

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
(APNs 144-274-014, 144-274-015 and 144-274-002)

This Exclusive Negotiating Rights Agreement (“Agreement”) is entered into as of this July 20th _____, 2024 by and between the City of Cotati, a California municipal corporation (“City”), and Freebird Development Company, LLC, a California limited liability company (“Developer”). City and Developer may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. The City of Cotati is the owner of three parcels of real property in the City of Cotati legally described as per Map recorded June 7, 1983 in Book 10, Pages 8 of Official Records, in the City of Cotati, County of Sonoma, State of California, APNs 144-274-014, 144-274-015 and 144-274-002, as shown on the map attached to this Agreement as **Exhibit A** and incorporated herein by this reference (“Property”).
- B. On March 30, 2024, the City issued a Request for Qualifications for the development of affordable housing, as defined and described in the City of Cotati Zoning Ordinance, on the Property (the “Project”). The City is interested in exploring the feasibility of the Project and has selected the Developer as a potential developer of the Project.
- C. It is anticipated that the Project will include a range of 40-55 units, with a mix of unit sizes and affordability levels. The Project is also anticipated to include on-site parking, and indoor amenity space including a community room, a lobby, laundry facilities and a property management office. Commercial space on the ground floor fronting onto La Plaza and East Cotati Avenue is also desired. Outdoor recreation areas are anticipated to include one or more courtyards, with pedestrian and bike infrastructure anticipated to be included along the project frontage. Developer acknowledges that the deed for the Property is likely to contain a restrictive covenant that the Property shall be developed as affordable housing, as defined and described in the City of Cotati Zoning Ordinance, and thus the Project is to be affordable to households with incomes not to exceed 120% of median income for Sonoma County, California, adjusted for actual household size appropriate for the unit, as determined by the U.S. Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093 (c). Accordingly, the Project will be subject to one or more agreements restricting the sale and/or rental and occupancy of residential units to eligible households.
- D. On February 13, 2024, the Council of the City of Cotati, by resolution, declared the Property “Exempt Surplus Land” in accordance with the terms, requirements, and provisions of the Surplus Land Act as that term is defined in California Government Code Section 54221(f)(1)(A) or 54221(f)(1)(F), making findings and justifications that the purchaser will be required to develop a project that is consistent with either Government Code Section 54221(f)(1)(A) or 54221(f)(1)(F). A copy of this Resolution was sent to the California Department of Housing and Community Development in accordance with the requirements of Section 400(e) of the Surplus Land Act Guidelines (April 2021), and the Guide to Exemptions from the Standard Surplus Land Act Process for Local Agencies issued by the California Department of Housing

and Community Development (July 2022). Development of the Property was then put out for competitive bid through a Request for Qualifications (RFQ) process with invitations to participate being sent to all known entities as identified in GC 54222, through which Freebird Development LLC was the chosen partners with which to develop the Property.

- E. The purpose of this Agreement is to establish procedures and standards for the negotiation by the City and the Developer of a Disposition and Development Agreement (“DDA”) pursuant to which the Developer will conduct specified development activities related to the Property and the City will convey the Property, subject to a restriction requiring development of Affordable Housing, upon satisfaction of and subject to certain conditions to be negotiated. The Developer acknowledges and agrees that this Agreement in itself does not grant the Developer the right to acquire the Property from the City or to develop the Project, nor does it obligate the Developer to any activities or costs to develop the Project, except for the preliminary analysis and negotiations contemplated by this Agreement.

AGREEMENT

Now, therefore, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

EXCLUSIVE NEGOTIATIONS RIGHT

1. Good Faith Negotiations. The City and the Developer shall negotiate diligently and in good faith, during the Negotiating Period described in Section 2, the terms of a DDA for the development of the Project on the Property. During the Negotiating Period, the Parties shall use good faith efforts to accomplish the respective tasks outlined in the Work Plan Scope and Schedule set forth in Exhibit B to this Agreement to facilitate the negotiation of a mutually satisfactory DDA.

2. Negotiating Period. The exclusive negotiating period (“Negotiating Period”) under this Agreement shall be twelve (12) months, commencing on the date this Agreement is fully executed. If Developer notifies City that the Property is not suitable for development, then this Agreement shall terminate in accordance with Section 10 (a) of the Work Plan Scope and Schedule set forth in Exhibit B to this Agreement.

The Negotiation Period may also be extended for up to two additional periods of six (6) months each upon presentation of a written request from the Developer together with a schedule of tasks to be accomplished during the additional period. Granting of such extension(s) shall be at the discretion of the City Manager and shall only be effective upon the execution of an amendment to the Agreement.

