Alhambra Highlands Project Summary and Status Update: March 2021

On July 20, 2011 the City of Martinez granted final approval (on appeal) of the Alhambra Highlands Project Alternative 1 (Mitigated Access Alternative). This project consists of development of 110 detached single-family residences on a 297.5 acre property with 122.4 acres of disturbed area and 173.9 acres of open space, including a single water tank. Prior to final project approval, the City reviewed and relied upon the information in a Final Subsequent Environmental Impact Report (Final SEIR) prepared pursuant to the California Environmental Quality Act (CEQA) and certified the Final SEIR. The final approval of the project included all discretionary approvals: a vesting tentative map (VTM 9257), Conditional Use Permits, a Planned Unit Development amendment, design guidelines, etc. These approvals were never challenged in court.

At the City Council’s request, the developer agreed to defer commencement of grading of the project until April 1, 2014, to allow interested third parties time to secure adequate funding to acquire the property as open space. The interested members of the public were unable to secure adequate funding by April 2014, and at that time the City began informal discussions regarding the possibility of the City purchasing the property. As a result of those discussions, the City and developer ultimately entered into a Negotiating Agreement on July 16, 2016. The terms of the Negotiating Agreement allowed the developer to “toll” the term of the VMT 9257 so that the extended negotiations did not place the developer in a disadvantageous position regarding the future expiration of the project approvals. Without a tolling agreement, the vesting tentative map (VTM 9257) could have expired as the negotiations were conducted.

The City and developer entered into multiple extensions of the Negotiating Agreement over the next 4.5 years. Despite good faith efforts, the parties were unable to reach a mutually acceptable deal and the Negotiating Agreement terminated on January 10, 2020. During the negotiation period, the developer (Richfield) deferred the implementation of its performance of the conditions necessary to begin processing the Final Map, and delayed its efforts to satisfy the requirements of the various state and federal permits needed for the development of the project.

Before the termination of the Negotiating Agreement in January 2020, both parties expressed interest in continued negotiations for purchase of the property. However, Richfield indicated that as a condition to extending the Negotiating Agreement, it wished to be allowed to concurrently process the Final Map for the project and perform the requirements of its state and federal permits. Consequently, the City and Richfield signed a new Negotiating Agreement effective January 10, 2020, which contemplates the continuation of negotiations over the City’s purchase of the property but at the same time permits Richfield to apply for Final Map approval and to implement the requirements of its various other permits and approvals. Pursuant to the January 10, 2020, Negotiating Agreement, the City agreed to process Richfield’s Final Map application in accordance with state law and the City’s Municipal Code. In this way, the project’s approvals will remain in effect and not lapse during continued negotiations, and the Final Map will be processed within the time limits specified in state law.
As part of the extended Negotiating Agreement, and in furtherance of Richfield’s goal to begin the process for the City to determine that the Final Map is in substantial conformance with the approved VTM 9257, Richfield entered into a Cost Reimbursement Agreement with the City agreeing to pay for all costs incurred by the City in processing the Final Map.

Staff estimates that Richfield’s Final Map will be presented to the City Council for approval sometime in the third quarter of this year.
January 6, 2021

City of Martinez
Eric Figueroa, City Manager
525 Henrietta Street
Martinez, CA 94553

Re: Letter Agreement to Extend the Term of the Amended and Restated Negotiating Agreement

Dear Mr. Figueroa:

The City of Martinez ("City") and Richfield Real Estate Corporation ("Richfield") entered into the Alhambra Highlands Negotiating Agreement dated July 20, 2017, as amended (the "Amended Agreement"). The Alhambra Highlands Negotiating Agreement addressed the terms of the possible purchase and sale of the Alhambra Highlands Property (the "Property"). The term of that Amended Agreement was later extended by subsequent agreements, including letter agreements, dated February 9, 2017, July 20, 2017, January 10, 2018, June 29, 2018, January 4, 2019, and July 12, 2019 (as corrected on August 1, 2019). The Amended Agreement, as further extended, expired on January 10, 2020.

