), inclusive, above in this section.

SECTION 5.03. OBLIGATION OF LOT 630-A TO PROVIDE ELECTRICITY TO LOT 630-B.

(A) The OWNER of LOT 630-A shall provide electricity to the City of Martinez through one (1) fifteen (15) amp electrical circuit with appropriate wires run into LOT 630-B, for the operation of lights within LOT 630-B only.

(B) If the circuit described in subsection (A), above, is wired through the meter of LOT 630-A, the cost of the electricity shall be paid by the OWNER of LOT 630-A, except: (a) if LOT 630-B should become rented or leased to a THIRD PARTY TENANT, the obligation of the OWNER of LOT 630-A to pay the cost of electricity to LOT 630-B through said circuit shall be suspended during such tenancy, as more particularly provided in Section 5.05, below; and (b) if LOT 630-B should become owned by a party other than the City of Martinez, the obligation of the OWNER of LOT 630-A to provide such circuit and pay for such electricity to LOT 630-B shall forever cease.

(C) If the circuit described in subsection (A), above, is ever placed on a meter that is separate from the meter serving LOT 630-A, the cost of the electricity for the circuit shall thereafter be paid by the OWNER of LOT 630-B. If the OWNER of LOT 630-A desires for such a separate meter to be installed, then the OWNER of LOT 630-A shall bear the cost of such installation, but if the OWNER of LOT 630-B desires for such a separate meter to be installed, then the OWNER of LOT 630-B shall bear the cost of such installation.

(D) This section shall be interpreted as an express exception to Section 5.02, above.

(E) The benefits conferred to the City of Martinez by this section are intended to be personal to the City of Martinez, and are not transferrable.

SECTION 5.04. COSTS OF VAULT AND LOT 630-B IMPROVEMENTS TO BE BORNE BY OWNER OF LOT 630-B.

(A) The OWNER of LOT 630-B shall be required, at its sole cost and expense, to maintain in good repair the EXISTING SIDEWALK VAULT leading to LOT 630-B.

(B) The OWNER of LOT 630-B shall be required, at its sole cost and expense, to maintain in good repair all improvements installed by such OWNER within LOT 630-B.

(C) This Section applies regardless of whether LOT 630-B is owned by the City of Martinez or not.

(D) This section shall be interpreted as an express exception to Section 5.02, above.

SECTION 5.05. COST SHIFTING TO THIRD PARTY TENANT OCCUPYING LOT 630-B.

If, while LOT 630-B is owned by the City of Martinez, it is rented or leased to a THIRD PARTY TENANT, then during such tenancy such tenant shall pay for: (a) all UTILITIES serving and/or furnished to LOT 630-B (including but not limited to the electricity furnished through the 15 amp circuit described in Section 5.03); and (b) one-half (1/2) of the operational costs of any and all MOISTURE CONTROL DEVICES installed by the OWNER of LOT 630-A pursuant to the easement for such purposes appurtenant to LOT 630-A. If a separate meter for any utility is impractical, a "secondary" or "downstream" meter may be installed on a utility line or lines serving LOT 630-A, and the OWNER of LOT 630-A shall bill the THIRD PARTY TENANT renting or leasing LOT 630-B based upon the readings of the secondary or downstream meter. This section shall be interpreted as an express exception to Section 5.02, above.

SECTION 5.06. COST SHIFTING TO FUTURE OWNER OF LOT 630-B.

(A) If the City of Martinez should convey LOT 630-B, or otherwise be de-vested of title to LOT 630-B, then the limitations conferred by Section 5.02, above, shall immediately cease, and, in addition to the obligations required by Section 5.04, above, the new OWNER of LOT 630-B, and that OWNER's successors and assigns:

- (a) shall be required to pay a PROPORTIONAL SHARE of the cost of maintenance and repair of:
 - (i) the roof of the SHARKEY BUILDING; (ii) the FOUNDATION of the SHARKEY BUILDING; and
 - (iii) all structural members, including joists, above the ceiling of LOT 630-B and below the floor of LOT 630-A;
- (b) shall not be required to pay any portion of the cost of maintenance and/or repair of the exterior walls, windows or doors of the SHARKEY BUILDING (excepting the door at the top of the interior stairway leading to LOT 630-B and also excepting the EXISTING SIDEWALK VAULT);
- (c) shall be required to pay for all costs to maintain and repair: (a) the interior stairway

leading to LOT 630-B; and (b) the door at the top of the interior stairway leading to LOT 630-B;

- (d) shall be required to pay a PROPORTIONAL SHARE of the cost of the installation of any EARTHQUAKE REINFORCEMENT that is installed after the City of Martinez has conveyed, or has been de-vested of, the title to LOT 630-B;
- (e) shall not be required to financially contribute in any manner to the cost of installation of any EARTHQUAKE REINFORCEMENT that was installed before the City of Martinez conveyed, or was de-vested of, the title to LOT 630-B;
- (f) shall be required to pay a PROPORTIONAL SHARE of the cost of maintenance and/or repair of any EARTHQUAKE REINFORCEMENT (if such maintenance or repair is performed after the City of Martinez has conveyed, or has been de-vested of, the title to LOT 630-B), regardless of when the EARTHQUAKE REINFORCEMENT that is being maintained and/or repaired was installed;
- (g) shall be required to pay a PROPORTIONAL SHARE of the premiums for CASUALTY INSURANCE covering the SHARKEY BUILDING;
- (h) shall be required to pay one-half (1/2) of the operational costs of any and all MOISTURE CONTROL DEVICES installed by the OWNER of LOT 630-A pursuant to the easement for such purposes appurtenant to LOT 630-A; and
- (i) shall pay for all UTILITIES serving and/or furnished to LOT 630-B, however only a PROPORTIONAL SHARE of any sewer charges shall be owing if a connection has been made such that the SEWER is shared by LOT 630-A and LOT 630-B.

(B) This section shall be interpreted as an express exception to Section 5.02, above.

SECTION 5.07. EXCEPTIONS: CHANGING OR EXPANDING A USE; DAMAGE TO SHARKEY BUILDING.

(A) Notwithstanding the previous sections of this Article, all costs (including but not limited to maintenance costs, repair costs and the costs to install improvements) related to a change of use or expansion

of an existing use, within either LOT 630-A (including any easement appurtenant to LOT 630-A) or LOT 630-B (including any easement appurtenant to LOT 630-B) shall be borne solely by the OWNER of the AIRSPACE LOT who initiates the change of use or expansion of use. By way of example, if the OWNER of LOT 630-B should desire to expand a use into an area within LOT 630-B that needs to be physically excavated, and such excavation necessitates that the foundation of the SHARKEY BUILDING be repaired and/or upgraded in the area of the excavation, the OWNER of LOT 630-B shall be solely responsible for such repairs and/or upgrades to the foundation.

(B) Notwithstanding the previous sections of this Article, all costs (including but not limited to maintenance costs, repair costs and the costs to install improvements) that are necessitated by damage caused to any portion of the SHARKEY BUILDING by an OWNER of an AIRSPACE LOT or such OWNER's agents, employees, servants, contractors, licensees, tenants, guests and/or invitees, shall be borne solely by such OWNER regardless of whether or not the damage occurred in such OWNER's AIRSPACE LOT or not.