If a DDA has not been executed by the City and the Developer by the expiration of the Negotiating Period, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except as set forth in Section 4 and Section 11. If a DDA is executed by the City and the Developer during the Negotiating Period, upon such execution, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.

It is anticipated that, during the Negotiating Period, the Developer will meet with Planning and other City officials to determine scope of project and land use approval process, complete property due diligence, conduct community outreach, complete schematic design, secure entitlements and any required environmental review, and refine proforma and financing plan. The City will cooperate with Developer’s efforts to accomplish the above tasks with the goal of negotiating and executing a mutually acceptable DDA prior to the expiration of the Negotiating Period.

3. Exclusive Negotiations. During the Negotiating Period, the City shall not negotiate with any entity, other than the Developer, regarding development of the Property, or solicit or entertain bids or proposals to do so.

4. City Consulting Costs Deposit. The Developer acknowledges that the City shall expend resources in the negotiation of the DDA and performance of the tasks provided in the Work Plan Scope and Schedule attached hereto as Exhibit B. In order for this Agreement to remain in effect, the Developer shall submit to the City as a good faith and initial third-party

consultant costs deposit, the sum of **TWENTY-FIVE THOUSAND Dollars (\$25,000)** ("Deposit") to be paid within thirty (30) calendar days following execution of this Agreement. The Deposit shall be placed in a separate City deposit account. Said deposit account shall not accrue interest.

The City shall have no obligation to begin negotiation of the DDA or to retain third-party consultants until the Developer delivers the Deposit to the City.

The Deposit may be used by the City to pay for the City's third party consultant costs and expenses in negotiating and preparing the DDA (collectively, the "Transaction Documents"). Such costs may include, but are not limited to, reasonable fees and services of third party consultants and attorneys, selected by the City at its sole discretion, relating to the Project and the preparation of the Transaction Documents ("Consultant Costs"). The Deposit is not intended to fund entitlement review, building permit issuance or other costs outside of the work contemplated in this ENA, which would be funded through a separate deposit account. Once the DDA is executed, the City will refund the remaining ENA Deposit, or if requested by the Developer in writing, the City may apply the remaining Deposit balance to subsequent phases of work.

Developer acknowledges that City's third party consultant costs include its city attorney services provided by the firm of Redwood Public Law, LLP, who will assist City with the negotiation and drafting of the DDA. Notwithstanding the foregoing, the amount of the fees for city attorney services related to this Agreement and the DDA that Developer shall be responsible for shall not exceed the initial Deposit without the written consent of the Developer.

Developer shall be responsible for all of the City's Consultant Costs subject to the restrictions contained in this Section 4. Prior to City incurring Consultant Costs in excess of the Deposit, the City shall provide the Developer with a schedule of the Consultant Costs incurred to date and an estimate of the additional Consultant Costs anticipated to be incurred. The Developer shall reasonably approve or disapprove the Consultant Costs within seven (7) calendar days following the City's submittal of the anticipated Consultant Costs. If Developer disapproves the City's Consultant Costs, the City and Developer will meet and confer in good faith to evaluate the estimate and attempt to reach a compromise budget acceptable to both parties. The Developer shall deposit with the City the amount of the additional Consultant Costs as approved by the Parties within fourteen (14) calendar days of such approval. The additional amount shall be added to the Deposit. If the Parties are unable to agree on a compromise budget within sixty (60) calendar days of Developer's disapproval of City's Consultant Costs, then either Party may terminate this Agreement. The City shall be reimbursed for all additional Consultant Costs approved by the Developer and incurred by the City prior to the date of the termination of this Agreement. To the extent this Agreement is terminated prior to or as of the end of the Negotiating Period and the City has incurred Consultant Costs that are less than the Deposit, and Developer has negotiated in good faith and is not in breach of this Agreement, the City shall return the unexpended balance of the Deposit to the Developer along with an accounting of the Consultant Costs incurred by the City.

If this Agreement is terminated by the City due to a failure by the Developer to negotiate in good faith under this Agreement, the Deposit shall be retained by the City. Conversely, if this Agreement is terminated by the Developer due to a failure by the City to negotiate in good faith under this Agreement, the Deposit (including any expended portion of the Deposit) shall be returned to the Developer.

Following such termination and the return of the appropriate amount of the Deposit as

provided in this Section 4, neither party shall have any further right, remedy or obligation under this Agreement; provided, however, that the Developer's indemnification obligation pursuant to Section 11 shall survive such termination.

5. Identification of Developer Representative. The Developer's representative to negotiate the DDA with the City is Robin Zimblar.