Before it expired, on January 10, 2020, the City and Richfield entered into that certain Amended and Restated Negotiating Agreement ("Restated Agreement") whereby the parties agreed to use best efforts to resume negotiations for the possible purchase and sale of the Property from Waters-DHC LLC and Oak Hill Park Company (the entities for whom Richfield is acting on behalf of) to the City, and under which Richfield agreed to extend the term to July 10, 2020. On July 20, 2020, Richfield requested, and the City concurred with the extension of the term of the Restated Agreement to January 10, 2021 on the same terms and conditions as set forth in the Restated Agreement, subject to any modifications set forth in the July 20, 2020 extension letter.

The parties now desire to further extend the term of the Restated Agreement by another six month period to July 10, 2021 so that the parties may continue their negotiations concerning the City’s possible acquisition of the Property. All terms and conditions set forth in the Restated Agreement shall remain in effect.
Please confirm that the City agrees to the extension of the Restated Agreement as further extended to July 10, 2021, by countersigning this extension in the signature block below.

Sincerely,

Richfield Real Estate Corporation

By
Dominic Leung, President

Agreed to and Acknowledged by:

Eric Figueroa, City Manager

cc: Jeffrey Walter, City Attorney
    Stephen Nussbaum, Richfield
    Pamela Culver, Richfield
    Debi Chung, Richfield
    Alicia Guerra, Buchalter
July 20, 2020

City of Martinez
Eric Figueroa, City Manager
525 Henrietta Street
Martinez, CA 94553

Re: Letter Agreement to Extend the Term of the Amended and Restated Negotiating Agreement

Dear Mr. Figueroa:

The City of Martinez ("City") and Richfield Real Estate Corporation ("Richfield") entered into the Alhambra Highlands Negotiating Agreement dated July 20, 2017, as amended (the "Amended Agreement"), and the term of that Amended Agreement has been extended by subsequent agreements, including letter agreements, dated February 9, 2017, July 20, 2017, January 10, 2018, June 29, 2018, January 4, 2019, and July 12, 2019 (as corrected on August 1, 2019). However, the Amended Agreement expired on January 10, 2020.

On January 10, 2020, the City and Richfield entered into that certain Amended and Restated Negotiating Agreement ("Restated Agreement") whereby we agreed to use best efforts to resume negotiations for the possible purchase and sale of the Alhambra Highlands Property from Waters-DHC LLC and Oak Hill Park Company (the entities for whom Richfield is acting on behalf of) to the City, and under which we agreed to extend the term to July 10, 2020. As such, the term of the Restated Agreement shall be extended to January 10, 2021 on the same terms and conditions as set forth in the Restated Agreement, subject to any modifications set forth in this letter.

Additionally, it has come to our attention that the name of the entities listed as "Landowners" in the first paragraph of the Restated Agreement were incorrectly identified as Waters-DHC and Oak Hill Park III. As such, the first paragraph of the Restated Agreement shall be modified to delete the incorrect names of the Landowners and insert in its place "Waters-DHC LLC and Oak Hill Park Company".
Mr. Eric Figueroa  
July 20, 2020  
Page 2

Please confirm that the City agrees to the extension of the Restated Agreement, and to the minor modification to the Restated Agreement, by countesigning this extension in the signature block below.

Sincerely,

Richfield Real Estate Corporation

By

Dominic Leung, President

cc: Veronica Nebb, City Attorney  
    Stephen Nussbaum, Richfield  
    Pamela Culver, Richfield  
    Debi Chung, Richfield  
    Alicia Guerra, Buchalter

Agreed to and Acknowledged by:

______________

Eric Figueroa, City Manager
CITY OF MARTINEZ
REIMBURSEMENT AGREEMENT

Agreement for Richfield Real Estate Corporation Payment of Martinez Full Cost Recovery Reimbursement for Processing Final Map(s) and other Documents Associated with Subdivision #9257, Alhambra Highlands, Including Engineering Consultant, Planning, and Legal Costs.

Richfield Real Estate Corporation, hereinafter referred to as ("Applicant") for and on behalf of Waters-DHC LLC, Gramercy Properties, Inc., and Oak Hill Park Company (collectively, "Owner") agrees to pay to the City of Martinez ("City") all reimbursable costs, both direct and indirect, including State-mandated costs, associated with review and the preparation of documents related to the processing, action, filing and recordation of a Final Map related to Subdivision #9257, referred to as Alhambra Highlands Project Assessor Parcel Numbers: 164-150-022, 164-150-030, 164-010-026, 366-060-007, 366-010-007, 164-010-019, 164-010-025 and 164-150-016, ("Subject Property") and any and all permits, agreements, plans, covenants and/or other documents relating to Subdivision 9257 including, but not limited to compliance with conditions of approval of the Vesting Tentative Map #9257 ("Project").