(C) This section shall be interpreted as an express exception to Section 5.02, above.

ARTICLE 6: DESTRUCTION OF IMPROVEMENTS

SECTION 6.01. MATERIAL DAMAGE OR DESTRUCTION.

If any portion of the SHARKEY BUILDING is MATERIALLY DAMAGED or destroyed by fire or other casualty, the following events shall occur:

- (a) All OWNERS of an AIRSPACE LOT shall meet within sixty (60) days of the date of the material damage or destruction. Said meeting of OWNERS may be called by any OWNER of an AIRSPACE LOT. Said meeting of OWNERS shall be held at a suitable location within fifteen (15) miles of the SHARKEY BUILDING, or other location agreed to by all OWNERS of all AIRSPACE LOTS. The location shall be specified in a notice of the meeting sent to all OWNERS of each AIRSPACE LOT at their last known addresses on file with the Contra Costa County Tax Assessor and such other addresses as may be known to the OWNER sending the notice. All notices shall be sent postage fully pre-paid by Certified Mail, return receipt requested.
- (b) The SHARKEY BUILDING shall be repaired or reconstructed substantially in accordance with the latest available construction plans and specifications unless in such meeting of OWNERS a majority of the OWNERS of LOT 630-A and a majority of the OWNERS of LOT 630-B vote against such repair or reconstruction in which event the provisions of Section 6.02 shall immediately become applicable.

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- (c) Unless, in the manner provided above, the requisite number of votes are cast against such repair or reconstruction, all of the insurance proceeds payable on account of such damage or destruction, less any amounts owing for demolition and/or to secure the SHARKEY BUILDING after the casualty (such as board-up services), shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "Depository"). The Depository shall be appointed by the OWNER of LOT 630-A, after the consent of the OWNER of LOT 630-B is obtained, which consent shall not be unreasonably withheld. Such funds shall be disbursed in accordance with the normal construction loan practices for the Depository. The restoration or reconstruction shall be substantially in accordance with the latest available construction plans and specifications for the SHARKEY BUILDING modified as may be required by available materials, state of the art construction and applicable building codes and regulations in force at the time of such repair or reconstruction or in accordance with such other plans and specifications as may be approved by a majority of the OWNERS of LOT 630-A and a majority of the OWNERS of LOT 630-B. However, any request by an OWNER of an AIRSPACE LOT to modify the latest available construction plans and specifications of that OWNER's AIRSPACE LOT shall be approved unless (i) the cost of construction pursuant to the modification exceeds the cost of reconstruction according to the latest available construction plans and specifications, (ii) it affects the other AIRSPACE LOT, or (iii) it affects the square footage of, permitted use of, utility service to, easements in favor of or number of AIRSPACE LOTS.
- (d) The OWNER of LOT 630-A shall designate an architect (the "Architect") for preparing plans for the contemplated repair or reconstruction, and a construction consultant (the "Construction Consultant") for putting the project out to bid by general contractors in accordance with the plans prepared by the Architect. However, the consent of the OWNER of LOT 630-B shall be obtained as to the identities of the Architect and Construction Consultant, before they are retained, which consent shall not be unreasonably withheld. Provided there is sufficient insurance proceeds, and unless there is good cause not to do so, the OWNER of LOT 630-A shall award the contract to rebuild or reconstruct the SHARKEY BUILDING to the general contractor submitting the lowest bid, however the consent of the OWNER of LOT 630-B shall be obtained as to the identity of the General Contractor, before the contract is awarded, which consent shall not be unreasonably withheld.
- (e) As used in this subparagraph the term "Total Project Costs" shall mean the sum of the following: (i) the cost of any demolition; (ii) the cost to secure the SHARKEY BUILDING after the casualty; (iii) the cost of the Architect; (iv) the cost of the Construction Consultant; and (v) the bid of the general

contractor to whom the contract is to be awarded.

In the event the insurance proceeds available for repair or reconstruction of the SHARKEY BUILDING are less than Total Project Costs, the OWNER of LOT 630-A shall have the option, for 30 days, to contribute the additional funds required for repair or reconstruction of the SHARKEY BUILDING. If the OWNER of LOT 630-A refuses or fails to so contribute those additional funds within such time, then the OWNER of LOT 630-B shall have the option, for 30 days, to contribute the additional funds required for repair or reconstruction of the SHARKEY BUILDING. If both the OWNERS of LOT 630-A and the OWNERS of LOT 630-B refuse or fail to so contribute those additional funds, then it shall be deemed that the OWNERS of the AIRSPACE LOTS have elected not to rebuild and the provisions of Section 6.02 shall immediately become applicable.

- (f) In the event the insurance proceeds available for repair or reconstruction of the SHARKEY BUILDING are equal to, or exceed, the combined cost of the Architect, the Construction Consultant and the bid of the general contractor to whom the contract is to be awarded, the insurance proceeds that were deposited with the Depository shall be disbursed in accordance with the normal construction loan practices of the Depository upon the receipt of appropriate mechanics lien releases and upon the certification of the Construction Consultant, the General Contractor and the Architect dated not more than ten (10) days prior to any such request for disbursement setting forth the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) That such disbursement request represents monies which either have been paid by or on behalf of the Construction Consultant, the General Contractor or the Architect and/or is justly due to contractors, subcontractors, materialmen, engineers or other Persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work, giving a brief description of such services and materials and the principal categories thereof, the respective amounts paid or due to each of said Persons in respect thereof and stating the progress of the work up to the date of said certificate;

(3) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) That no part of the cost of the services and materials described in subsection (e)(1) of this Section has been or is

being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) That the amount held by the Depository will, after payment of the amount requested in the pending disbursement request, be sufficient to pay in full the cost of such repair or reconstruction.

Nothing herein shall prevent the OWNERS of the AIRSPACE LOTS from modifying or altering any or all of the above procedures in this Section. Any such modification shall be in a writing signed by the same number of OWNERS required to amend this DECLARATION.

SECTION 6.02. SALE AFTER VOTE NOT TO REBUILD.

(A) In the event the SHARKEY BUILDING is MATERIALLY DAMAGED and the OWNERS of AIRSPACE LOTS elect not to rebuild, or are deemed to have so elected, all AIRSPACE LOTS and easements within AIRSPACE LOTS shall be merged together and sold as one property on terms that provide for an all cash payment upon the close of escrow. If any OWNER of an AIRSPACE LOT refuses to sell, any other OWNER of an AIRSPACE LOT may seek to compel such sale in a court of competent jurisdiction. The net proceeds of the sale, together with any insurance proceeds, shall be deposited with the Depository, and as soon as possible thereafter be distributed to the OWNERS of all AIRSPACE LOTS according to the following procedure:

A single appraiser or a panel of appraisers, selected in accordance with subsection (B) of this section, shall hold an evidentiary hearing at which any interested party shall have the right to present relevant evidence, including, but not limited to, the opinions of experts. Thereafter, the appraiser(s) shall render his, her or their written decision as to the fair market value of each AIRSPACE LOT as it existed immediately prior to the damage or destruction. The determination of value by the appraiser(s) shall be final.