GENERAL PROVISIONS

6. Limitation on Effect of Agreement. This Agreement shall not obligate either the City or the Developer to enter into a DDA or to enter into any particular DDA. By execution of this Agreement, the City is not committing itself to or agreeing to undertake acquisition, disposition, and exercise of control over any property, or any other act or activity requiring the subsequent independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City and City Council action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after certification, adoption or approval of any analysis required under the California Environmental Quality Act ("CEQA"), and final approval of all land use entitlements required under the Cotati Municipal Code have been secured, and only if such DDA has been duly considered and approved by the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of City and Developer. Until and unless a DDA is signed by Developer, approved by the City Council, and executed by City, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding agreement. Failure of the City Council to approve a DDA after a public hearing thereon shall not constitute a default or a breach of the terms of this Agreement by City.

This Agreement does not limit in any way the discretion of City in acting on any applications for required permits or approvals for the proposed Project or any portion thereof. The Parties acknowledge that compliance with CEQA will be required in connection with consideration of such permits and approvals required for the proposed Project or any portion thereof, and the City shall retain the discretion in accordance with CEQA and other applicable law before taking action on any such permits or approvals to (1) adopt or certify an environmental analysis of the Project or any portion thereof, prepared in accordance with CEQA, (2) identify and impose mitigation measures to mitigate significant environmental impacts, nor limit the anticipated scope of any required public improvements, (3) select other feasible alternatives to avoid significant environmental impacts, including the "no project" alternative, (4) adopt a statement of overriding considerations in accordance with Public Resources Code Section 21081(b) relative to any significant environmental impacts of the Project or any portion thereof, or implementation of any required public improvements, prior to taking final action if such significant impacts cannot otherwise be avoided, or (5) determine not to proceed with the Project or any portion thereof. Any action taken by the City in the exercise of its discretion relating to any analysis required by CEQA, or on any application for a permit or approval required to develop and construct the Project or any portion thereof, shall not constitute a default or a breach of the terms of this Agreement by City.

7. Notices. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail,

postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

City:

City of Cotati
201 West Sierra Ave
Cotati, CA 94931
Attention: City Manager

Developer:

Freebird Development Company, LLC
Broadway
Oakland, CA 94607
Attention: Robin Zimblar

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered.

8. Costs and Expenses. Except for the Developer's obligation to fund certain City consultant costs under Section 4, above, Project Entitlements under Exhibit B, and CEQA Documentation under Exhibit B, each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each Party's obligations under this Agreement.
9. No Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA that may result from this Agreement. The City represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer shall defend and hold the City harmless from any claims by any broker, agent or finder retained by the Developer.
10. Defaults and Remedies.
 1. Default. Failure by either Party to (i) negotiate in good faith as provided in this Agreement, (ii) perform and complete tasks within the time provided for their performance as set forth in the Work Plan Scope and Schedule attached as Exhibit B to this Agreement, or (iii) comply with any of their obligations under this Agreement, shall constitute an event of default hereunder. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If the required action to cure the default involves the payment of money, the defaulting party shall have thirty (30) calendar days from receipt of such notice to cure the breach, otherwise the defaulting Party shall have forty five (45) calendar days from receipt of such notice to cure such breach; provided, however, if such breach or failure cannot reasonably be cured within such forty five (45) calendar day period and the defaulting Party has commenced the cure within such forty five (45) calendar day period and thereafter is diligently working in good faith to complete such cure, the defaulting Party shall have such longer period of time as may reasonably be necessary to cure the breach or failure, provided, however, in any event such breach or failure shall be cured within ninety (90) calendar days. If a default remains uncured after receipt by the defaulting party of such notice and the passing of time as set forth herein to cure such default, the non-defaulting Party may exercise the remedies set forth in subsection 2.
 2. Remedies. In the event of an uncured default by the City, the Developer's

sole remedy shall be to terminate this Agreement, upon which termination the Developer shall be entitled to the return of the Deposit, as set forth in Section 4. Notwithstanding anything to the contrary contained herein, in the event of such default, following notice and an opportunity to cure in accordance with subsection 1. above, Developer shall be entitled to (i) a return of the full Deposit in accordance with Section 4 of this Agreement, and (ii) all other rights or remedies available to it at law or in equity, provided that any monetary damages awarded to Developer as a result of such default shall not exceed the total amount of all actual, third party out-of-pocket costs reasonably incurred by Developer in connection with and after the date of this Agreement. Following any such termination and the return of the appropriate amount of the Deposit, neither party shall have any further right, remedy or obligation under this Agreement; provided, however, that the Developer's indemnification obligation pursuant to Section 11 shall survive such termination.

In the event of an uncured default by the Developer, the City's sole remedy shall be to terminate this Agreement and to retain any unexpended funds remaining in the Deposit. Following such termination, neither Party shall have any right, remedy or obligation under this Agreement; provided; however, that the Developer's indemnification obligation pursuant to Section 11 shall survive such termination.