"Reimbursable Costs" specifically include, but are not limited to, all costs incurred by the City for City Staff, City Engineer, City Attorney, and all consultants (professional, technical or other) associated with the Project, the cost of additional legal services and any additional services and materials necessary relating to same, including, but not limited to, copying, mailing, delivery, and postage, even if the Final Map is withdrawn.

Applicant understands that one or more deposits will be required to be paid by Applicant to cover the costs noted above at such time(s) and of such amounts as requested by the City Engineer, or designee. 

Upon the execution of this Agreement, the Applicant shall deposit with the City the amount of Two Hundred and Fifty Thousand Dollars ("$250,000.00") which is a portion of the estimated cost for the review and processing of the Project documents (the "Deposit"). In the event that the funds available in the Deposit drop below One Hundred Thousand Dollars ("$100,000"), City shall notify the Applicant of the need to replenish the funds on account to restore the Deposit to Two Hundred and Fifty Thousand Dollars ("$250,000"). Any additional monies requested by the City, or required to complete the review above the Deposit amount will first be discussed with the Applicant. After said conversation, any additional monies required to complete the review as determined by the City Engineer or designee will be deposited by the Applicant within 15 days after notice from the City Engineer of the amount of additional deposit required above the Deposit amount ("Additional Deposit"). Any monies deposited pursuant to this paragraph that are not expended for reimbursable
costs related to the work for this project shall first be applied to any other monies due the City and thereafter any remaining funds shall be refunded, without interest, to the Applicant after (i) the City has taken final action on the Final Map (including any appeal); or (ii) the application has been withdrawn.

The Applicant may request an accounting of the expenditures of either of these accounts at a maximum of once every thirty days, if they wish to do so.

City agrees to review and process the Project in accordance with this Agreement and all applicable laws, regulations, ordinances, standards and policies. In the event any approval is appealed, additional amounts shall be required to be paid to the City by the Applicant, and payment thereof shall be a condition precedent to the processing of any such appeal.

Applicant understands and agrees that nonpayment or untimely payment of any amount owed hereunder may, at the sole and exclusive discretion of the City Engineer, result in temporary or permanent cessation of processing of the Project and, after notice, may result in an order requiring cessation of all work. In the event of the Applicant’s breach of this Agreement and/or failure to timely and fully pay all amounts due hereunder, Applicant waives any rights under the California Permit Streamlining Act should the City cease processing any application. Prior to completion of processing of any phase of the project and/or the issuance of occupancy permits, any and all outstanding amounts due pursuant to this Agreement shall be paid.

In any legal actions arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including costs and attorneys’ fees.

Under this Agreement, the Applicant agrees to defend, indemnify, release and hold harmless the City, its agents, officers, attorneys, employees, consultants, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities (“indemnitees”), the purpose of which is to attack, set aside, void or annul the approval of the Project, the original project entitlements and/or the environmental compliance relating thereto. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or incurred by or awarded to any person or entity, including the Applicant, third parties and/or the indemnitees, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnitees.

Nothing in this agreement shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that the Applicant is required to defend the indemnitees in connection with any said claim, action or proceeding, the City shall retain the right to (i) approve the counsel to so defend the indemnitees, (ii) approve all significant decisions concerning the matter in which the defense is conducted, and (iii) approve any and all settlements, which approvals shall not be
unreasonably withheld by the City.

The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the Applicant in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own, other than the City Attorney, defend any claim, action or proceeding where the Owner and Applicant has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City, shall be paid by the City except that the fees and expenses of the City Attorney shall be paid by the Applicant. All such fees and costs shall be paid within thirty (30) calendar days of receipt of a bill from the City.

The Applicant also agrees to so indemnify the indemnitees for all costs incurred in additional investigation or study, or for supplementing, redrafting, revising or amending any document, if such is made necessary by the claim, action or proceeding and if the Owner and Applicant desire approvals from the City which are conditioned on the approval of said documents.