The Depository shall determine the amount available for distribution, which shall be the sum of the insurance proceeds, any accrued interest, and the net sale proceeds, less the cost of the appraiser(s), and less the costs of the Depository (herein the "Net Proceeds").

The Depository shall then distribute to the OWNER or OWNERS of an AIRSPACE LOT and his or her MORTGAGEES the following amount:

That percentage of the Net Proceeds which is equal to the fair market value of such OWNER's AIRSPACE LOT immediately prior to the damage or destruction, divided by the total fair market value of all the AIRSPACE LOTS immediately prior to such damage or destruction.

(B) If the OWNER of LOT 630-A and the OWNER of LOT 630-B are unable to agree as to the identity of a single appraiser, then the OWNER of LOT 630-A and the OWNER of LOT 630-B shall each appoint one appraiser who shall be a member of the American Institute of Appraisers or other nationally recognized appraiser's organization. These two appraisers shall appoint a third appraiser who shall also be a member of the American Institute of Appraisers or other nationally recognized appraiser's organization. The third appraiser shall chair the panel. If the two appraisers cannot agree on the identity of the third appraiser, any party may petition any court with jurisdiction of the subject matter, to appoint the third appraiser.

(C) Nothing in this Section shall prevent the OWNERS of the AIRSPACE LOTS from modifying or altering any or all of the above procedures in this Section. Any such modification shall be in a writing signed by the same number of OWNERS required to amend this DECLARATION.

SECTION 6.03 DAMAGE OR DESTRUCTION NOT CONSIDERED MATERIAL.

In the event that any portion of the SHARKEY BUILDING is not MATERIALLY DAMAGED as a result of fire or other casualty, the SHARKEY BUILDING shall be repaired and reconstructed in accordance with the provisions for repair and reconstruction as set forth in Section 6.01 hereinabove, unless all of the damage is confined to one AIRSPACE LOT, in which event the OWNER or OWNERS of the damaged AIRSPACE LOT shall be responsible for repairing the damage, if they elect to so repair it, using any insurance proceeds that may be available.

ARTICLE 7: TERM, AMENDMENT AND TERMINATION OF DECLARATION

SECTION 7.01. TERM.

Unless earlier terminated as hereinafter provided, the covenants and restrictions of this DECLARATION shall run with and bind the AIRSPACE LOTS and shall inure to the benefit of and shall be enforceable by any OWNER of an AIRSPACE LOT and their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date this DECLARATION is recorded after which time they shall be automatically extended for successive periods of ten (10) years unless a majority of OWNERS of LOT 630-A and a majority of OWNERS of LOT 630-B elect otherwise.

SECTION 7.02. AMENDMENT OF DECLARATION.

This DECLARATION may be amended by a document signed by:

- (1) a majority of the OWNERS of LOT 630-A; and
- (2) a majority of the OWNERS of LOT 630-B.

Any amendment authorized by this section shall be recorded in the Office of the County Recorder of Contra Costa County, California.

SECTION 7.03. EARLY TERMINATION OF DECLARATION CAUSED BY CASUALTY.

In the event the SHARKEY BUILDING is MATERIALLY DAMAGED and the OWNERS of AIRSPACE LOTS elect not to rebuild, or are deemed to have so elected, this DECLARATION shall cease upon the sale of the remaining property as provided for above in this DECLARATION. In such event, and upon a request to do so, every OWNER of every AIRSPACE LOT shall execute a document in recordable form memorializing that this DECLARATION has been terminated. Any document recorded for the purpose of memorializing that this DECLARATION has been terminated shall be signed by a majority of the OWNERS of LOT 630-A and a majority of the OWNERS of LOT 630-B.

ARTICLE 8: MORTGAGE PROTECTION

SECTION 8.01. VALIDITY OF MORTGAGE LIEN.

No breach of any of the covenants, conditions and restrictions contained herein shall defeat or render invalid the lien of any FIRST MORTGAGE encumbering any AIRSPACE LOT made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any OWNER whose title is derived through foreclosure or trustee's sale or otherwise.

SECTION 8.02. PRIORITY AS TO PROCEEDS AND AWARDS.

Any language contained in this DECLARATION to the contrary notwithstanding, no OWNER and no other party shall have priority over any rights of MORTGAGEES pursuant to their MORTGAGES in the case of a distribution to OWNERS of insurance proceeds or condemnation awards for losses to or taking of AIRSPACE LOTS.

SECTION 8.03. BOUNDARIES OF AIRSPACE LOTS.

No boundary between the AIRSPACE LOTS may be changed without the:
(a) written consent of all MORTGAGEES adversely affected; and (b) the approval of the City of Martinez.

ARTICLE 9: MISCELLANEOUS

SECTION 9.01. INTENT AS TO DAVIS-STERLING COMMON INTEREST DEVELOPMENT ACT.

This DECLARATION is not intended to be a "Declaration" as that term is defined by the Davis-Sterling Common Interest Development Act (Civil Code section 1351, subd. (h)), because, among other things, there is no common area in the above referenced subdivision of the PROPERTY.

SECTION 9.02. NON-MERGER.

This DECLARATION shall not be subject to the doctrine of merger.

SECTION 9.03. SEVERABILITY.

Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where the AIRSPACE LOTS are situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

SECTION 9.04. APPLICABLE LAW.

This DECLARATION shall be construed in accordance with, and be governed by, California law without reference to principles of conflict of laws.

SECTION 9.05. VENUE.

The venue for any action or proceeding based upon this DECLARATION shall be Contra Costa County, California.

CITY OF MARTINEZ

By: _____
Philip A. Vince, City Manager

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF MARTINEZ
ATTN: PUBLIC WORKS DIRECTOR
525 HENRIETTA STREET
MARTINEZ, CA 94553

APNs 373-265-001 and 373-265-002

DECLARATION OF USE RESTRICTIONS

ARTICLE 1: INTRODUCTION & FACTS

This is a Declaration of Use Restrictions for 610 Court Street and 630 Court Street, Martinez, California (the "DECLARATION") and is executed on April 18, 2012 by the **CITY OF MARTINEZ**, a general law city, (the "CITY").

This DECLARATION is made with specific reference to the following facts:

A. CITY is the owner of certain tracts of land located in the City of Martinez, State of California, commonly known as 610 Court Street ("610 COURT STREET") and 630 Court Street ("630 COURT STREET"), and which are more particularly described as follows, to wit:

610 COURT STREET (APN 373-265-001)

Real property in the City of Martinez, County of Contra Costa, State of California, described as follows:

PARCEL ONE:

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

BEGINNING AT THE MOST NORTHERLY CORNER OF BLOCK 329, SAID POINT BEING THE INTERSECTION OF THE SOUTH LINE OF ESCOBAR

STREET WITH THE WEST LINE OF COURT STREET; THENCE FROM SAID POINT OF BEGINNING SOUTHERLY ALONG THE WEST LINE OF COURT STREET, 90 FEET; THENCE WESTERLY AND PARALLEL WITH THE SOUTH LINE OF ESCOBAR STREET, 41 FEET; THENCE NORTHERLY AND PARALLEL WITH THE WEST LINE OF SAID COURT STREET, 90 FEET, MORE OR LESS, TO THE SOUTH LINE OF ESCOBAR STREET; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID ESCOBAR STREET; 41 FEET TO THE POINT OF BEGINNING.