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

- 11 Developer's Obligation to Indemnify City. Developer shall defend, indemnify, and hold harmless the City from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, damage or liability of any nature whatsoever, arising directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with performance of this Agreement on the part of the Developer or any contractor or subcontractor of the Developer; provided, however, that in no event shall Developer have any liability to the City for any claims, losses, demands or expenses arising from or relating to its ownership of the Property or any rights or obligations with respect to the Property, except to the extent caused by the negligence or willful misconduct of Developer or any contractor or subcontractor of the Developer. The Developer shall pay immediately upon the City's demand any amounts owing under this indemnity. The duty of the Developer to indemnify includes the duty to defend the City, with counsel of the City's choosing, to pay the City's costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising in any manner by reason of or incident to the performance of this Agreement on the part of the Developer or any contractor or subcontractor of the Developer. The City shall have the right to approve any attorneys retained by the Developer to defend the City pursuant to this Section 11 and shall have the right to approve any settlement or compromise. The Developer's duty to indemnify the City shall survive the termination of this Agreement. Notwithstanding the above, the Developer shall have no obligation to defend, indemnify or hold harmless the City, for any and all suits and causes of action, claims, losses, demands and expenses caused by, arising from, or related in any part to, any gross negligence, fraud or misconduct on the part of the City or its employees, agents, assigns, officers, or officials.

12. Compliance with Laws. Developer shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to the Cotati Municipal Code.
13. Nonliability of Officials, Officers, Members, and Employees. No member, official, officer, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement.

No member, officer, or employee of the Developer shall be personally liable to a city, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City or to its successor, or on any obligations under the terms of this Agreement.
14. Lobbying Prohibition. Developer agrees and acknowledges that the negotiations of a DDA shall take place with the City Manager, acting by and through his or her staff, and the City's legal, financial and planning advisers and such other City parties as may be designated by the City Manager from time to time (collectively, the "City-Designated Team"). Developer shall not engage in any material discussions, negotiations or lobbying of any City Council or Planning Commission members or other City employees or officials as may be designated by the City Manager from time to time (collectively, "Excluded City Parties") with regards to the Project or DDA, unless authorized or requested to do so by the City-Designated Team for specific purposes related to the negotiations. Nothing in this Section 14 shall prevent: (1) responses to requests for information from one or more Excluded City Parties, provided such responses are directed to the City-Designated Team; (2) Developer's participation in any question-and-answer sessions, workshops, or tours approved in writing by the City-Designated Team; or (3) Developer's participation in public events or community forum at which one or more Excluded City Parties are present, provided Developer does not engage in communications with such Excluded City Parties at such events that are intended to influence the negotiations of the DDA.
15. Ballot and Legislative Measures. Developer expressly agrees and acknowledges that it shall not initiate, promote, support or pursue, or authorize any other person or party to initiate, promote, support or pursue, any ballot or legislative measure relating to the Project without the prior consent of the City as evidenced by City Council resolution.
16. Assignment. The Developer shall not assign its rights or responsibilities under this Agreement, in whole or in part, except with the written consent of the City which may be granted or denied in its sole discretion. Any attempted assignment without such prior written consent shall be invalid and void.
17. No Third-Party Beneficiaries. This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.
18. Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California with venue in the Superior Court of Sonoma County, California.
19. Attorneys' Fees/Costs. In the event any action or proceeding is brought to enforce or interpret any provision contained herein or as the result of any alleged breach thereof, each Party shall be responsible for their own fees, costs and expenses incurred, including any and all attorneys' fees.
20. Entire Agreement. This Agreement, including the Exhibits, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous

agreements, representations and understandings, whether oral or written.

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

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives, to be effective as of the date executed by the last of the Parties.

(signatures on following page)

DEVELOPER:

FREEBIRD DEVELOPMENT COMPANY, LLC,

Dated: July 20, 2024

By: DocuSigned by:
Robin Zimbler
 22E3E7E683A5480...

Name: Robin Zimbler

Title: Manager

Local Address: 111 I Broadway
Oakland, CA 94607
 Email Address: robin@freebirddev.com
 Telephone: 510-319-6959

CITY:

CITY OF COTATI, a California municipal corporation

Dated: July 20, 2024

By: DocuSigned by:
Damien O'Bid
 B3B1B523C8FD438...

Name: Damien O'Bid

Title: City Manager

Local Address: 201 West Sierra Ave
Cotati, CA 94931
 Email Address: dobid@cotaticity.org
 Telephone: 707-665-3621

APPROVED AS TO FORM

Signed by:
John Bakker
 3BC98FC7E3EA467...