The undersigned Applicant hereby represents that he/she/it is authorized to sign on behalf of all owners of the subject property. All other Owners and Applicants agree to be jointly and severally liable for payment of all fees and costs referenced above. The Applicant agrees to notify City in writing prior to any change in ownership and to submit a written assumption of the obligations under this Agreement signed by the new owner or his/her authorized agent.

Name of Owner: Waters-DHC LLC, Gramercy Properties, Inc., and Oak Hill Park Company

Name of Applicant: Richfield Real Estate Corporation for and on behalf of Owner

Signature of Applicant: Dominic Leung  Date: Oct 27, 2020

Dominic Leung, President

Address: 10001 Westheimer Rd., Suite 2888, Houston, TX 77042
FOR CITY USE ONLY:

Name of Owner/Applicant: ________________________________________________

Address of Project ______________________________________________________

Fee Deposit total: $______________

Staff Member Receiving: ________________________________________________

Date Received: ________________

Receipt ~ and Date:
ALH - Reimbursement Agmt 201027
Final Audit Report 2020-10-27

Created: 2020-10-27
By: Allison Davis (adavis@richfieldcorp.com)
Status: Signed
Transaction ID: CBJCHBCAAABAAUD_CDKj0macvhKZwSx2TA9JhzuY5_tKc

"ALH - Reimbursement Agmt 201027" History

Document created by Allison Davis (adavis@richfieldcorp.com)
2020-10-27 - 8:29:10 PM GMT - IP address: 209.64.155.12

Document emailed to Dominic Leung (dleung@richfieldcorp.com) for signature
2020-10-27 - 8:29:43 PM GMT

Email viewed by Dominic Leung (dleung@richfieldcorp.com)
2020-10-27 - 8:31:48 PM GMT - IP address: 98.197.70.9

Document e-signed by Dominic Leung (dleung@richfieldcorp.com)
Signature Date: 2020-10-27 - 8:32:36 PM GMT - Time Source: server - IP address: 98.197.70.9

Agreement completed.
2020-10-27 - 8:32:36 PM GMT
AMENDED AND RESTATED
NEGOTIATING AGREEMENT
by and between

RICHFIELD REAL ESTATE CORPORATION

and

THE CITY OF MARTINEZ
THIS AMENDED AND RESTATED NEGOTIATING AGREEMENT (this "Amended Agreement") is entered into effective as of January 10, 2020 ("Effective Date") by and between the City of Martinez, a municipal corporation and California general law city ("City") and Richfield Real Estate Corporation (d.b.a. "Richfield"), a Delaware corporation ("Developer"). Richfield is entering into this Agreement, on behalf of Waters DHC and Oak Hill Park III, the landowners (each a "Landowner," and collectively, the "Landowners") of the Alhambra Highlands property (as further defined below). Richfield certifies that it is fully authorized by the Landowners to enter into this Agreement. City and Developer are hereinafter collectively referred to as the "Parties."

RECITALS

A. Developer is the manager, on behalf of Landowners, of a total of approximately 297.5 acres of real property located in the City of Martinez, California, generally bounded by Alhambra Avenue to the north, Alhambra Valley Road and Reliez Road to the west, and Skyline Drive to the south, commonly referred to as the, "Alhambra Highlands Property," Assessor’s Parcel Nos. 164-010-019, 025 & 026, 164-150-016, 022 &030, 366-010-007 and 366-060-007 ("the Subject Property").

B. Developer is the successor-in-interest to Richfield Investment Corporation, the prior developer and manager of the Subject Property, and is currently responsible for the development and management of the Subject Property. Collectively, Richfield Investment Corporation and Richfield Real Estate Corporation are referred to as, the "Developer."

C. In May 1987, the City adopted the Alhambra Hills Specific Plan. The Alhambra Hills Specific Plan envisioned a residential development to be located on the Subject Property.