630 COURT STREET (APN: 373-265-002)

Real property in the City of Martinez, County of Contra Costa, State of California, 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.

B. CITY has subdivided 630 COURT STREET into two (2) airspace lots, designated as Lot 630-A ("LOT 630-A") and Lot 630-B ("LOT 630-B"), the dividing line between which is a horizontal plane across the 630 COURT STREET as more particularly set forth in the "Declaration of Airspace Plan and Covenants, Conditions and Restrictions for 630 Court Street, Martinez, California" recorded _____, 2012, as Instrument No. _____ in the Official Records of Contra Costa County, California. There are no common areas in such subdivision.

C. CITY will be conveying, to a private party, 610 COURT STREET and LOT 630-A, which will leave LOT 630-B vested in the CITY.

D. There is located upon 610 COURT STREET a mostly concrete and stucco building commonly known as the Old Public Defender Building (the "OLD PUBLIC DEFENDER BUILDING") which contains two (2) stories above the level of the adjacent sidewalk.

E. There is located upon 630 COURT STREET a mostly brick building commonly known as the Sharkey Building (the "SHARKEY BUILDING") which contains two (2) stories above the level of the adjacent sidewalk. All of said two stories of the SHARKEY BUILDING exist within LOT 630-A.

F. With regard to 610 COURT STREET and 630 COURT STREET, public funds have been expended to assemble, subdivide and negotiate a disposition of said properties.

G. CITY desires, upon conveyance to a private party, to restrict the uses at 610 COURT STREET and LOT 630-A, in order to foster CITY's policies of: (i) encouraging uses that will foster economic growth in the area generally known as the 600 block of Court Street; and (ii) discouraging uses that, in CITY's opinion, will tend to deter economic growth in said block.

NOW, THEREFORE, CITY hereby declares that 610 COURT STREET and LOT 630-A shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the declarations and restrictions set forth herein, all of which are imposed as equitable servitudes. All of the restrictions hereinafter set forth shall constitute covenants that run with the land and are binding upon CITY and its successors and assigns, and all parties having or acquiring any right, title, or interest in or to any part of 610 COURT STREET and/or LOT 630-A.

ARTICLE 2: DEFINITIONS

SECTION 2:01. "ADMINISTRATIVE OFFICE" DEFINED.

As used in this DECLARATION the term "ADMINISTRATIVE OFFICE" shall mean an office establishment primarily engaged in overall management and general supervisory functions, such as executive, personnel, finance, legal and sales activities, performed in a single location or building for other branches or divisions of the same company, which may involve the accessory sale of goods and/or merchandise from the premises. If the goods or merchandise are sold for delivery on, or from, the premises, and constitutes greater than fifty (50) percent of the gross revenue from the administrative office, then the premises shall be considered a store rather than an administrative office.

SECTION 2:02. "ALCOHOLIC BEVERAGE" DEFINED.

As used in this DECLARATION the term "ALCOHOLIC BEVERAGE" shall have the same definition as provided in California Business and Professions Code section 23004. If section 23004 should be repealed then a replacement statute may be resorted to for such definition, and if there is no replacement statute, then the common meaning shall be applied.

SECTION 2:03. "ANTIQUÉ SHOP" DEFINED.

As used in this DECLARATION the term "ANTIQUÉ SHOP" shall mean an establishment engaged in the retail sales of objects of art or pieces of furniture, household implements and the like, which, because of age, rarity, and fabrication or the manufacture at a time much earlier than present, have acquired a collectors' quality and value, but excluding any objects or materials that are obsolete and have secondhand or salvage value only.

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SECTION 2:04. "BAIL BONDS AGENCY" DEFINED.

As used in this DECLARATION the term "BAIL BONDS AGENCY" shall mean an establishment that provides security for the due appearance of an individual in order to obtain temporary release from imprisonment.

SECTION 2:05. "BEER" DEFINED.

As used in this DECLARATION the term "BEER" shall have the same definition as provided in California Business and Professions Code section 23006. If section 23006 should be repealed then a replacement statute may be resorted to for such definition, and if there is no replacement statute, then the common meaning shall be applied.

SECTION 2:06. "CHECK CASHING SHOP" DEFINED.

As used in this DECLARATION the term "CHECK CASHING SHOP" shall mean an establishment with a primary purpose of cashing checks and making loans. The term "CHECK CASHING SHOP" does not include: (a) a PAWNSHOP; or (b) a financial institution such as a bank or credit union.

SECTION 2:07. "BAR / COCKTAIL LOUNGE" DEFINED.

As used in this DECLARATION the term "BAR / COCKTAIL LOUNGE" shall mean an establishment principally engaging in the sale or dispensing of ALCOHOLIC BEVERAGES by the drink for on-site consumption and where food may be made available for on-premises consumption as accessory to the principal use. The term "BAR / COCKTAIL LOUNGE" does not include a "WINE BAR / BEER GARDEN."

SECTION 2:08. "COLON CLEANSING SALON" DEFINED.

As used in this DECLARATION the term "COLON CLEANSING SALON" shall mean an establishment that provides colon cleansing, colon hydrotherapy, colon hydration and/or colon irrigation by injecting fluid, through one or more tubes, into the colon via the rectum.

SECTION 2:09. "DAY SPA" DEFINED.

As used in this DECLARATION the term "DAY SPA" shall mean an establishment that offers a combination of massage therapy, spa tubs, pools, steam rooms, saunas, or other related accessory facilities and uses and may include a combination of non-medical personal services such as hair, nail, skin care, and hair removal treatments or other services typically found in a beauty shop. A "DAY SPA" shall not mean a beauty shop, barber shop, or nail care establishment that does not provide a combination of massage therapy, spa tubs, pools, steam rooms, saunas, or other related accessory facilities and uses. The term "DAY SPA" does not include a "COLON CLEANSING SALON."

SECTION 2:10. "DRY CLEANER" DEFINED.

As used in this DECLARATION the term "DRY CLEANER" shall mean an

establishment that uses one or more solvents, other than water, for the purpose of cleaning or renovating wearing apparel, fabrics, textiles, drapes, curtains, rugs, blankets, furs, leather or other material.

SECTION 2:11. "FIREARMS SALES" DEFINED.

As used in this DECLARATION the term "FIREARMS SALES" shall mean the retail sale of firearms and/or ammunition, whether it is the principal sales item or incidental to the overall sales. "FIREARMS SALES" shall also include the leasing, and/or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm and/or ammunition.

SECTION 2:12. "GUNSMITH" DEFINED.

As used in this DECLARATION the term "GUNSMITH" shall mean an establishment that manufactures, repairs, restores, refurbishes, customizes and/or engraves firearms.

SECTION 2:13. "LAUNDRY" DEFINED.

As used in this DECLARATION the term "LAUNDRY" shall mean an establishment that operates laundry equipment for the cleaning of wearing apparel, fabrics, textiles, drapes, curtains, rugs, blankets, furs, leather or other material.