John Bakker,
 City Attorney

EXHIBIT A

LEGAL DESCRIPTION AND MAP OF PROPERTY

APN 144-274-002-000, 144-274-014-000 and 144-274-015-000

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

Parcel One (APN: 144-274-014-000):

Lots 7, 8 and 9, Block 3, as shown upon the Map entitled "Plan of the Townsite of Cotati, being Subdivision No. 6, Rancho Cotati, Sonoma County, California, the property of the Cotati Company", filed in the Office of the County Recorder of Sonoma County, California, on June 7, 1983 in Book 10 of Maps, Page 8.

Excepting therefrom all that portion conveyed to the County of Sonoma by Deed Dated May 2, 1966 and Recorded May 20, 1966 in Book 2210 of Official Records, Page 250, Serial No. J 98361, Sonoma County Records.

Parcel Two (APN: 144-274-015-000):

Lots 10, 11 and 12, in Block 3, as shown upon the Map entitled "Plan of the Townsite of Cotati, being Subdivision No. 6, Rancho Cotati, Sonoma County, California, the property of the Cotati Company", filed in the Office of the County Recorder of Sonoma County, California, on June 7, 1983 in Book 10 of Maps, Page 8.

Excepting therefrom all that portion conveyed to the County of Sonoma by Deed Dated May 2, 1966 and Recorded May 20, 1966 in Book 2210 of Official Records, Page 250, Serial No. J 98361, Sonoma County Records.

Parcel Three (APN: 144-274-002-000):

Lot 13, in Block 3, as shown upon the Map entitled "Plan of the Townsite of Cotati, being Subdivision No. 6, Rancho Cotati, Sonoma County, California, the property of the Cotati Company", filed in the Office of the County Recorder of Sonoma County, California, on June 7, 1983 in Book 10 of Maps, Page 8



EXHIBIT B**WORKPLAN SCOPE AND SCHEDULE**

1. Overview. To facilitate negotiation of the DDA, the Parties shall use good faith efforts to accomplish the tasks set forth in this Exhibit B within the timeframes set forth herein which are intended to support the negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period (the “Work Plan Scope and Schedule”). The City Manager may agree on behalf of the City to modifications to the time periods established herein to complete certain tasks provided, however, in no event shall there be any modification to the Due Diligence Period or Negotiation Period beyond the time periods as may be authorized by the City Manager pursuant to Section 2 of the Agreement without the approval of the City Council. The Parties agree that failure of a Party to perform and complete a task within the timeframe set forth in this Work Plan Scope and Schedule shall constitute a default as contemplated in Section 10 of the Agreement.

2. Conceptual Plans: Site Plans and Project Narrative. Prior to releasing or presenting the initial Conceptual Plans to the public, the Developer shall prepare and submit to City staff the Conceptual Plans for their review and comment. The Conceptual Plan shall include the proposed site plan identifying the size and shape of the parcels which comprise the Property, the location of the Project improvements, including the public sidewalk and street light improvements, and location and number of vehicular points of ingress and egress to the Developer Parcels, to be constructed on each of the Development Parcels (“Site Plans”). Developer shall also prepare and submit to the City staff for their review and comment a detailed written description (“Project Narrative”) of the intended scope of development on the Property, including but not limited to a description of land uses, building heights, ingress/egress points, anticipated waivers from development standards, project density, number and size of units, bedroom and bathroom composition, anticipated affordability level per unit, on-site parking count, on-site open space, recreation and other Project amenities, (collectively, the Site Plans and Project Narrative means the “Conceptual Plans”). No later than thirty (30) calendar days following receipt of the Conceptual Plans, City staff shall arrange a meeting between City staff and Developer and its design consultants to meet and discuss City suggestions, recommendations and comments related to the Conceptual Plans.

3. Community Presentations. Prior to submission of the project application, Developer shall conduct the following community presentations: 1) one pre-application community presentation prior to submission of Conceptual Plans; 2) one community presentation of Conceptual Plans; and 3) one community presentation of revised Conceptual Plans.

4. Project Applications. City and Developer shall use good faith best efforts to ensure submission of project application by January 31, 2025. Developer shall prepare and submit complete planning applications to the City, and shall be responsible to pay all costs, fees and expenses associated therewith, to secure all planning and development permits a required for the Project pursuant to the Cotati Municipal Code (“Project Entitlements”). Prior to

submitting its planning applications with the City for the Project Entitlements, Developer and City staff shall meet to identify and confirm all required permits to be applied for and all information and materials to be submitted in connection therewith.