D. In July 1990, the City conditionally approved vesting tentative maps on the Subject Property for Tract No. 7245 ("Tract Map 7245"), Planned Unit Development No. 89-5 and Design Review No. 89-42 for Alhambra Highlands Unit I. Concurrently, the City conditionally approved a vesting tentative map for Tract No. 7244 ("Tract Map 7244"), Planned Unit Development No. 89-6 and Design Review No. 89-41 for Alhambra Highlands Unit II, and in September 1993, the City conditionally approved a vesting tentative map for Tract 7606 (the "Briar Rose" or "Images" subdivision) ("Tract Map 7606"), Planned Unit Development No. 91-4 and Design Review No. 91-64. These tract maps authorized the subdivision of the Property into 214 lots.

E. From 1991 through 1999, Developer's predecessor-in-interest, Richland Development Corporation ("Richland"), applied for and was conditionally granted several extensions of the terms of Tract Maps 7244, 7245, and 7606.

F. Since 1999, the Developer, or its predecessor-in-interest received the approval of multiple outside agencies which are required for construction of the Alhambra Highlands Project on the Property including a U.S. Army Corps of Engineers (Corps) Section 404 Permit, December 2008; United States Fish and Wildlife Service
Biological Opinion (November 2005); and the San Francisco Regional Water Quality Control Board Section 401 water quality certification (amended August 2008).

G. Acquisition of additional land for Alameda whipsnake habitat preservation was integral to the state and federal agencies' approvals, and the Landowners acquired the adjacent site of the un-built Subdivision #7606 ("Briar Rose/Images") and "Monteros" property, increasing the project site from approximately 190 acres to approximately 297.5 acres to include additional on-site open space and habitat preservation.

H. In 2006, Landowners retained Developer's predecessor-in-interest, Richfield Investment Corporation to manage the general development and management functions for the Alhambra Highlands property.

I. On December 8, 2008, Developer's predecessor in interest, Richfield Investment Corporation, submitted a revised application to the City for a revised vesting tentative map to subdivide the 297.5 acre Property with 122.4 acres of disturbed area and 173.9 acres of open space for the development of 112 detached single-family homes; modifications to the previously approved Planned Unit Developments; and application for Use Permit for a single water tank, reflecting the reduced scope of development since the original 1990 and 1993 vesting tentative map approvals (the "Alhambra Highlands Project" or "Project").

J. Pursuant to the California Environmental Quality Act (CEQA) the City conducted an Initial Study to evaluate the Alhambra Highlands Project's potential impacts on the environment associated with the revised applications, and later decided to prepare a Subsequent Environmental Impact Report ("SEIR") in accordance with Public Resource Code Section 21116 and CEQA Guidelines Section 15162.

K. The SEIR identified the need for further revisions to the Alhambra Highlands Project, and on May 14, 2010, Developer's predecessor-in-interest submitted a revised plan ("Alternative #1" or "Mitigated/ Alternate Access Alternative"), illustrating the design changes called for by the mitigation measures and mitigated alternative, as set forth in the SEIR and reducing the maximum number of units from 112 to 110.

L. Upon completion of the Draft SEIR and in compliance with CEQA, the City issued a Notice of Availability on October 21, 2010, State Clearinghouse Number 2010022053 and circulated the Draft SEIR for public review and comment until December 6, 2010, after which time, the City prepared a Final SEIR.

M. Following public hearings on March 22, 2011 and April 12, 2011, the Martinez Planning Commission certified the Final SEIR and approved the Alhambra Highlands Project as revised.

N. Four appeals were filed with the City of Martinez seeking City Council review of the Planning Commission's decision to approve the Alhambra Highlands Project, and many members of the public expressed an interest in acquiring the Property as open space.
O. The Martinez City Council conducted a public hearing on July 6, 2011 and accepted public comments regarding the four appeals filed challenging the Planning Commission’s approval of the Alhambra Highlands Project, and on July 20, 2011, the City Council conducted another public meeting regarding the appeals.

P. On July 20, 2011, the City Council denied the appeals and granted final approval of the Alhambra Highlands Project Alternative 1 (Mitigated Access Alternative) and all associated discretionary approvals (VTM 9257, CUPs, PUD amendment, design guidelines, etc.) (“Project Approvals”). At the City Council’s request, Developer agreed to defer commencement of grading of the Project until April 1, 2014, in order to allow interested third parties time to explore and secure adequate funding to acquire the Subject Property from Developer as open space.

