

COMPLIANCE AGREEMENT

This COMPLIANCE AGREEMENT (“Agreement”) is entered into by and between Nathan Trivers (“Tenant”), Keeping It Going LLC (“Owner”), and the City of Richmond (“City”). Tenant, Owner, and City are sometimes referred to in this Agreement individually as “Party” and collectively as “Parties.” The Effective Date of this Agreement is the date the last Party signs this Agreement.

I. PURPOSE

The purpose of this Agreement is to resolve long standing disputes where the City believes Tenant has been out of compliance with various City Ordinances and Tenant disputes the City processes which have been followed. The Parties intend to resolve the disputes establishing actions to be taken and specific timeframes. The Parties shall undertake performance of this Agreement in good faith.

II. RECITALS

This Agreement is made with reference to the following facts:

Facts Related to the Parklet

1. Title to the property is vested in Keeping It Going LLC. The property is located at 2 West Richmond Avenue, Richmond, California 94801-3991, Assessor’s Parcel Number 558-122-020 (“Subject Property”). Tenant operates Up & Under Pub & Grill (“Up & Under”) at the Subject Property.
2. On or about August 6, 2020, Tenant submitted a parklet application to the City of Richmond seeking to establish a parklet as defined in Richmond Municipal Code (“RMC”) sections 14.46.005 and 12.30.020.
3. On or about November 5, 2020, the City issued Encroachment Permit No. EN20-00883 (“2020 Encroachment Permit”) for the parklet at the Subject Property. However, on or about December 31, 2021, the 2020 Encroachment Permit expired.
4. On or about July 29, 2022, the City issued a Notice of Violation and Demand to Abate based on the expired encroachment permit (“Parklet NOV 1”). The corrective action was for the parklet to be removed. On or about May 8, 2023, the City issued a second Notice of Violation and Demand to Abate based on the expired encroachment permit (“Parklet NOV 2”). The corrective action was for the parklet to be removed.
5. In August 2023, Tenant submitted a parklet application. The City deemed this parklet application incomplete. On or about September 19, 2023, the City issued a Final Notice of Violation and Demand to Abate which affirmed the violations in NOV 2 and ordered the parklet removed by October 19, 2023 (“Parklet NOV 3”). In November 2023, the City reiterated Tenant’s parklet application remained

incomplete and provided notice that the City would remove the parklet on or after December 10, 2023, and asked Trivers to voluntarily remove the parklet and/or submit a complete parklet application.

6. In December 2023, counsel for Tenant requested the City re-review Tenant's parklet application submitted in August 2023. The City re-reviewed Tenant's August 2023 parklet application and found it incomplete. On or about January 22, 2024, the City sent Tenant a letter outlining the deficiencies and requested a full and complete parklet application by February 5, 2024. Tenant did not submit a full and complete parklet application by February 5, 2024.

Facts Related to the Grill

7. On February 7, 2023, the City conducted an inspection of the Subject Property and observed a grill being stored on the city street.
8. On or about February 9, 2023, the City issued a Notice of Violation and Demand to Abate to Owner and Tenant ("Grill NOV"). The Grill NOV stated the grill was being stored on the city street in violation of RMC section 12.28.040 which prohibits placing "any material, machinery or apparatus for building, paving or other purposes" "on any street, sidewalk or public place in the city of Richmond" "for over twenty-four hours without a permit." The Grill NOV directed the grill be stored "on the property and not on the city street, sidewalk, or any other public space."
9. On February 28, 2023, the City conducted a compliance inspection and found the grill remained stored on the city street. On or about March 3, 2023, the City issued an Administrative Citation to Owner and Tenant. It included a \$250 fine for failing to remove the grill that was being stored on the city street.
10. Tenant appealed the Administrative Citation, and a hearing was held on April 4, 2023. The Administrative Citation was upheld on appeal in a written decision issued on April 12, 2023. Tenant appealed the written decision, and a hearing was held on May 26, 2023. The written decision was upheld in a written decision issued on June 8, 2023.
11. On or about October 12, 2023, the Tenant submitted an encroachment permit application #EN23-00843 seeking approval to place a BBQ smoker on the public sidewalk/street adjacent to Up & Under at 2 West Richmond Avenue.
12. On July 31, 2024, after completing a careful review with other City departments, the City Engineer in the Public Works Department denied the permit in writing, citing several regulatory and safety concerns.
13. The Tenant appealed the denial of the encroachment permit application. On September 12, 2024, the City Clerk mailed, via overnight mail, a letter to the Applicant advising that the hearing of his appeal had been scheduled for the September 24, 2024 City Council meeting and included a copy of the Notice of Hearing. The Notice of Hearing was also published in the West County Times on Saturday, September 14, 2024.