Developer acknowledges that the Property shall be subject to a deed restriction imposed by City requiring affordable housing to be constructed onsite. Additionally, without the express written consent of the City, which may be granted or denied in its sole and reasonable discretion, Developer shall not seek, request or apply for, and City shall have no obligation to consider or grant an application pursuant to California Government Code §65913.4. Further, with the consent of the City, which may be granted or denied in its reasonable discretion, Developer may seek, request or apply for affordable housing incentives or concessions as provided by the Cotati Municipal Code or California Government Code §65915 et.seq..

5. Priority Housing Obligations. Developer acknowledges that pursuant to the City's local preference policy, to the extent permitted by applicable law and the Project's funding sources, to establish a priority list for the initial purchasers and/or renters of the affordable housing that is built on the Development Parcels and offered for sale or rent, respectively, which lists shall provide priority to current residents or employees working within the City of Cotati, individuals or families with children whom attend Rancho Cotati school district facilities, members of the Graton Rancheria Native American Tribe, and employees of Sonoma State University with respect to consideration of applications by such residents, employees, individuals or families, or tribal members to purchase or rent such affordable housing within the project, as applicable.

Subject to the limitations of applicable law, inclusive of Federal and State Fair Housing laws and those governing Federal and State Low Income Housing Tax Credit Laws and any other applicable requirements of the Project's funding sources which may be applicable to the development of affordable housing on a Development Parcel, the Parties agree to make best efforts to include terms in the DDA between City and Developer to include a preference for initial purchasers and renters of affordable housing offered for purchase or rent thereon who are current residents or employees working within the City of Cotati, individuals or families with children whom attend Rancho Cotati school district facilities, members of the Graton Rancheria Native American Tribe, and employees of Sonoma State University with respect to consideration of applications by such residents, employees, individuals or families, or tribal members.

City shall use good faith best efforts in collaboration with Developer to determine whether such preferences are permitted by applicable law and the Project's funding sources. In the event that City is unable to sufficiently evidence compliance with applicable laws and Project funding sources, or is unable to obtain HUD's confirmation that the preferences comply with fair housing law, then such preferences shall not apply to the Project.

6. Developer Cooperation and Coordination with Adjacent Parcels. Developer acknowledges the adjacent parcels and shall plan the site to be sensitive to these neighborhoods.

7. Financing and Costs of Development.

As a component of the DDA the Developer shall provide the City with a detailed financial pro forma for the Project containing, among other matters, a detailed development budget setting forth the costs of the tasks to be undertaken by the Developer, and sources and

uses of funds for acquisition of the Property and development of the Project. The financial pro forma will be used to evidence the financial feasibility of the Project, to discuss and evaluate the financial and operational components of the Project, including any requirements pertaining to the applicability of any prevailing wage requirements, to discuss and evaluate any affordable housing incentives or concessions requested by Developer in accordance with Section 4 above, and to develop a Term Sheet regarding the provisions of the DDA.

8. Developer Organizational Documents. Concurrent with the submission of the pro forma under Section 7 (Financing and Costs of Development), the Developer shall (i) provide the City with its organization documents as well as an organization chart outlining key personnel's roles and responsibilities, and (ii) submit to the City for its approval, copies of all operating agreements, joint venture agreements or other agreements between the members of the development entity, and such financial statements or tax returns reasonably required by the City to determine the Developer's financial capability, excluding confidential or proprietary information.

9. Environmental Review. Subject to the limitations set forth in Section 6 of the Agreement, upon submission by Developer of a complete application for all Project Entitlements as contemplated in Section 4 above, the City shall make good faith efforts to engage the services of an environmental consulting firm ("CEQA Consultant") within thirty (30) calendar days thereafter to commence the preparation of environmental documentation required by the California Environmental Quality Act ("CEQA") ("CEQA Documentation"), for consideration of approval of the Project Entitlements and DDA. The Developer shall provide such information as may be required to enable the City and its CEQA Consultant to prepare or cause the preparation and consideration of any required CEQA Documentation and shall otherwise generally cooperate with the City and its CEQA Consultant to complete this task. The Developer shall be responsible for all costs associated with the preparation of the required CEQA Documentation. Within thirty (30) calendar days after the City has engaged the services of the CEQA Consultant, the City and Developer, in consultation with the CEQA Consultant, shall develop a schedule and timeline for the preparation and consideration of the CEQA Documentation, Project Entitlements and DDA ("Project Entitlement Schedule"). As is necessary and warranted, the City and Developer, in consultation with the CEQA Consultant, shall update the Project Entitlement Schedule from time to time. Notwithstanding the foregoing, in the event that the Project applies a streamlining ministerial approval process which does not require CEQA approval of the Project, as consented to by the City in its reasonable discretion, this Section 9 shall not apply.