Q. On October 11, 2011, the City and Developer entered into a Grading Moratorium Agreement which deferred any grading on the Subject Property until April 1, 2014. Notwithstanding the Grading Moratorium Agreement, interested members of the public were unable to secure adequate funding to acquire the Subject Property by April 1, 2014 and the Grading Moratorium Agreement expired.

R. Upon the expiration of the Grading Moratorium Agreement, City and Developer began some initial informal discussions regarding the possibility of the City purchasing the Subject Property. Although the Parties commenced the discussions in good faith, changes in City administration hindered the ability to complete the negotiations in a timely manner.

S. As a result of those discussions, the Parties entered into a Negotiating Agreement on July 20, 2016 to memorialize further discussions, provide a process for the sharing of confidential information regarding real property negotiations and provide a mechanism whereby any time spent in further discussions between City and Developer regarding the possible purchase and sale of the Subject Property tolled the term of the VTM 9257 and did not place Developer and Landowners in any disadvantageous position relating to the future expiration of the Project Approvals.

T. The Parties entered into multiple extensions over the next four years that were executed on February 9, 2017, July 20, 2017, January 10, 2018, June 29, 2018, January 4, 2019, July 12, 2019 as corrected on August 1, 2019. Despite the Parties’ efforts for the next four and one-half years to negotiate terms acceptable for the City’s purchase of the Property, the Parties were unable to reach a mutually acceptable deal and the Negotiating Agreement terminated on January 10, 2020. During the term of the Negotiating Agreement (as amended and extended), Richfield deferred the implementation of its performance of the conditions necessary to begin processing the Final Map, and delayed its efforts to satisfy the requirements of the various state and federal permits necessary for the development of the Project.

U. The parties are interested in resuming negotiations with the understanding that Richfield will be allowed to concurrently process the Final Map and perform the requirements of its state and federal permits, and the City will review and accept the
Final Map for filing, while Richfield implements the requirements of its various permits and authorizations so that the Project Approvals will remain in effect and not lapse during the pendency of any further negotiations among the parties.

**NOW THEREFORE,** in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. **Good Faith Efforts to Continue Negotiations.** The Parties shall use their best efforts to resume negotiations for a possible purchase and sale agreement ("PSA") and related documents which shall describe the terms and conditions that would govern the transfer of the Subject Property from the Landowners to City. Developer and Landowners acknowledge that the City cannot execute a PSA without funding and approval by a majority of the City Council of City. In no event shall this Amended Agreement impose any binding obligation on the Landowners or the Developer to convey the Subject Property to City or on City to purchase the Subject Property from Landowners. Without limiting the generality of the foregoing, Parties expressly acknowledge that a PSA and other documents resulting from negotiations contemplated hereby shall become effective only if the City is able to identify a partner(s) who may assist with the funding of such acquisition, and provided that such documents are approved by the Landowners and by the City following a public meeting as required by applicable law and compliance with all other requirements of law, including, without limitation, the California Environmental Quality Act ("CEQA").

2. **Terms of Purchase.** During the Term of this Amended Agreement, the Parties will negotiate regarding the process by which a possible PSA may be negotiated and reached, the necessary steps, and the terms of said potential PSA which terms shall include, but not be limited to:

   (a) **Purchase Price.** The determination of an acceptable purchase price for the Subject Property.

   (b) **Due Diligence Period.** The determination of a due diligence period, and the actions to be performed during same.

   (c) **Funding.** Provisions for demonstrating the financial feasibility of acquisition by the City which may include a joint venture with another party.

   (d) **Right of Entry.** Provision for the grant of access to the Subject Property, including, but not limited to City indemnification of the Landowner and Developer, for purposes of performing inspections and due diligence activities on the Subject Property.