14. The appeal hearing was held on September 24, 2024 at a regularly scheduled City Council meeting. The City Council voted to continue the item for some 60 days until December 3, 2024 to allow for an agreeable plan to be brought forth to address all issues that were presented by the City, including issues with the parklet. If no agreeable plan was brought forth, the grill would be removed.

Additional Facts

15. On October 7, 2024, the City sent a letter to Tenant in follow up to the hearing held on September 24, 2024 and an internal meeting of staff to develop a work-out plan over two months. In that letter, the City clarified the issues to be resolved, some immediate and some in the future including (1) the BBQ grill/smoker, (2) the parklet located on W. Richmond Avenue, (3) the outdoor dining area currently located across Railroad Avenue, near the railroad tracks, and (4) the outdoor dining area immediately adjacent to the building on the sidewalk along Railroad Avenue. The City followed up with another letter on October 29, 2024.
16. In the letter dated November 19, 2024, counsel for Tenant agreed to: (1) move the grill/smoker onto private property, (2) retain a Certified Access Specialist to inspect the parklet and provide an accessibility and make any improvements to ensure the Parklet is accessible under the Americans with Disabilities Act, and (3) enter into a compliance agreement with the City to allow Tenant to maintain the parklet.
17. Owner and Tenant intend and desire to bring the parklet and the grill at the Subject Property into full compliance with the RMC and all other applicable State and local laws. Given the agreement to undertake the actions above, through this Agreement a timeline can be developed for implementation of this plan. Accordingly, despite the expiration of the compliance deadlines in the Parklet NOV 1, Parklet NOV 2, Parklet NOV 3, and Grill NOV, the City agrees, subject to the terms of this Agreement, to suspend enforcement so long as the Agreement is operative.

III. AGREEMENT

In consideration of an in return for the promises, covenants, and agreements made herein by the Parties, sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Parties acknowledge and agree that all the statements in the Recitals are true and correct to the best of their knowledge. The Recitals are hereby incorporated into and made a part of this Agreement to the same extent and the same effect as if fully set forth herein.

2. Violations. Tenant and Owner acknowledge the existence of the violations on the Subject Property, and the public nuisances and substantial danger that those violations present to any occupants of the Subject Property, residents including neighbors, and the public.

3. Nuisance. Tenant and Owner acknowledge the existence of the violations on the Subject Property and that such violations are a public nuisance and pose a substantial danger to

the health and safety of the residents and the public. These violations make the Subject Property a nuisance, being injurious to health, indecent and offensive to the senses, and an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life and property. The violations also make the Subject Property a public nuisance since they affect at the same time the entire community, the neighborhood, and a considerable number of persons.

4. Compliance Schedule. Tenant and Owner agree to bring the grill and parklet at the Subject Property into full compliance with all laws, including but not limited to, the RMC and all and other applicable law and regulations pursuant to the following schedule (“Compliance Schedule”):

(a) The Grill.

- (1) Tenant will immediately cease use of the grill at the current location on the Effective Date of this Agreement. Tenant will permanently remove the grill from the public right-of-way, including but not limited to the sidewalk, street, roadway, curb, and/or gutter within seven (7) calendar days of the Effective Date of this Agreement.
- (2) Should the Tenant move the grill to private property, Tenant will ensure the grill’s placement on private property is compliant with relevant state and local laws and regulations, including but not limited to City’s Building, Planning, and Fire Departments and any other appropriate regulatory entities, including but not limited to Bay Area Air Quality Management District and the Contra Costa Environmental Health Division. Failure to comply with this provision will be considered a breach of this Agreement.