10. Due Diligence. The Developer shall, at its sole cost and expense, conduct the following due diligence activities:

(a) Property Adequacy Determination. The Developer shall, within six (6) months from the date Developer is able to access the Property pursuant to Section 11 below ("Due Diligence Period"), determine whether the Property is suitable for development of the Project, taking into account the geotechnical and soils conditions; the presence or absence of toxic or other hazardous materials; the zoning of the Property; the massing of the proposed Project improvements; traffic, circulation and parking requirements, issues and constraints imposed on projects of this type that may affect site development; assessment of major public and private utility capacities and connections for providing service to the Project; assessment of site drainage; assessment of creek and wetland issues that may affect development of the Project;

and assessment of any other environmental and regulatory factors that the Developer deems relevant. Developer shall, prior to the expiration of the Due Diligence Period, notify the City in writing whether, in the Developer's judgment based on such investigations and analyses, the Property either is or is not suitable for development. If Developer determines and notifies City in writing that the Property is suitable for development, then this Agreement shall continue in effect. If Developer determines and notifies City in writing that the Property is not suitable for development, then this Agreement shall terminate and the remaining balance of the Deposit shall be immediately refunded to the Developer and neither Party shall thereafter have any further duties, obligations, rights, or liabilities under this Agreement. If the Developer fails to provide any written notification to the City prior to the expiration of the Due Diligence Period regarding the suitability of the Property for development, then it shall be deemed that the Property is not suitable for development and this Agreement shall terminate and the remaining balance of the Deposit shall be immediately refunded to the Developer and neither Party shall thereafter have any further duties, obligations, rights, or liabilities under this Agreement.

(b) Objections to Title. Within sixty (60) calendar days following the execution of this Agreement, the Developer shall cause Old Republic Title Company ("Title Company") issue a Preliminary Title Report (the "Report") on the Property to the Developer and the City. If the Developer objects to any exception appearing on the Report or should any title exception arise after the date of the Report, the Developer may object to such exception, provided such objection is made to the City in writing on or before the thirtieth (30th) calendar day following the date the Developer and the City receive the Report from Title Company. If the Developer objects to any exception to title, the City, within fifteen (15) calendar days of receipt of Developer's objection, shall notify Developer in writing whether City elects to (i) cause the exception to be removed of record, obtain a commitment from Title Company for an appropriate endorsement to the policy of title insurance to be issued to the Developer, insuring against the objectionable exception, or decline to address the Developer's objection to an exception to title. If City declines to address the Developer's objection to an exception to title, the Developer, within fifteen (15) calendar days of receipt of City's written notification may either terminate this Agreement or elect to take title subject to such exception. If Developer elects to terminate this Agreement pursuant to this subsection, the remaining balance of the Deposit shall be immediately refunded to the Developer and neither Party shall thereafter have any obligations to or rights against the other hereunder. If the Developer fails to provide any notification to the City regarding an objection to any exception to title prior to expiration of the time period set forth herein, the condition set forth in this subsection shall be deemed satisfied and this Agreement shall continue in effect. Notwithstanding the foregoing, City shall use best efforts to keep the Property free and clear of any new liens or encumbrances during the Negotiating Period.

11. Site Access. Within thirty (30) calendar days following execution of this Agreement, City shall use best efforts to execute an agreement to provide Developer and its consultants with rights to enter, examine and conduct tests on the Property, subject to such terms, conditions, indemnity and insurance requirements as may be reasonably required.

12. Reports. The Developer shall provide the City or its consultants or attorneys with copies of all reports, studies, analyses, correspondence and similar documents, but excluding confidential or proprietary information, prepared or commissioned by the Developer with respect to this Agreement and the Project, promptly following execution of this Agreement

with respect to documents then in its possession or under its reasonable control, and promptly upon their completion with respect to any subsequently prepared documents. The City shall provide the Developer with copies of all reports, studies, analyses, correspondence and similar documents, but excluding confidential or proprietary information, prepared or commissioned by the City with respect to this Agreement and the Project, promptly following execution of this Agreement with respect to documents then in its possession or under its reasonable control, and promptly upon their completion with respect to any subsequently prepared documents.