3. **Processing of Final Map.** Landowners and Developer have invested substantial time and financial resources in the Project and initially deferred the submittal of the Final Map application for VTM 9257 so that the Parties would be able to negotiate the possible terms of the City’s acquisition of the Property with the understanding that the term of the VTM 9257 and the associated Development Approvals were tolled during the pendency of the Grading Moratorium and the Negotiating Agreement as set forth below in Section 4. Notwithstanding the foregoing, the Parties agree that the Developer may file a Final Map application with the City for review in
accordance with Government Code Section 66456 and commence the process for the City to
determine that the Final Map is in substantial conformance with the VTM 9257. The Parties
agree to initiate the Final Map process in accordance with Section 21.44 of the City’s
Subdivision Ordinance and shall undertake the following steps

(a) Convene a meeting with the Developer, City Engineer, Community and Economic
    Development Director and City Attorney to review the conditions and
    requirements for the processing of the Final Map by no later than 2 weeks of the
    execution of this Amended Agreement;

(b) Review the submittal requirements for improvement plans which shall be
    processed by the City in conjunction with the Final Map application pursuant to
    Section 66456.2 and within the time limits specified in the Map Act; and

(c) The City Engineer and Community and Economic Development Director shall
    each assign a contract employee and/or staff person to the Alhambra Highlands
    Final Map to assure the timely processing of the Final Map so that the City may
    accept for filing the Final Map before the expiration of the term of the VTM 9257
    and Development Approvals as otherwise extended pursuant to Section 4, below.

4. Moratorium Construed. Landowners and Developer have invested substantial time and
financial resources in the Project, including but not limited to those associated with the
processing of the Development Approvals both before and subsequent to the approval thereof.
In addition, as a result of the Grading Moratorium and the informal discussions with the City,
Landowners and Developer have been delayed in the actual development of the Subject Property
for almost 36 months. Therefore, in consideration of the Landowners and Developer’s
willingness to continue further discussions with the City and to provide a mechanism whereby
any time spent in such discussions does not place Landowners and Developer in any
disadvantageous position relating to the future expiration of the Development Approvals, the
City agrees that for purposes of determining the term and expiration of the Development
Approvals, or any of them, the Term of this Amended Agreement shall be construed as a further
moratorium under Government Code section 66452.6(b).

(a) The Additional Moratorium (further defined in Section 3(b), below) shall
    be in addition to the Grading Moratorium pursuant to the Grading Moratorium
    Agreement and any legislative extensions otherwise allowed as a matter of law which
    previously extended the term of the Project Approvals to July 13, 2021.

(b) For purposes of this Amended Agreement, the effect of the Grading
    Moratorium and the moratorium established under this Amended Agreement shall extend
    the term of the VTM and Project Approvals from July 13, 2021 for an additional 6-month
term commensurate with the term of this Amended Agreement to January 6, 2022
(“Additional Moratorium”).

(c) The applicable rules, regulations, ordinances and policies in effect when
    the City deemed complete the applications for the Project Approvals and those governing
    the Development Approvals (including the conditions of approval approved by the City
Council on July 20, 2011) shall continue to apply, and no further discretionary approvals from any and all City advisory or decision-making bodies shall be required or imposed by the City in order to commence Grading and Project development as contemplated under the Project Approvals and the Grading Moratorium.

5. **Legal Costs.** Each Party shall pay its own legal fees incurred in connection with the negotiation and preparation of a PSA and related documents. The City shall take lead responsibility for the drafting of such documents.

6. **Term.** The Term of this Amended Agreement shall commence on the Effective Date, and shall terminate one hundred and eighty (180) days from the Effective Date, unless extended or earlier terminated as provided herein. The City Manager is authorized to extend the Term by up to an additional one hundred eighty (180) days upon the mutual written agreement(s) of the Parties without further approval of the City Council, further extensions of the Term of this Amended Agreement must be agreed upon by all Parties. Notwithstanding the foregoing, the term of the VTM and Project Approvals shall survive the termination of this Agreement and shall be extended by the Grading Moratorium and the Additional Moratorium pursuant to Section 3 of this Agreement.

7. **Relationship of Parties.** The Parties agree that nothing in this Amended Agreement shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.

8. **Expenses.** Except as otherwise expressly provided in the PSA, all costs and expenses (including, without limitation, staff, consultant and legal fees and expenses) incurred in connection with this Amended Agreement and the activities contemplated hereby shall be paid by the Party incurring such expense.