SECTION 2:14. "LAUNDROMAT" DEFINED.

As used in this DECLARATION the term "LAUNDROMAT" shall mean an establishment that provides laundry equipment to be used by the general public for the cleaning of wearing apparel, fabrics, textiles, drapes, curtains, rugs, blankets, furs, leather or other material.

SECTION 2:15. "LICE REMOVAL SALON" DEFINED.

As used in this DECLARATION the term "LICE REMOVAL SALON" shall mean an establishment engaged in the removal of lice and/or lice eggs (nits) from human hair.

SECTION 2:16. "LIQUOR STORE" DEFINED.

As used in this DECLARATION the term "LIQUOR STORE" shall mean an establishment engaged in the retail sales of ALCOHOLIC BEVERAGES for off-site consumption. The term "LIQUOR STORE" does not include a "WINE BAR / BEER GARDEN."

SECTION 2:17. "MARTINEZ ZONING CODE" DEFINED.

As used in this DECLARATION the term "MARTINEZ ZONING CODE" shall mean Chapter 22 (entitled "Zoning") of the City of Martinez Municipal Code, or any subsequently enacted chapter related to zoning that replaces Chapter 22.

SECTION 2:18. "MASSAGE PARLOR" DEFINED.

As used in this DECLARATION the term "MASSAGE PARLOR" shall mean an establishment engaged in providing massage treatments by one or more therapists. The term "MASSAGE PARLOR" does not include a DAY SPA.

SECTION 2:19. "MEDICAL MARIJUANA DISPENSARY" DEFINED.

As used in this DECLARATION the term "MEDICAL MARIJUANA DISPENSARY" shall mean a facility, business, club, place of operation, or other establishment: (a) where marijuana is made, possessed, provided, used, sold, purchased, distributed, cultivated, dispensed, stored, handled, consumed, received, delivered, received for purchase, sale or distribution, made available, or arranged to be made available; and/or (b) where any assistance of any form is provided, offered, purchased or procured to obtain marijuana and/or to make marijuana available.

SECTION 2:20. "OFFICE" DEFINED.

As used in this DECLARATION the term "OFFICE" shall mean a room or suite of rooms or portion of a building used for the practices of a profession or for the conduct of a business that may involve the accessory sale of goods and/or merchandise from the premises. If the goods or merchandise are sold for delivery on, or from, the premises, and constitutes greater than fifty (50) percent of the gross revenue from the office, then the premises shall be considered a store rather than an office. An "OFFICE" includes, but is not limited to, a BAIL BONDS AGENCY, attorney, real estate agency, insurance agency, medical professional, medical clinic, mental health counselor and messenger service.

SECTION 2:21. "PAWNSHOP" DEFINED.

As used in this DECLARATION the term "PAWNSHOP" shall mean an establishment engaged in retail sales of new or secondhand merchandise and offering loans secured by personal property.

SECTION 2:22. "PUBLIC BILLIARD ROOM" DEFINED.

As used in this DECLARATION the term "PUBLIC BILLIARD ROOM" shall mean any place open to the public where billiards, bagatelle or pool is played, or in which any billiard or pool table is kept and persons are permitted to play or do play thereon, whether any compensation or reward is charged for the use of such table or not; provided, however, that "PUBLIC BILLIARD ROOM" shall not include any place operated and maintained on the same premises with and strictly incidental to another lawful principal use of the premises and only during the hours that such principal use is open to the public.

SECTION 2:23. "SECONDHAND STORE" DEFINED.

As used in this DECLARATION the term "SECONDHAND STORE" shall mean the retail sale of used appliances, clothing and miscellaneous household or

ARTICLE 3: USE RESTRICTIONS

SECTION 3:01. USE RESTRICTIONS FOR SIDEWALK LEVEL STORIES.

(A) Notwithstanding the MARTINEZ ZONING CODE, the following uses are prohibited on any SIDEWALK LEVEL STORY of the SHARKEY BUILDING and the OLD PUBLIC DEFENDER BUILDING, unless a written waiver is first obtained from the CITY:

- a. An ADMINISTRATIVE OFFICE (except to the extent described in subsection (B), below);
- b. An OFFICE (except to the extent described in subsection (B), below);
- c. A BAIL BONDS AGENCY;
- d. A DRY CLEANER;
- e. A LAUNDRY;
- f. A LAUNDROMAT;
- g. A PAWNSHOP;
- h. A SECONDHAND STORE;
- i. A TATTOO PARLOR;
- j. A MASSAGE PARLOR;
- k. A CHECK CASHING STORE;
- l. A BAR / COCKTAIL LOUNGE;
- m. A LIQUOR STORE;
- n. A MEDICAL MARIJUANA DISPENSARY;
- o. A private club or lodge;
- p. A PUBLIC BILLIARD ROOM;
- q. FIREARMS SALES;
- r. A GUNSMITH;
- s. A LICE REMOVAL SALON; and
- t. A COLON CLEANSING SALON.

(B) An OFFICE, including an ADMINISTRATIVE OFFICE, that is merely incidental to a use that is not prohibited in subsection (A), above, shall not be prohibited by this section, provided the main entrance door to the establishment does not open directly into the OFFICE or ADMINISTRATIVE OFFICE. By way of example, a manager's office in the rear of a restaurant or store would not be prohibited by this section.

(C) Notwithstanding the above provisions of this Section, all uses not prohibited in subsection (A), above, shall comply with the requirements, if any, of the MARTINEZ ZONING CODE. If a use that is not prohibited in subsection (A), above, is a use conditionally permitted by the MARTINEZ ZONING CODE, such use shall be established only after the issuance of a conditional use permit in accordance with the MARTINEZ ZONING CODE.

SECTION 3:02. NO USE RESTRICTIONS ON OTHER STORIES; BURDEN.

(A) Through this DECLARATION, use restrictions are only being placed upon the SIDEWALK LEVEL STORY of the SHARKEY BUILDING and the SIDEWALK LEVEL STORY of the OLD PUBLIC DEFENDER BUILDING. Accordingly, this DECLARATION shall burden the SIDEWALK LEVEL STORY of LOT 630-A and the

SIDEWALK LEVEL STORY of the OLD PUBLIC DEFENDER BUILDING.

(B) All stories above or below the SIDEWALK LEVEL STORY of the SHARKEY BUILDING and the SIDEWALK LEVEL STORY of the OLD PUBLIC DEFENDER BUILDING are not affected by the use restrictions contained in this DECLARATION, and instead shall be governed by the MARTINEZ ZONING CODE.

SECTION 3:03. WRITTEN WAIVERS.

Any owner, tenant or proposed tenant of the SIDEWALK LEVEL STORY of the SHARKEY BUILDING or the SIDEWALK LEVEL STORY of the OLD PUBLIC DEFENDER BUILDING may apply to the CITY for a written waiver of any prohibition contained in this DECLARATION. The application for the waiver shall set forth, in detail, the particular business establishment for which the waiver is sought, including any restrictions proposed to be placed upon the operation of the business establishment. The CITY shall be under no obligation to grant any such waiver, and may deny any such application for any reason whatsoever, or no reason at all.