While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer acknowledges that the City will need sufficient, detailed information about the proposed Project (including, without limitation, the financial information described in Section 7 of this Exhibit B) to make informed decisions about the content and approval of the DDA. The City will work with the Developer to maintain the confidentiality of proprietary information, subject to the requirements of the Public Records Act, California Government Code section 7920.000 et seq. (CPRA). The Developer acknowledges and agrees that the City may share information provided by the Developer of a financial and potential proprietary nature with third-party consultants who have been engaged to advise the City concerning matters related to this Agreement and to the City Council members as part of the negotiation and decision-making process. Information submitted to the City is a public record and may be subject to disclosure if requested by a member of the public. The Developer shall familiarize itself with the CPRA, including consulting with legal counsel, regarding its requirements for disclosure of public records and applicable exemptions from such disclosure. If the Developer claims an exemption from disclosure under the CPRA, it must identify the specific provision(s) of the CPRA providing an exemption from disclosure for each such item claimed as exempt from disclosure. The Developer must also clearly identify, in writing and with specificity, all copyright, patent or trademark materials, trade secrets, or proprietary or confidential commercial or financial information claimed as exempt from disclosure under the CPRA (collectively, "Exempt Information"). Any documents that Developer believes constitutes Exempt Information shall be clearly labeled in bold and all caps at the top of the page as "EXEMPT INFORMATION" prior to their submission to City.

Exempt Information shall remain the property of the Developer. If a request is made under CPRA for disclosure of Exempt Information, the City will endeavor to provide the Developer with reasonable timely notice of that request, in order that the Developer will have the opportunity, under the CPRA, to seek protection from disclosure by a court of competent jurisdiction. The City shall not be, under any circumstances, responsible or liable to the Developer, or any other person, for the disclosure of Exempt Information, whether such disclosure is required by law, by an order of a court, or as a result of inadvertence, mistake, or negligence on the part of the City or its elected or appointed officials, officers, employees, agents, contractors, representatives, or consultants.

The Developer submitting claimed Exempt Information in connection with this Agreement, by making such submittal of claimed Exempt Information, unconditionally agrees to indemnify, defend, and hold harmless the City and its elected or appointed officials, officers, employees, agents, contractors, representatives, and consultants, from and against any and all claims, damages, losses, liabilities, and expenses, including actual attorneys' fees and costs, including in-house legal counsel fees and costs, incurred by the City, in good faith, that arise out of, relate to, or result from the City's failure to disclose any claimed Exempt Information to any person making a request for such information. If the Developer fails to timely and diligently undertake indemnification of the City, it shall be deemed to have waived the right to claim exemption from disclosure under the CPRA; and after reasonable notice to the Developer,

Freebird-City of Cotati ENA
120 East Cotati Avenue

the City may release the requested information in accord with applicable law.

13. Progress Reports. Each Party, on a monthly basis, shall provide oral or written progress reports advising the other party on studies being made and matters being evaluated by the reporting Party with respect to this Agreement and the Project.

Certificate Of Completion

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 Subject: Cotati - Freebird ENA
 Source Envelope:
 Document Pages: 18
 Certificate Pages: 5
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 Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed
 Envelope Originator:
 Damien O'Bid
 dobid@cotaticity.org
 IP Address: 108.213.217.140

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Signer Events

Robin Zimblar
 robin@freebirddev.com
 Security Level: Email, Account Authentication (None)

Signature

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Damien O'Bid
 dobid@cotaticity.org
 City Manager
 City of Cotati
 Security Level: Email, Account Authentication (None)

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In Person Signer Events

In Person Signing Host:
 Kevin Patterson
 kepatterson@cotaticity.org
 In Person Signer:
 John Bakker
 Security Level: In Person

Signature

Signed by:

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 Signature Adoption: Pre-selected Style
 Using IP Address: 71.6.94.254

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Noah Housh
nhoush@cotaticity.org
Director of Community Development
City of Cotati
Security Level: Email, Account Authentication
(None)

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Kevin Patterson
kepatterson@cotaticity.org
Deputy City Clerk
City of Cotati
Security Level: Email, Account Authentication
(None)

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| Witness Events | Signature | Timestamp |
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| Notary Events | Signature | Timestamp |
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| Envelope Summary Events | Status | Timestamps |
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| Certified Delivered | Security Checked | 7/23/2024 8:28:36 AM |
| Signing Complete | Security Checked | 7/23/2024 8:28:59 AM |
| Completed | Security Checked | 7/23/2024 8:29:00 AM |

| Payment Events | Status | Timestamps |
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| Electronic Record and Signature Disclosure |
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From time to time, Carahsoft OBO City of Cotati (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Carahsoft OBO City of Cotati:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: lberges@cotaticity.org

To advise Carahsoft OBO City of Cotati of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at lberges@cotaticity.org and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Carahsoft OBO City of Cotati

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to lberges@cotaticity.org and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Carahsoft OBO City of Cotati

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to lberges@cotaticity.org and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

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- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Carahsoft OBO City of Cotati as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO City of Cotati during the course of your relationship with Carahsoft OBO City of Cotati.