9. **Confidentiality; Dissemination of Information.** During the Term hereof, each Party may share information obtained or prepared relating to the Subject Property in contemplation of the PSA with the other Party. The Parties hereto agree that such sharing of information is in furtherance of confidential real property negotiations and to the extent permitted by law shall be shared only between counsel for the Parties and retained in confidence by the other Party. Notwithstanding the immediately preceding sentence, no Party shall be prohibited from supplying any information, through its counsel, to its representatives, agents, attorneys, advisors, and financing sources to the extent necessary to accomplish only the activities contemplated hereby so long as such representatives, agents, attorneys, advisors, and financing sources are made aware of the terms of this Section and agree to retain any such information as a confidential communication. Nothing contained in this Amended Agreement shall prevent either Party at any time from furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual obligations, provided that in the event that the Party disclosing the information is the source of the information which is being disclosed. In the event that the Party disclosing the information is not the source of the information, then such Party shall obtain the prior written consent from the other Party (who is the source of the information) prior to the disclosure of the information to any governmental entity or authority as contemplated in this Section 9.
10. **Termination.** This Amended Agreement may be terminated at any time by any Party during the Term of this Amended Agreement by providing written notice to the other Party of such termination. In the event of termination, City shall return any documents provided by Developer and provide copies to Developer of all reports, findings, appraisals and any other documentation related to City’s Right of Entry within 30 business days.

11. **Effect of Termination.** Upon termination as provided herein, or upon the expiration of the Term hereof, including any extensions thereof, without the Parties having successfully negotiated a PSA, this Amended Agreement shall forthwith be void, and there shall be no further liability or obligation on the part of any of the Parties or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 3, Section 4, Section 9 and Section 13 and any other provisions that expressly so state, shall survive such termination.

12. **Notices.** Except as otherwise specified in this Amended Agreement, all notices to be sent pursuant to this Amended Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: personal delivery, in which case notice is effective upon delivery; certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; nationally recognized overnight courier, with charges prepaid or charged to the sender’s account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient’s time or on a non-business day.

City:

City of Martinez  
City Manager  
525 Henrietta Street  
Martinez, CA 94553  
Fax: (925) 229-5012  
Phone: (925) 372-3505

City of Martinez  
Veronica Nebb  
Asst. City Attorney  
Walter & Pistole  
670 W. Napa St., Ste. F  
Sonoma, CA 95476  
Fax: (707) 996-9603  
Phone: (707) 996-9690
Developer/Landowners:

Richfield Real Estate Corp,
Dba Richfield
Mr. Dominic Leung, President
10001 Westheimer Rd., Suite 2888
Houston, TX 77042
Fax: (713) 975-1002
Phone: (713) 975-6288
Email: dleung@richfieldcorp.com

Ms. Alicia Guerra
Buchalter Nemer, A Professional Corporation
55 Second Street, Suite 1700
San Francisco, CA 94105
Fax: (415) 227-0770
Phone: (415) 227-3508
Email: aguerra@buchalter.com

13. **Severability.** If any provision or provisions of this Amended Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

14. **Entire Agreement; Amendments In Writing; Counterparts.** This Amended Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, updates the prior understandings contained in the Negotiating Agreement, and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Amended Agreement may be amended only by a written instrument executed by the Parties or their successors in interest. This Amended Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

15. **Successors and Assigns; No Third-Party Beneficiaries.** This Amended Agreement shall be binding upon and inure to the benefit of the Landowner, the Parties, and their respective successors and assigns. Notwithstanding the foregoing, neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the Landowners or the other Party, which may be withheld in such Party's sole discretion, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Amended Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Landowners or the Parties and their permitted successors and assigns.

16. **Brokers.** Each Party warrants and represents to the other that no brokers have been retained or consulted in connection with this transaction. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Amended Agreement.

17. **Captions.** The captions of the sections and articles of this Amended Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.
18. **Governing Law.** This Amended Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in the County of Contra Costa.

IN WITNESS WHEREOF the parties hereto execute this Amended Agreement on the date written below.

**City of Martinez**

By: [Signature]

Dated: 6/22/2020

By: [Signature]

Dated: 6/15/20

By: [Signature]

Dated: 5/30/2020

**Richfield Real Estate Corporation**

By: [Signature]

Dated: 01-10-20

By: [Signature]

Dated: 07/02/2020

**Waters – DHC LLC**

a Delaware limited liability company

By: Gramercy Properties, Inc.

Its Sole Member

By: [Signature]

Dated: 01-10-20
Oak Hill Park Company,
a California corporation

By: ___________________________  Dated: ___-10-20

Dominic Leung, Treasurer