Any such written waiver shall be for the particular business establishment proposed by the applicant and shall be non-transferrable. Additionally, any such waiver, in order to be effective, must be signed by a person authorized to act on behalf of CITY. No such waiver shall be a blanket or general waiver. No such waiver shall be applicable to unspecified acts to take place in the future.

The issuance of a building permit or business license shall, in and of itself, not constitute such a waiver.

Any such waiver may be a conditional waiver. The type, scope, duration, and other details of any condition to be imposed on the waiver shall be determined in the sole discretion of the CITY. The CITY may impose a condition upon the waiver that the waiver shall have a duration of a certain number of years, after which a new waiver must be obtained and, if not so obtained, the business establishment shall close immediately.

Notwithstanding the above, no waiver shall be granted for a use not otherwise permissible or conditionally permissible pursuant to: (a) the City of Martinez General Plan (as the same may exist from time to time); (b) any Specific Plan applicable, from time to time, to the SHARKEY BUILDING and/or the OLD PUBLIC DEFENDER BUILDING; and (c) the MARTINEZ ZONING CODE.

SECTION 3:04. DURATION.

The covenants and restrictions of this DECLARATION shall run for a term of fifty (50) years from the date this DECLARATION is recorded after which time they shall be automatically extended for successive periods of ten (10) years unless all of the following elect otherwise: (a) the CITY; (b) a majority of OWNERS of LOT 630-A; and (c) a majority of OWNERS of OLD PUBLIC DEFENDER BUILDING.

ARTICLE 5: AMENDMENT

SECTION 5:01. AMENDMENT OF DECLARATION IN GENERAL.

This DECLARATION may be amended as provided for in this Article.

SECTION 5:02. AMENDMENT AFFECTING LOT 630-A ONLY.

Any amendment to this DECLARATION that only involves an amendment to the restrictions imposed upon LOT 630-A, may be accomplished by a document signed by all of the following:

- (1) the CITY; and
- (2) a majority of the owners of LOT 630-A.

SECTION 5:03. AMENDMENT AFFECTING OLD PUBLIC DEFENDER BUILDING ONLY.

Any amendment to this DECLARATION that only involves an amendment to the restrictions imposed upon the OLD PUBLIC DEFENDER BUILDING, may be accomplished by a document signed by all of the following:

- (1) the CITY; and
- (2) a majority of the owners of the OLD PUBLIC DEFENDER BUILDING.

SECTION 5:04. AMENDMENT AFFECTING BOTH PROPERTIES.

Any amendment to this DECLARATION that involves an amendment to the restrictions imposed upon both LOT 630-A and the OLD PUBLIC DEFENDER BUILDING, may be accomplished by a document signed by all of the following:

- (1) the CITY;
- (2) a majority of the owners of the LOT 630-A; and
- (3) a majority of the owners of the OLD PUBLIC DEFENDER BUILDING.

SECTION 5:05. RECORDATION.

Any amendment authorized by this Article shall be in a writing recorded in the Office of the County Recorder of Contra Costa County, California.

ARTICLE 6: MISCELLANEOUS

SECTION 6:01. MORTGAGE PROTECTION.

No breach of this DECLARATION, nor any enforcement action based thereon, shall defeat or render invalid any lien of any mortgage or deed of trust made in good faith and for value, however this

DECLARATION shall be binding upon and effective against any owner of LOT 630-A or 610 COURT STREET whose title is derived through foreclosure or trustee's sale or otherwise.

SECTION 6:02. INTENT AS TO DAVIS-STERLING COMMON INTEREST DEVELOPMENT ACT.

This DECLARATION is not intended to be a "Declaration" as defined by the Davis-Sterling Common Interest Development Act (Civil Code section 1351, subd. (h)).

SECTION 6:03. AMBIGUITIES.

Any ambiguity in this DECLARATION shall be resolved against any and all future owners of LOT 630-A and 610 COURT STREET and in favor of upholding and retaining the restrictions on use contained in the provisions of Article 3 hereof.

SECTION 6:04. HEADINGS.

It is agreed that the titles of the articles and sections (i.e. headings) within this instrument are merely for convenience, do not form a part of this instrument, and shall not be used to interpret any particular article, section or other portion of this instrument.

SECTION 6:05. CITY ZONING REGULATIONS NOT LESSEMED.

Nothing contained in this DECLARATION shall be interpreted to authorize or permit any future owner of 610 COURT STREET and/or LOT 630-A to violate any ordinance or regulation of the CITY OF MARTINEZ relating to zoning and land use, including but not limited to the MARTINEZ ZONING CODE.

SECTION 6:06. RIGHTS AND OBLIGATIONS RUN WITH THE LAND.

The terms of this DECLARATION shall run with the land.

ARTICLE 7: EXECUTION

Executed this 16th day of May, 2012.

CITY OF MARTINEZ

By: _____
Philip Vince, City Manager

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF MARTINEZ
ATTN: PUBLIC WORKS DIRECTOR
525 HENRIETTA STREET
MARTINEZ, CA 94553

APN 373-265-002

**DECLARATION OF
ARCHITECTURAL
COVENANTS, CONDITIONS & RESTRICTIONS**

ARTICLE 1: INTRODUCTION & FACTS

This is a Declaration of Architectural Covenants, Conditions and Restrictions for 630 Court Street, Martinez, California (this "DECLARATION") and is entered into on the date hereinafter set forth by the **CITY OF MARTINEZ**, a general law city, (the "CITY") and **SOUTHPORT LAND AND COMMERCIAL COMPANY**, a California corporation, (the "GRANTEE").

This DECLARATION is made with specific reference to the following facts:

A. The CITY is the owner of a certain tract of land located in the City of Martinez, State of California, commonly known as 630 Court Street (the "PROPERTY"), and which is more particularly described as follows, to wit:

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.)

B. CITY has subdivided the PROPERTY into two (2) airspace lots, designated as Lot 630-A ("LOT 630-A") and Lot 630-B ("LOT 630-B"), the dividing line between which is a horizontal plane across the PROPERTY as more particularly set forth in the "Declaration of Airspace Plan and Covenants, Conditions and Restrictions for 630 Court Street, Martinez, California" recorded _____, 2012, as Instrument No. _____ in the Official Records of Contra Costa County, California. There are no common areas in such subdivision.

C. The GRANTEE has agreed to purchase LOT 630-A which will leave LOT 630-B vested in the CITY. The CITY is also the owner, in fee or lesser interest, of certain land adjacent to the Property described as follows, to wit:

COURT STREET (BETWEEN ESCOBAR STREET AND MAIN STREET); and MAIN STREET (BETWEEN COURT STREET AND LAS JUNTAS STREET).

(LOT 630-B and the property immediately described above will be collectively referred to herein as the "ADJACENT PROPERTY.")

D. There is located upon the PROPERTY a mostly brick building commonly known as the "Sharkey Building" (the "SHARKEY BUILDING") which contains two (2) stories above the level of the adjacent sidewalk. All of the exposed exterior of the SHARKEY BUILDING exists within LOT 630-A.