(b) The Parklet.

- (1) Certified Access Specialist (CASp) Inspection and Report. Within forty-five (45) calendar days of the Effective Date of this Agreement, Tenant must retain a CASp Inspector and have the CASp Inspector complete an inspection of the parklet and provide an accessibility report. The CASp Inspector’s accessibility report should be included with the application as set forth in Section III(4)(b)(ii), below.
- (2) Permits and Other Required Approvals. Tenant and Owner must submit complete applications, plans or other requirements documents for all approvals, permits, or other submissions to [REDACTED] to bring the parklet at the Subject Property into full legal compliance within seventy-five (75) calendar days of the Effective Date of this Agreement.

- (a) A “complete application” consists of:
 - i. A complete and signed parklet application form attached hereto as **EXHIBIT A**;
 - ii. A parklet application fee;
 - iii. A list of parklet requirements attached as **EXHIBIT B**;
 - iv. A letter of support from the Neighborhood Council;
 - v. A letter of support from each adjacent property owner;
 - vi. A complete and signed encroachment permit application form attached hereto as **EXHIBIT C**;
 - vii. An encroachment permit application fee; and
 - viii. Construction schedule, if the application identifies additional work to the existing parklet.
- (b) The City will complete its review of the application submitted by Tenant and Owner within thirty (30) calendar days of its submission to the City.
- (3) Resubmittal. If any of the aforesaid applications, plans, or other requirements documents are returned, rejected, or otherwise not approve, then Tenant and Owner agree that any deficiencies in the submissions shall be corrected, and the applications, plans, or other required documents shall be properly re-submitted within seven (7) calendar days of notification of return, rejection, non-approval, and/or deficiencies by any means. The re-submitted applications must be final and complete.
- (4) Commencement. If work is required to bring the parklet into full legal compliance, Tenant and Owner must begin all work on the Subject Property within seven (7) calendar days of the issuance of the approval, permit, or other legally required authorization. “Issuance” shall be deemed the date the City notifies the Tenant and/or Owner by any means that the permit or approval to begin work is approved. Neither Tenant, Owner, nor their agents shall perform any work, which requires a prior approval, until and unless such prior approval is issued by the City or applicable public agency.
- (5) Insurance. Tenant and/or Owner shall provide insurance certificates to the satisfaction of the City of Richmond’s Risk Manager within seven (7) calendar days of the issuance of the approval, permit, or other legally required authorization. The insurance coverage shall include, but not be limited to, comprehensive general liability,

automobile liability, and workers' compensation insurance, as applicable. The City of Richmond shall be named as an additional insured on the comprehensive general liability and automobile liability policies. The insurance certificates must include the following coverage amounts:

- (a) Comprehensive General Liability: \$2,000,000 per occurrence
- (b) Automobile Liability: \$1,000,000 per accident
- (c) Workers' Compensation: Statutory limits

All insurance policies shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party, except after thirty (30) days prior written notice has been given to the City of Richmond.

- (6) Completion Deadline. Tenant and Owner must take all necessary actions and must ensure that the Subject Property is adequately protected from further nuisance activities and that the grill and parklet at the Subject Property is in complete compliance with Parklet NOV 1, Parklet NOV 2, Parklet NOV 3, and Grill NOV, RMC, and all other applicable laws as confirmed by the City within one-hundred and eighty (180) calendars days of the Effective Date of this Agreement. Should Tenant and Owner meet the Compliance Deadline, the City will issue the appropriate permits or approvals for the parklet with conditions, with which Tenant and Owner will comply.

5. Contractors. Should work be required to comply with this Agreement, Tenant and Owner agree to utilize only State licensed contractors who are insured and bonded for the work on the Subject Property.