E. On or about February 2, 2007 the State Historical Resources Commission listed the SHARKEY BUILDING on the California Register of Historic Places. In its annual report for 2007, the State Historical Resources Commission stated:

"The Sharkey Building in Martinez was constructed in 1926. The property was listed for its association with William R. Sharkey, who published the dominate newspaper in Martinez and Contra Costa County. He became a State Senator in 1916 where he authored legislation that expanded Mt. Diablo Park, caused oil regulation and conservation to become a forefront issue of its time, granted the cities of Richmond and Martinez the right to manage and wharf their own tidelands."

ARTICLE 2: ARCHITECTURAL CONDITIONS, COVENANTS & RESTRICTIONS

SECTION 2:01. DEFINITION OF "PROTECTED FACADES."

As used in this Article, the term "PROTECTED FACADES" shall mean the exterior of the SHARKEY BUILDING fronting on Main Street (the south facing facade) and fronting on Court Street (the east facing facade).

SECTION 2:02. ARCHITECTURAL RESTRICTIONS FOR PROTECTED FACADES.

(A) Unless a written waiver or consent is obtained from the CITY, any and all modifications to the PROTECTED FACADES of the SHARKEY BUILDING shall comply with the Secretary of the Interior's "Standards for Rehabilitation" codified at 36 CFR §67.7, a current version of which is attached hereto as EXHIBIT A.

(B) To the extent reasonably possible, any and all seismic retrofitting and strengthening work shall be performed on the interior of the SHARKEY BUILDING and shall not be visible on the PROTECTED FACADES of the SHARKEY BUILDING (for example, epoxied bolts are to be used when reasonably possible instead of "through the wall" type bolts and washers).

SECTION 2:03. DESIGN REVIEW PROCESS MAY BE USED TO OBTAIN WAIVER OR CONSENT.

The City of Martinez design review process may be used to obtain the written waiver or consent referred to in subsection (A) of Section 2:02, above.

The issuance of a building permit shall, in and of itself, not constitute such a waiver or consent. The issuance of a demolition permit shall, in and of itself, not constitute such a waiver or consent.

Any such waiver or consent may be a conditional waiver or consent. The type, scope, duration, and other details of any condition to be imposed on the waiver or consent shall be determined in the sole discretion of the CITY. A conditional waiver or consent may be rejected by the owner of LOT 630-A, and if so rejected, this DECLARATION shall continue to apply as if the conditional waiver or consent had never been issued.

SECTION 2:04. ALTERNATIVE PROCESS TO OBTAIN WAIVER OR CONSENT.

If the City of Martinez design review process is ever abolished, or if such procedure is not deemed, by the City, to be the appropriate process, under the circumstances, to use to seek the written waiver or consent referred to in Section 2:02, above, then any other appropriate process may be used, and the remainder of this section shall apply.

If a waiver or consent, as referred to in Section 2:02, above, is obtained from the CITY under such alternate process, such waiver or consent shall:

- (a) be in writing;
- (b) specifically, and with detail, describe the scope of the waiver and the reasons why it was granted;
- (c) describe the PROPERTY by legal description and/or address;

(d) reference this DECLARATION by date recorded and Instrument number assigned by the County Recorder;

(e) be signed by a person authorized to act on behalf of the CITY;

(f) be signed by, (or, in a separate document, consented to by), all of the owner(s) of that portion of the SHARKEY BUILDING affected by the waiver; and

(g) be, (along with any consent by the affected owner(s)), recorded in the Office of the County Recorder of Contra Costa County, California.

No such waiver or consent shall be a blanket or general waiver. No such waiver shall be applicable to unspecified acts to take place in the future.

The issuance of a building permit shall, in and of itself, not constitute such a waiver or consent. The issuance of a demolition permit shall, in and of itself, not constitute such a waiver or consent.

Any such waiver or consent may be a conditional waiver or consent. The type, scope, duration, and other details of any condition to be imposed on the waiver or consent shall be determined in the sole discretion of the CITY. A conditional waiver or consent may be rejected by the owner of LOT 630-A, and if so rejected, this DECLARATION shall continue to apply as if the conditional waiver or consent had never been issued.

SECTION 2:05. COVENANT PROVISIONS.

(A) GRANTEE, for itself and all future owners of LOT 630-A or any part thereof, hereby covenants to abide by all of the conditions and restrictions contained in Section 2:02, above.

(B) This DECLARATION:

(1) shall burden LOT 630-A within the PROPERTY; and

(2) shall benefit the ADJACENT PROPERTY and the CITY.

(C) Pursuant to Civil Code section 1468, subd. (b), successive owners of LOT 630-A are to be expressly bound by the covenants in subsection (A), above, for the benefit of the ADJACENT PROPERTY and the CITY.

SECTION 2:06. AFFECT ON OTHER PARTS OF THE SHARKEY BUILDING.

(A) Nothing in this DECLARATION imposes any restriction or condition on, nor contains any covenant as to, an element of the SHARKEY BUILDING that is situated entirely on the interior of the SHARKEY BUILDING.

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(B) Nothing in this DECLARATION imposes any restriction or condition on, nor contains any covenant as to, the north facing and west facing facades of the SHARKEY BUILDING.

SECTION 2:07. DURATION.

(A) Except to the extent provided below in subsections (B), (C) and (D) of this Section, the covenants, conditions and restrictions in this DECLARATION shall run for a term of fifty (50) years from the date this DECLARATION is recorded after which time they shall be automatically extended for successive periods of ten (10) years unless all of the following elect otherwise: (a) the CITY; and (b) a majority of OWNERS of LOT 630-A.

(B) If the SHARKEY BUILDING is substantially destroyed by act of God, fire, or other casualty, and not rebuilt in substantially the same form as existed prior to the destruction, this DECLARATION shall automatically terminate and no longer burden the title to any portion of the SHARKEY BUILDING or the PROPERTY. The SHARKEY BUILDING shall be considered to be "substantially destroyed" if more than fifty percent (50%) of it is destroyed or rendered unsafe. The fifty percent shall, in the discretion of the owner of LOT 630-A, be either: (i) measured by physical volume; or (ii) measured by value. If this DECLARATION is so terminated, the parties shall execute appropriate documents to remove this DECLARATION from the title, or any party hereto may seek to remove it by quiet title action instituted in a court with jurisdiction over the subject matter.

(C) If the SHARKEY BUILDING is moved from the PROPERTY to a different location within the jurisdictional limits of the City of Martinez, this DECLARATION shall continue to apply to the SHARKEY BUILDING in its new location, but shall automatically terminate and no longer burden the title to any portion of the PROPERTY. In the event of such a move, the term "LOT 630-A" as used in this DECLARATION shall, after such move, mean all of what is presently the two (2) stories of the SHARKEY BUILDING above the level of the adjacent sidewalk.

(D) If the SHARKEY BUILDING is moved from the PROPERTY to a location not within the jurisdictional limits of the City of Martinez, this DECLARATION shall automatically terminate and no longer burden the title to any portion of the SHARKEY BUILDING or the PROPERTY.

ARTICLE 3: ENFORCEMENT

SECTION 3:01. PERSONS ENTITLED TO ENFORCEMENT.

The following shall be entitled to enforce this DECLARATION:

(A) the CITY;

(B) any person expressly authorized by the CITY to enforce this DECLARATION; and/or

(C) any owner of the ADJACENT LAND.