6. Maintenance. Tenant and Owner agree to maintain the grill and parklet on the Subject Property with all laws, thereafter, including the RMC, HSC, and all other applicable laws. This includes, but is not limited to, obtaining the necessary permits for all construction and/or demolition, and ensuring that such construction and/or demolition is in compliance with all applicable laws.

7. Schedule. Tenant and Owner acknowledge and agree that the Compliance Schedule is mutually agreeable and a reasonable accommodation in light of any known or unknown disabilities or other constraints Tenant and/or Owner may have in bringing the Subject Property into compliance. Nevertheless, upon request by the Tenant and/or Owner, the City may grant,

completely at its own discretion, an extension of time to the Compliance Schedule provided that the City determines substantial progress has been made towards compliance by the Tenant and/or Owner and a request is received before the subject Compliance Deadline. Additionally, the Project is entitled to extensions caused by force majeure provided Tenant must inform City of the commencement of the delay and City must approve the nature of the delay, but approval shall not be unreasonably denied.

8. Inspection. Tenant and Owner agree and consent to inspection of the Subject Property by City staff during the hours of 8 a.m. to 5 p.m., Monday through Friday, for purposes of confirming the condition of the Subject Property and/or compliance efforts, upon forty-eight (48) hour notice by the City, until full compliance is confirmed by the City.

9. Reimburse Costs. Tenant agrees to reimburse the City's actual and reasonable costs, abatement costs, expenses, fees, attorneys' fees, and pay any unpaid fines associated with its enforcement efforts to date ("Costs and Fees"), in the amount not exceeding \$_____. These Costs and Fees are due to the City as provided by law. Tenant agrees to reimburse the City that amount in full within thirty (30) calendar days of the date of the written request therefor. Reimbursement of the City's costs and fees shall be made payable to the "City of Richmond" and sent to the City of Richmond, City Attorney's Office, at 450 Civic Center Plaza, Richmond, California 94804.

10. Lien. In the event that full reimbursement to the City is not made, as provided herein, Tenant and Owner agree the City may recover these unpaid amounts, as well as any additional fees and costs incurred by the City relating to its enforcement efforts on the Subject Property and related to Tenant and/or Owner's non-compliance with this Compliance Agreement or any terms contained therein, by any means authorized by law, including by a lien or special assessment on the Subject Property and/or reporting to the Franchise Tax Board, without further hearings or notice and/or appointment of a receiver to pay the remaining fees or costs, which receiver's certificates shall be recorded as super-priority liens on the Subject Property. Tenant and Owner waive any rights of appeal or hearing regarding any such lien or special assessment.

11. Default. In the event Tenant and Owner fail to perform any obligation under this Agreement, the City shall be entitled to pursue any and all legal and, or equitable remedies available to it for purposes of enforcement of this Agreement, including, without limitation, to all

remedies available under the law, which includes, but is not limited to, injunctive relief, the appointment of a receiver or its equivalent to manage and maintain the Subject Property for purposes of bringing the same within compliance as contemplated by this Agreement at the expense of Owner, and the assessment of civil penalties or fines. Furthermore, Tenant and/or Owner shall be responsible for all reasonable future costs, fees, and expenses, including all inspection costs, enforcement costs, abatement costs, litigation expenses, attorneys' fees and costs, administrative citation fines, and administrative expenses, incurred by the City in inspecting, enforcing, and abating all unlawful conditions on the Subject Property, if any there may be, to the extent authorized by law.

12. Railroad Avenue. The City in its letter dated October 7, 2024 raised two issues, (i) the Railroad Avenue property and (ii) the open dining seating area which Tenant addressed in his letter of November 19, 2024. Tenant states that he has no interest in the Railroad Avenue site and City may address any way they choose. With respect to the dining area the City reserves the right to continue its enforcement efforts as to this area, in addition to any future violations at the Subject Property as set forth in Section III(13) below.