As used in this Section, the term "person" shall apply with equal force to a corporation, partnership, limited partnership, limited liability company, joint venture, public entity, trust, association and/or other entity, as well as a natural person.

SECTION 3:02. INJUNCTION.

(A) If the GRANTEE, or any future owner of LOT 630-A, breaches, or threatens to breach, any covenant in this DECLARATION, an action may be brought in equity seeking an injunction to enforce the covenant which has been breached or which is threatened to be breached. Any such injunction may be a prohibitive injunction and/or a mandatory injunction. If a mandatory injunction is sought for a breach that has already occurred, such injunction may require, at the expense of GRANTEE, or any future owner of LOT 630-A (as the case may be), the restoration of the affected area of the SHARKEY BUILDING, to the condition and appearance prior to said breach.

(B) The remedy provided in subsection (A) of this Section is in addition to any other remedy now or hereafter provided by law.

SECTION 3:03. EQUITABLE SERVITUDES.

In the alternative, the covenants, conditions and restrictions in this DECLARATION may be enforced as equitable servitudes. Enforcing this DECLARATION as equitable servitudes is in addition to any other remedy now or hereafter provided by law.

SECTION 3:04. OTHER MEANS OF ENFORCEMENT.

Any party enforcing this DECLARATION shall have broad choices for enforcement thereof. Accordingly, an action to enforce this DECLARATION may be maintained on any recognized legal theory.

SECTION 3:05. SELECTION OF REMEDY IS NOT A WAIVER OR LIMITATION.

The exercise of one remedy for enforcement hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

ARTICLE 4: AMENDMENT

SECTION 4:01. AMENDMENT OF DECLARATION.

(A) If LOT 630-B is owned by the CITY, this DECLARATION may be amended by a document signed by:

- (1) the CITY; and

(2) a majority of the owners of LOT 630-A.

(B) If LOT 630-B is not owned by the CITY, this DECLARATION may be amended by a document signed by:

(1) the CITY;

(2) a majority of the owners of the ADJACENT PROPERTY; and

(3) a majority of the owners of LOT 630-A.

Any amendment authorized by this section shall be recorded in the Office of the County Recorder of Contra Costa County, California.

ARTICLE 5: MISCELLANEOUS

SECTION 5:01. MORTGAGE PROTECTION.

No breach of this DECLARATION, nor any enforcement action based thereon, shall defeat or render invalid any lien of any mortgage or deed of trust made in good faith and for value, however this DECLARATION shall be binding upon and effective against any owner of LOT 630-A whose title is derived through foreclosure or trustee's sale or otherwise.

SECTION 5:02. INTENT AS TO DAVIS-STERLING COMMON INTEREST DEVELOPMENT ACT.

This DECLARATION is not intended to be a "Declaration" as defined by the Davis-Sterling Common Interest Development Act (Civil Code section 1351, subd. (h)), because, among other things, there is no common area in the above referenced subdivision of the PROPERTY.

SECTION 5:03. AMBIGUITIES.

Any ambiguity in this DECLARATION shall be resolved against the GRANTEE and all future owners of LOT 630-A, and in favor of construing the covenants, conditions and restrictions contained herein so as to promote a preservation, and possible restoration, of the PROTECTED FACADES of the SHARKEY BUILDING in accordance with the provisions of Article 2 hereof.

SECTION 5:04. HEADINGS.

It is agreed that the titles of the articles and sections (i.e. headings) within this DECLARATION are merely for convenience, do not form a part of this DECLARATION, and shall not be used to interpret any particular article, section or other portion of this DECLARATION.

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SECTION 5:05. FACTS.

It is agreed that the facts stated in Article 1 of this DECLARATION are true and accurate.

SECTION 5:06. CITY BUILDING REGULATIONS NOT LESSENEED.

Nothing contained in this DECLARATION shall be interpreted to authorize or permit GRANTEE to violate any ordinance or regulation of the City of Martinez relating to building materials, construction methods, land use or zoning. In the event of any conflict between any such ordinance or regulation and the terms of this DECLARATION, such ordinance or regulation shall prevail.

SECTION 5:07. RIGHTS AND OBLIGATIONS RUN WITH THE LAND.

The rights, obligations and other terms of this DECLARATION shall run with the land.

ARTICLE 6: EXECUTION

Executed this 16th day of May, 2012.

CITY OF MARTINEZ

By: _____
Philip Vince, City Manager

SOUTHPORT LAND AND COMMERCIAL COMPANY

By: _____
David R. Fischer, President

EXHIBIT A

§ 67.7 Standards for rehabilitation.

(a) The following Standards for Rehabilitation are the criteria used to determine if a rehabilitation project qualifies as a certified rehabilitation. The intent of the Standards is to assist the long-term preservation of a property's significance through the preservation of historic materials and features. The Standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The Standards also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction. To be certified, a rehabilitation project must be determined by the Secretary to be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located.

(b) The following Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility. (The application of these Standards to rehabilitation projects is to be the same as under the previous version so that a project previously acceptable would continue to be acceptable under these Standards.)

(1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

(2) The historic character of a property shall be retained and preserved.

The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

(3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

(4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

(5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

(6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

(7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

(9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

(10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(c) The quality of materials and craftsmanship used in a rehabilitation project must be commensurate with the quality of materials and craftsmanship of the historic building in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate physical treatments include, but are not limited to: improper repointing techniques; improper exterior masonry cleaning methods; or improper introduction of insulation where damage to historic fabric would result. In almost all situations, use of these materials and treatments will result in denial of certification. Similarly, exterior additions that duplicate the form, material, and detailing of the structure to the extent that they compromise the historic character of the structure will result in denial of certification. For further information on appropriate and inappropriate rehabilitation treatments, owners are to consult the Guidelines for Rehabilitating Historic Buildings published by the NPS. “Preservation

Briefs'' and additional technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's Standards for Rehabilitation are available from the SHPOs and NPS WASO. Owners are responsible for procuring this material as part of property planning for a certified rehabilitation.

(d) In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In such cases, the Secretary will consider such extreme intervention as part of a certified rehabilitation if:

- (1) The necessity for dismantling is justified in supporting documentation;
- (2) Significant architectural features and overall design are retained; and
- (3) Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

Section 47 of the Internal Revenue Code of 1986 exempts certified historic structures from meeting the physical test for retention of external walls and internal structural framework specified therein for other rehabilitated buildings. Nevertheless, owners are cautioned that the Standards for Rehabilitation require retention of distinguishing historic materials of external and internal walls as well as structural systems. In limited instances, rehabilitations involving removal of existing external walls, *i.e.*, external walls that detract from the historic character of

the structure such as in the case of a nonsignificant later addition or walls that have lost their structural integrity due to deterioration, may be certified as meeting the Standards for Rehabilitation.

(e) Prior approval of a project by Federal, State, and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes. The Secretary's Standards for Rehabilitation take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the property and, where applicable, the district in which it is located.

(f) The qualities of a property and its environment which qualify it as a certified historic structure are determined taking into account all available information, including information derived from the physical and architectural attributes of the building; such determinations are not limited to information contained in National Register or related documentation.