13. Release. Tenant and Owner on behalf of themselves and any successors, know and/or potential heirs, and assignees, hereby release the City, its agents, employees, attorneys, elected officials, appointed officials and representatives, from any and all existing and future actions, causes of action, losses, claims, demands, damages, costs, loss of use, loss of revenue, expenses, compensation and other forms of damages arising from or relating to the code enforcement efforts relating to the Subject Property, including those which they do not know at the time of executing this Agreement which, if known by them, might have materially affected this Agreement. However, this release provision does not extinguish, release, or discharge any of the obligations and rights set forth and encompassed in this Agreement. The City expressly reserves its right to take enforcement action relating to violations on the Subject Property, relating to cost recovery and other rights of the City.

14. Advice of Counsel. The Parties represent that they have had the opportunity, whether or not they have chosen to do so, to discuss this Agreement with legal counsel.

15. Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and

written agreements and discussions. This Agreement may be amended only by an agreement in writing signed by all Parties, except that a change in contact information may be made simply by sending written notice to the other party.

16. Waivers. A waiver of any provision of this Agreement must be in writing. Failure to insist upon strict performance of any provision, right, duty, or obligation in this Agreement is not a waiver of the right to future enforcement of that provision, right, duty, or obligation, nor any other provision, right, duty, or obligation.

17. Severability. Each provision of this Agreement is separate, distinct, and severable from the others. If any provision is held unenforceable, the rest of the Agreement shall be enforced to the greatest extent possible.

18. Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of California.

19. Choice of Forum and Applicable Law. This Agreement is intended to be construed pursuant to the laws of the State of California, without regard to its choice of law provisions, and each of the undersigned Parties agrees that the only proper venue for any action arising out of the breach of this Agreement shall be the Superior Court of California for the County of Contra Costa.

20. Ability to Perform. Each Party represents and warrants to the other Party that it has the ability to carry out the obligations assumed and promised hereunder, is correctly named, and is not presently aware of any pending event which would or could hamper, hinder, delay, or prevent its timely performance of said obligations.

21. Successors and Assigns. This Agreement and all terms, conditions and obligations contained herein are binding upon and inure to the benefit of any assigns, heirs, devisees, and/or successors-in-interest of the Parties, and each of them. Each of the Parties represents and warrants that as of the Effective Date none of the claims or causes of action being released herein have been transferred, assigned, or otherwise conveyed to any other person or entity, and each of the Parties is the holder of the claims being released.

22. Counterparts/Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed one and the same instrument. Signatures to this Agreement may be transmitted electronically and/or by facsimile, and that such electronic

and/or facsimile signatures shall have the same force and effect as an original. By signing below, the parties acknowledge that they have read, understood, and agree to all of the terms of this Agreement.

23. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

Dated: _____ **KEEP IT GOING LLC**

By: _____

Name:

Title:

Dated: _____ **NATHAN TRIVERS**

NATHAN TRIVERS

Tenant and Owner of Up & Under

CITY OF RICHMOND

By: _____

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Approved as to Form:

David J. Aleshire
City Attorney

EXHIBIT A
APPLICATION ATTACHED

EXHIBIT B

PARKLET REQUIREMENTS

1. A site map or map(s), to scale, showing the location and dimensions of the parklet and other objects in the immediate area (same block). The site map shall include and/or demonstrate:

- (a) The street number addresses of nearby buildings;
- (b) The direction of traffic;
- (c) The presence and location of: vacant lots or buildings, driveways, fire hydrants, manholes, storm water inlets, gutters, bike parking, utilities (including but not limited to tree grates, vault, covers, manholes, junction boxes, signs, lights, and poles), street furniture (including but not limited to bus shelters, honor boxes, and benches), and café seating.
- (d) The length of the applicant's street frontage
- (e) The parklet's compliance with accessibility standards under the Americans with Disabilities Act, including the CASp accessibility report

2. At least two photographs from different angles along the sidewalk/street where the parklet is located as well as photographs of potential location-related conflicts, including but not limited to street utilities, street furniture, and/or intersections, as noted in the detail site map.

EXHIBIT C
ENCROACHMENT PERMIT APPLICATION

DOCUMENTS ATTACHED